

F. ANN RODRIGUEZ, RECORDER
RECORDED BY: HEM
DEPUTY RECORDER
2057 ES4

TFNTI
OCOTILLO PRESERVE DEVELOPMENT
1600 E HANLEY ST STE 124
TUCSON AZ 85737



DOCKET: 13251
PAGE: 1275
NO. OF PAGES: 17
SEQUENCE: 20080390334
02/27/2008
ARSTRT 14:52
MAIL
AMOUNT PAID \$ 22.00

When Recorded return to:
Ocotillo Preserve Development, LLC
1600 E. Hanley St., Ste. 124
Tucson, AZ 85737

**AMENDED AND RESTATED DECLARATION
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
OCOTILLO PRESERVE**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR OCOTILLO PRESERVE is made as of the 27 day of FEBRUARY, 2008, by FIDELITY NATIONAL TITLE AGENCY, an Arizona corporation ("Fidelity"), as Trustee under Trust Numbers 60,149, 60,306, 60,307 and 60,308 only and not in its individual corporate capacity (collectively, "Declarant").

RECITALS

WHEREAS, this Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Ocotillo Preserve ("Declaration") concerns certain real property located in Pima County, Arizona, legally described as:

Lots 1-42 of OCOTILLO PRESERVE, a subdivision of Pima County, Arizona, according to the Plat of record in Book 60 of Maps and Plats at Page 20 in the official records of Pima County, Arizona ("Property").

WHEREAS, pursuant to its authority set forth in Article XII, Section 12.7(B) of the Declaration of Covenants, Conditions, Restrictions and Easements for Ocotillo Preserve recorded in Docket 12625 at Page 4930 in the official records of Pima County, Arizona ("Original Declaration"), Declarant desires to amend and restate the Original Declaration.

NOW, THEREFORE, Declarant hereby submits the Property, together with all improvements, appurtenances and facilities relating to or located on the Property now and in the future, to this Declaration which shall supercede and replace the Original Declaration, and hereby imposes upon all of the Property the covenants, conditions, restrictions, easements, reservations and other provisions of this Declaration below, and declares that all of the Property shall be held, sold, conveyed, encumbered, leased, rented, occupied and improved subject to the provisions of this Declaration. All provisions of this

RECORDED & INDEXED

SECRET

Areas" and including those portions of each Lot outside of the "Designated Homesite Area" which shall be converted to Natural Open Space as set forth in the Plat (also referred to as the "Restricted Property" in the Open Space Covenants), and maintained by the Association.

Section 1.11. "Open Space Covenants" shall mean that certain Declaration of Restrictive Covenants recorded in Docket 12794 at page 1930 in the official records of Pima County, Arizona.

Section 1.12. "Owner" refers to the record owner, whether one or more persons, of the fee simple title to any Lot which is part of the Properties except persons holding an interest merely as security for the performance of an obligation.

Section 1.13. "Period of Declarant Rights" refers to the time in which the Class B membership exists. Any and all of Declarant's rights under this Declaration may be assigned by Declarant to one or more beneficial owners of the Property under any trust administering the Property during the Period of Declarant Rights.

Section 1.14. "Plat" refers to the Subdivision plat recorded in Book 60 of Maps and Plats at Page 20 in the official records of Pima County, Arizona, as same may be amended from time to time.

Section 1.15. "Property" and "Subdivision" shall be synonymous and shall refer to that certain real property described as follows: Lots 1 thru 42, Ocotillo Preserve, a subdivision of Pima County, Arizona, as shown on the Plat recorded in Book 60 of Maps and Plats at Page 20 in the official records of Pima County, Arizona.

Section 1.16. "Single Family" means a group of one or more persons each related to the other by blood, marriage or legal adoption or a group of three or less persons who are not related, but who maintain a common household.

Section 1.17. "Visible from Neighboring Property" means, with respect to any object, that such object is, or would be visible by a person six (6) feet tall standing on any part of a neighboring Lot or any street within the Subdivision, at an elevation no greater than the elevation of the base of the object being viewed.

ARTICLE 2 ASSOCIATION

Section 2.01. Powers. The Association is a non-profit corporation charged with the duties and invested with the powers set forth in this Declaration, the Association's Articles of Incorporation, its Bylaws, and prescribed by the laws of the State of Arizona relating to nonprofit corporations. The affairs of the Association shall be conducted by a Board of Directors who shall be appointed by the Declarant during the Period of Declarant Rights,

00-1A7A-03 1-800-555-5555

Section 2.03. Personal Liability. No director or officer of the Association, and no other person acting on behalf of the Board shall be personally liable to any Lot Owner or occupant for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence in the discharge of such person's duties and responsibilities under this Declaration provided such person acted in good faith.

Section 2.05. Management Agreements. Any agreement for professional management entered into after the date this Declaration is recorded, or any other contract providing for services, will not exceed a term of one (1) year, which term may be renewed by mutual agreement for successive one year periods. Any professional management or service agreement will provide for termination by either party with or without cause and without payment of a termination fee upon thirty (30) days' written notice.

Section 3.01. Association Membership. Every Lot Owner shall automatically become a member of the Association with such membership to automatically terminate if such person ceases to be an Owner. The rights and obligations of any member other than the Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure of a Mortgage of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the membership appurtenant to said Lot to the new Owner thereof. Each purchaser of a Lot shall notify the Association of his/her purchase within ten (10) days after he/she becomes the Owner of a Lot.

4

Class A. Class A members are all Owners of Lots, with the exception of the Declarant until the termination of the Class B membership. Each Class A member shall be entitled to one vote for each Lot owned. In the event any Lot is owned by two (2) or more persons, the membership shall be joint, and only one vote may be cast with respect to any such Lot. If an Owner casts a ballot representing a certain Lot, it will be conclusively presumed for all purposes that such Owner was acting with the authority and consent of other Owners of the same Lot ("Co-Owners"), unless an objection or protest is made by a Co-Owner prior to the completion of the vote in which case no vote for that Lot will be counted. In the event that more than one ballot is cast for a particular Lot, none of said votes shall be counted.

Class B. The Class B member shall be the Declarant. The Declarant shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership when Declarant no longer owns any Lot. The Declarant may at any time relinquish its Class B membership by giving written notice thereof to the Association.

Section 3.03. Suspension of Voting Rights. In the event any Owner shall be in arrears in the payment of any Assessment for a period of fifteen (15) days or more, or in default of any provision of this Declaration, said Owner's right to vote as a member of the Association may be automatically suspended by the Board of Directors until all payments are brought current and all defaults cured.

ARTICLE IV ASSESSMENTS

Section 4.01. Assessments. The Owner of every Lot, by acceptance of a deed there for, is deemed to covenant and agree to pay to the Association: (1) Annual Assessments, payable in such installments as determined by the Association's Board of Directors; (2) Special Assessments; and (3) Individual Assessments. The Assessments, together with late charges, costs of collection, and all attorneys' fees incurred in collecting same, shall be a charge and continuing lien upon the Lot against which each such Assessment is made, and shall also be the personal obligation of the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to such Owner's successors in title unless expressly assumed by them.

Section 4.02. Purpose of Assessments. The Assessments levied by the Association shall be used to promote the health, safety, and well-being of the members, to enhance the aesthetics of the Subdivision, and for all of those purposes and activities that may be required of the Association or that the Association may be empowered to pursue by virtue of this Declaration, the Articles of Incorporation, the Bylaws of the Association, and Arizona law governing non-profit corporations, including but not limited to the following: (i) the amount required to pay the cost of maintenance, management, operation, repair and replacement of the Common Features; (ii) the Association's obligations under the Open

10-10-01

Space Covenants; (iii) the cost of wages, professional fees, materials, insurance premiums, services, supplies and other expenses required for the administration, operation, and maintenance of the Association; and (iv) such amounts as may be necessary to provide reserve funds as determined by the Board of Directors.

Section 4.03. Maximum Annual Assessments. The Board of Directors shall not increase the amount of the Annual Assessment from the amount of the prior year's Annual Assessment by more than twenty percent (20%) without the consent of Owners representing a majority of the Lots.

Section 4.04. Special and Individual Assessments.

A. Special Assessments. Special Assessments may be levied by the Association equally against each Lot for the purpose of defraying, in whole or in part, the cost of any maintenance, construction, reconstruction, repair or replacement of Common Features with the affirmative vote of members representing at least sixty-seven percent (67%) of the total votes in the Association.

B. Individual Assessments. Individual Assessments may be levied against a Lot to reimburse the Association for any costs incurred in bringing the Lot into compliance with the provisions of the Declaration, including attorneys' fees, and any costs incurred by the Association pursuant to Article VII (Sections 7.03 and 7.04) and Article XI (Section 11.02) of this Declaration.

Section 4.05. Effect of Non-payment of Assessments. Assessments shall be due and payable by the Owners in such manner and at such time as the Board shall designate. If not paid within fifteen (15) days after its due date, each such Assessment shall have added to it a late charge of \$15.00 or ten percent (10%) of the Assessment, whichever is greater. The Association may foreclose its Assessment lien and bring an action at law against the Owner personally obligated to pay same, and in the event that a judgment is obtained, such judgment shall include interest, late charges on the Assessment, reasonable costs of collection, and attorneys' fees, together with the costs of the action.

Section 4.06. Uniform Assessment. The rate of Annual and Special Assessments shall be uniform as to each Lot.

Section 4.07. Commencement of Annual Assessment. The initial Annual Assessment shall commence on the first day of the month following the first conveyance of a Lot, and the second and each subsequent Annual Assessment period shall correspond with the fiscal year of the Association; provided, however, that the first Annual Assessment shall be pro rated according to the number of months remaining in the first Annual Assessment year.

Section 4.08. No Offsets. All Assessments shall be payable in the amount specified in

the Assessment or notice of Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that (I) the Association, the Board, or Declarant is not properly exercising its duties and powers as provided in the Declaration; or (II) Assessments for any period exceed Association expenses.

Section 4.09. Reserves. The responsibility of the Board of Directors (whether controlled by Declarant or the Members) shall be only to provide for such reserves as the Board of Directors in good faith deems reasonable. Neither the Declarant nor the Board of Directors (including any member thereof) shall have any liability to any Owner or to the Association if such reserves prove to be inadequate.

Section 4.10. Responsibility of Declarant for Assessments. Notwithstanding any term or condition of this Declaration to the contrary, Declarant shall pay twenty-five percent (25%) of Regular and Special Assessments for each Lot owned by Declarant.

Section 4.11. Subordination of Lien to Mortgages. The Association's Assessment lien provided for herein, including without limitation any late charges, reasonable costs of collection, and attorneys' fees incurred in connection therewith, shall be subordinate to the lien of any first deed of trust recorded against a Lot. Sale or transfer of any Lot shall not affect the Association's Assessment lien or charges, except that sale or transfer of any Lot pursuant to a trustee's sale or foreclosure of any such first deed of trust or proceeding in lieu thereof, shall extinguish the lien of such Assessment charges that became due prior to any such sale, foreclosure or proceeding, including a deed in lieu of foreclosure.

ARTICLE V PERMITTED USES AND RESTRICTIONS

Section 5.01. Private Residential Purposes. Except as provided for elsewhere in this Declaration, Lots will be used solely for residential purposes by Single Families. An Owner or occupant may operate a home occupation which complies with the following:

- (a) The existence or operation of the business activity is not apparent by sight, sound or smell;
- (b) The business activity conforms to all zoning requirements for the Property;
- (c) The business activity does not involve frequent or annoying traffic by persons coming on the Property who do not reside in the Property or door-to-door solicitation of residents of the Property;
- (d) The business activity is consistent with the residential character of the Property and does not constitute a nuisance or hazard, nor threaten the security, safety or well being of other residents of the Property;

(e) No business may involve equipment or machinery, manufacturing, drilling, burning, or conversion of any garage into a business office or room; and

(f) No business conducted upon the Property may result in any change in the exterior appearance of any Lot, and no business will involve signs, buildings, or structures in addition to the residence.

Section 5.02. Animals. No animals, including but not limited to, livestock, poultry, or bees shall be kept or maintained on any Lot except that Owners may keep a reasonable number of dogs, cats, fish and other household pets so long as such pets are not kept for commercial purposes, do not make objectionable noises and are not kept in such number or manner as to otherwise cause a nuisance or inconvenience to any residents and are kept in compliance with all existing applicable local ordinances. The Association shall have the right to determine that, in its sole discretion, certain household pets, their number, or the manner in which they are kept constitute a nuisance, and may require the Owner of same to remove such pets from Owner's property.

Section 5.03. Leasing. No Owner may lease less than his/her entire Lot and the residence situated thereon, and there shall be no subleasing of residences or assignments of leases. All leases shall be to Single Families only, and for an initial term of at least ninety (90) days. All leases must be in writing and specify that failure of the lessees to comply with this Declaration and/or the Association Rules constitutes a default under any such lease. The Owner shall be liable for any violation of this Declaration by the lessees or other persons residing in the residence, including their guests and invitees, and in the event of any such violation, the Owner, upon demand of the Association, shall immediately take all necessary actions to correct any such violations.

At least ten (10) days before commencement of any lease term, the Owner shall provide the Association with the following information: (a) the commencement date and expiration date of the lease term; (b) the names and telephone numbers of each of the lessees and each other person who will reside in the residence during the lease term; and (c) the address and telephone number at which the Owner can be contacted by the Association during the lease term. Any Owner who leases his/her Lot and the residence situated thereon must provide the lessee with a copy of this Declaration.

Section 5.04. Offensive Activities and Conditions. No obnoxious, offensive, or illegal activity shall be conducted upon any Lot, nor shall any condition which is unsightly, offensive, or which is or may become an annoyance or nuisance to other residents exist on any Lot. A determination by the Board of Directors that a Lot is in violation of this Section shall be conclusive.

Section 5.05. Vehicles. No vehicle of any type which is abandoned, unregistered, or inoperable shall be stored or kept on any Lot in such a manner as to be visible from Neighboring Property. Lots may not be used for the repair or maintenance of vehicles

unless conducted inside garages so as not to be Visible from Neighboring Property. No motor driven two-wheel or three-wheel or off-road vehicles of any type shall be operated on any Lots or roadways within the Subdivision if such operation is disturbing to Owners of other Lots within the Subdivision. Upon receipt of a written notice from the Board of Directors to cease operation of any such vehicle, the Owner of the Lot upon which such vehicle is kept or being operated shall promptly comply. No trailers of any kind, motor homes, mobile homes, recreational vehicles, boats, commercial vehicles (except those specifically permitted by A.R.S. §33-1809) or similar vehicles and/or equipment shall be parked or stored in such a manner so as to be Visible from Neighboring Property for more than a total of five (5) days in any ninety (90) day period, except with the written consent of the Board of Directors. The Board of Directors may promulgate Association Rules that limit and/or restrict parking on streets within the Subdivision.

Section 5.06. Recreational Equipment. No recreational equipment, including but not limited to basketball hoops and jungle gyms, should be erected or placed on any Lot in such a manner as to be Visible from Neighboring Property, unless such equipment and its location has received prior written approval of the Board of Directors.

Section 5.07. Maintenance of Lots. Each Owner shall, at such Owner's expense, keep his Lot (including, but not limited to, all buildings, improvements, walls, driveways and landscaping, but excluding any Natural Open Space Area) in a well-maintained, clean, neat and attractive condition at all times. Trash containers shall not be Visible from Neighboring Property except when at the curb for trash pick-up, and at such times, for no more than twenty-four (24) hours. The Board of Directors shall have sole discretion in determining if the condition of any Lot is in violation of this section.

Section 5.08. Signs. No signs shall be erected, placed or permitted to remain on any Lot except for (i) "For Lease" or "For Sale" signs as set forth in A.R.S. §33-1808; (ii) political signs as set forth in A.R.S. §33-1808; and (iii) such signs as are required by legal proceedings.

Section 5.09. Temporary Structures; Antennas; Clotheslines. No structure of a temporary character may be installed, placed, or erected on any Lot without the prior written approval of the Board of Directors. Television antennas and satellite dishes less than one (1) meter in diameter may be installed on Lots; provided, however, that such devices should be installed so as not to be Visible from Neighboring Property so long as an acceptable signal can be obtained. Clotheslines shall be kept screened by adequate planting or walls so as not to be Visible from Neighboring Property.

Section 5.10. Tanks; Machinery; and Equipment. No elevated tanks of any kind shall be erected, placed or permitted on any Lot. No machinery of any kind shall be placed, operated, or stored on any Lot except such machinery as is usual and customary in connection with repair or construction, and only for the period of such repair or construction. Mechanical and electrical equipment (including, but not limited to, duct-work,

air conditioning, heating, evaporative cooling, and pool equipment) installed on any Lot shall not be placed on the roof of any structure, and such equipment shall not be Visible from Neighboring Property. All electric, cable, natural gas, water and telephone line installations and connections shall be placed underground except during construction of a residence upon a Lot.

Section 5.11. Drainage. Nothing shall be done to alter the drainage on any Lot or the Common Features, except with the approval of the Association and Pima County, Arizona.

Section 5.12. Subdivision of Lots. No Lot or Lots may be subdivided except with the prior written approval of the Association and Pima County, Arizona.

Section 5.13. Ocotillo Ranch Protective Covenants. The Lots within the Subdivision are subject to the covenants, conditions, restrictions and easements set forth in the Ocotillo Ranch Protective Covenants recorded in Docket 10539 at Page 2165 in the official records of Pima County, Arizona, as thereafter amended by Declaration of Scrivener's Error recorded in Docket 10777 at Page 231 and re-recorded in Docket 11717 at page 4588 in the official records of Pima County, Arizona.

Section 5.14. Violation of Law. Any violation of any federal, state, county, or municipal law or ordinance constitutes a violation of this Declaration.

Section 5.15. Declarant's Exemption. Notwithstanding any other provision in this Declaration, it shall be expressly permissible for the Declarant, or its duly authorized builders, agents, and representatives, during the Period of Declarant's Rights, to maintain such facilities, structures and signs as are necessary or convenient, in the sole opinion of the Declarant, to the sale of the Lots, including but not limited to, a business office, storage area, construction yards, model homes and sales offices. Declarant may assign its rights under this section in conjunction with the sale of unimproved Lots to a person or company intending to construct homes on the purchased Lots and thereafter offer such homes for sale to the general public.

ARTICLE VI NATURAL OPEN SPACE AREAS

As more fully set forth in the Open Space Covenants, the Natural Open Space Areas shall be preserved, in perpetuity, in their natural and open condition, specifically:

(i) No development, construction, grubbing or clearing is permitted within the Natural Open Space Areas.

(ii) No dumping of any kind including, but not limited to, refuse or other unsightly, offensive or toxic materials is permitted within the Natural Open Space Areas.

(iii) The Natural Open Space Areas shall not be subdivided or split.

None of the above is intended, nor shall it be interpreted, to preclude the Association from performing restoration and/or mitigating damage to the Natural Open Space Areas that may occur as a result of a violation of this Article VI.

The Association shall retain all responsibilities and bear all costs (subject to its right to reimbursement under Article VII, Section 7.03 of this Declaration) and liabilities of any kind related to ownership, operation, upkeep and maintenance of the Common Features and Natural Open Space Areas. The Association shall be responsible for enforcing the restrictions on the use of the Natural Open Space Areas, as set forth above, and for promptly repairing any damage done to the Natural Open Space Areas in violation of these restrictions. Pima County shall also have the right, but shall not be obligated in any way, to enforce the above restrictions. The Association shall defend and hold Pima County and its officers, employees, and agents, harmless from and against any loss, cost, liability or expense, related to the maintenance, use (whether in compliance with or in violation of the above restrictions), or disturbance of the Natural Open Space Areas.

This Article VI may not be amended without the prior approval of Pima County.

ARTICLE VII MAINTENANCE

Section 7.01. Maintenance by Association. The Association shall maintain, repair and replace the Common Features and Natural Open Space Areas pursuant to its obligations under this Declaration and the Open Space Covenants.

Section 7.02. Maintenance by Owners. Each Owner shall be solely responsible for keeping his Lot in a neat, clean and attractive manner and shall keep the improvements thereon in good repair, including, but not limited to, the maintenance, repair, and replacement of any improvements thereon, any utility lines within the boundaries of the Lot, and the landscaping of the Lot (except for those portions of the Lot that are Natural Open Space Areas), all in accordance with this Declaration and the Association Rules. Each Owner shall also be responsible for the maintenance of any public right-of-way areas (between sidewalks or roads and the Owner's Lot), or other public or easement areas adjacent to the Owner's Lot unless the maintenance of such areas is the responsibility of the Association, a utility, or a governmental or similar authority.

Section 7.03. Damage to Common Features and Natural Open Space Areas. No Owner (including his guests, lessees, licensees, and invitees) shall in any way damage or destroy any Common Feature or improvement thereon or cause damage to the Natural Open Space Areas. Any expenses incurred by the Association by reason of any such act, including all attorneys' fees incurred by the Association, shall be paid by the Owner upon demand and any such amounts shall constitute an Individual Assessment against such

Owner's Lot.

Section 7.04. Nonperformance by Owners. If any Owner fails to maintain any portion of his Lot or the improvements thereon in conformance with this Declaration, the Association may, but is not required to, after fourteen (14) days written notice, enter the Lot without being deemed guilty of any trespass, to perform the maintenance and repairs not performed by the Owner. The cost of any such work performed by or at the request of the Association, including all attorneys' fees incurred by the Association, shall be paid for by the Owner of the Lot upon demand from the Association and constitute an Individual Assessment against such Owner's Lot.

ARTICLE VIII DESIGN CONTROL

Section 8.01. Design Control. No building, wall or other structure shall be commenced, erected, or maintained upon a Lot, nor shall any addition to or change in or alteration of the Lot (including but not limited to excavation, demolition, grading, or landscaping) or the exterior of any improvements thereon (including but not limited to the paint color of a residence) be made until plans and specifications showing the nature, kind, shape, height, materials, and location of same shall have been submitted to and approved in writing by a Design Review Committee ("DRC") comprised of at least three (3) persons appointed by the Board of Directors. In determining whether to grant approval for any architectural plan, the DRC shall consider whether the proposed plans are in harmony with the general surroundings and structures, and may, but is not required to, consult with the Owner(s) of any nearby Lot(s). The DRC may establish fees to defer the costs of reviewing any submitted plans, and the payment of such fees shall be required before any submission shall be deemed complete. In the event the DRC fails to approve or disapprove such plans within sixty (60) days after said plans have been submitted, approval will be deemed granted. However, in the event the DRC shall notify the requesting Owner in writing within such time period that it is necessary to obtain independent advice from a licensed architect, or other professional consultant, then the DRC must approve or disapprove said plans within sixty (60) days of obtaining such advice or approval will be deemed granted. All construction of plans and specifications approved by the DRC must be completed within one (1) year of such approval unless additional time is expressly granted by the DRC, and the DRC may require the posting of a performance bond to ensure completion. During the period of any approved construction on a Lot, and during a reasonable time immediately thereafter, the DRC may, at any reasonable time and after reasonable notice, without being deemed guilty of trespass, enter and inspect any Lot to ascertain whether the improvements or modifications being constructed thereon are being, or have been built in compliance with the approved plans and specifications.

Section 8.02. Design Guidelines. The DRC may establish design guidelines governing Lots and the improvements thereon, subject to approval by the Board of Directors, which establish standards and procedures including, but not limited to, construction requirements,

refundable and non-refundable construction deposits, landscaping requirements, design review fees, and guidelines concerning the style and design of any improvements for the purpose of protecting, enhancing, and maintaining the residential atmosphere and harmony of the Lots and the improvements thereon ("Design Guidelines"). The Design Guidelines have the same binding force and effect as the provisions of this Declaration, and may be adopted, amended, repealed, restated or otherwise modified by the DRC, subject to approval of the Board of Directors, without the consent or vote of the members of the Association. The DRC may grant variances to the Design Guidelines where the topography or location of the property lines of any Lot, or the configuration of the structure thereon, or the combination thereof, prevent reasonable construction of structures in accordance therewith.

Section 8.03. Liability. Neither the Board of Directors, nor any member of the DRC shall be liable in damages to anyone submitting plans for approval, or to any Owner of land subject to this Declaration by reason of mistake in judgment, negligence or non-feasance arising out of or in connection with (a) the approval, disapproval, or failure to approve any plans, drawings or specifications, whether or not defective; or (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specification. Anyone submitting plans to the DRC for approval, and any Owner acquiring title to any Lot covered by this Declaration, waives his claim for any such damages.

ARTICLE IX: EASEMENTS

Section 9.01. Utility Easement. There is a blanket easement upon, across, over and under all Lots (except such portions designated as Natural Open Space Areas) and the Common Features for installing, replacing, repairing and maintaining all utilities, including, but not limited to water, sewer, gas, telephone, electricity and cable television. By virtue of this easement, it shall be expressly permissible for the providing utility to erect and maintain facilities and equipment in the Common Features.

Section 9.02. Declarant Easement. There is an affirmative, nonexclusive easement in favor of Declarant for ingress and egress over all Common Features and Lots for purposes reasonably related to Declarant's rights and obligations hereunder and to the development of the Property. This easement shall continue until the day on which title to the last Lot in the Property owned by Declarant is conveyed to a third party for value.

Section 9.03. Drainage Easement. There is an easement over each Lot in favor of the remainder of the Property for reasonable drainage from the Property and to accommodate existing drainage patterns.

Section 9.04. Easement for Encroachments. If any portion of an improvement encroaches upon any adjoining Lot, including any future encroachments arising or resulting from the repair or reconstruction of an improvement subsequent to its damage, destruction or condemnation, an easement on the surface and for subsurface support below such

surface and for the maintenance of same, so long as it stands, shall exist.

Section 9.05. Easement for Maintenance. There is a blanket easement, in favor of the Association, upon, across, over and under all Lots for the purpose of maintaining, repairing and replacing the Common Features and performing its obligations with respect to the Natural Open Space Areas under this Declaration and the Open Space Covenants.

Section 9.06. Miscellaneous Easements. In addition to the blanket easements granted herein, the Association is authorized and empowered to grant upon, across, or under real property owned or controlled by the Association such permits, licenses, easements and right-of-way for power, telephone, natural gas lines, water lines, underground conduits, storm drains, television cable and other similar public or private utility purposes as may be reasonably necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Property or for the preservation of the health, safety, convenience and welfare of the Owners, provided that any damage to a Lot resulting from such grant shall be repaired by the Association at its expense.

Section 9.07. Existing Easements. In addition to the easements established herein, all Owners hereby acknowledge the existence of previously recorded easements including, without limitation, right-of-way, private drainage, and public utility easements. The easements established in this Declaration shall in no way affect any recorded easement on the Property.

ARTICLE X INSURANCE

Section 10.01. By Association. The Association shall purchase and maintain certain insurance for the Common Features, including, but not limited to, the following:

A. **Multi-Peril.** A multi-peril type policy covering all of the Common Features including any improvements thereon, providing such coverage in kind and amounts customarily acquire for projects similar in construction, location and use;

B. **Liability.** A comprehensive policy of public liability insurance covering all of the Common Features for personal injury, death or property damage. The scope and amount of such coverage shall be such as are customarily acquired or required for projects similar in construction, location and use.

C. **Fidelity Bond.** Fidelity bond coverage against dishonest acts on the part of directors, managers, trustees, employees or volunteers. The fidelity bond or insurance must name the Association as the named insured and shall be written to provide protection which is in no event less than one and one-half (1½) times the Association's estimated annual operating expenses and reserves.

D. Other. Such other insurance as the Board shall determine from time to time to be desirable.

Section 10.02. Non-Liability of Association. Neither the Association nor any Board member shall be liable to any Owner or other person if any risks or hazards are not covered by the Association's insurance policies or if the amount of any Association insurance policy is not adequate.

Section 10.03. Owner's Responsibility. It shall be the responsibility of each Owner, occupant or other person to provide for himself insurance on his own Lot, the improvements thereon, any furnishings and personal property therein, and any personal liability or other insurance as the Owner may desire.

Section 10.04. Damage or Destruction. In the event of damage or destruction to any Lot due to fire or other adversity or disaster, the Owner shall promptly repair and restore the Lot to substantially the same condition in which it existed prior to such damage or destruction.

ARTICLE XI GENERAL PROVISIONS

Section 11.01. Enforcement. The Association and its members have the right, but not the obligation, to enforce the provisions of this Declaration against any member of the Association, including the right to bring an action in any court of law or equity having competent jurisdiction. The Association may impose reasonable monetary penalties against any Owner for the breach of this Declaration or Association Rules upon written notice to such Owner and after providing Owner with the opportunity to be heard by the Board of Directors regarding such breach no less than five (5) business days after such notice has been given.

Section 11.02. Attorneys' Fees and Costs. In the event the Association employs an attorney for collection of any Assessment, or to enforce compliance with or specific performance of the terms and conditions of this Declaration or the Association Rules, or for any other purpose in connection with the breach of this Declaration or the Association Rules, whether by suit or otherwise, each Owner agrees to pay all attorneys' fees and costs thereby incurred by the Association in addition to any other amounts due or any other relief or remedy sought or obtained against said Owner. Such attorneys' fees and costs shall constitute an Individual Assessment against the breaching owner's Lot.

Section 11.03. Waiver. Any delay or omission on the part of the Association in exercising any right, power, or remedy for any breach of this Declaration herein provided shall not be construed as a waiver of such right, power, or remedy for any subsequent breach, and the Association shall not be liable to any person for any failure or neglect to exercise any right, power or remedy.

Section 11.04. Term and Amendments. This Declaration shall run with and bind the land subject hereto, and continue and remain in full force and effect at all times and against all persons. This Declaration may be amended at any time by Declarant during the Period of Declarant Rights, and thereafter, by the vote or written consent of Owners representing sixty-seven percent (67%) of the Lots. Any such amendment shall certify that it was made in accordance with this provision and shall be effective upon its recordation with the County Recorder for Pima County, Arizona.

Section 11.05. Annexation. During the Period of Declarant Rights, additional residential property may be annexed by Declarant to the Property without any vote or consent whatsoever of Lot Owners by the recording of a Declaration of Annexation. Once annexed, such property shall be subject to all terms and provisions hereof, except as may otherwise be set forth in the Declaration of Annexation.

Section 11.06. FHA/VA Approval. As long as there is a Class B Membership, the following actions shall require the prior approval of the Federal Housing Administration and/or the Veterans Administration if such agencies have previously approved this Declaration: annexation of additional property to the Property and amendment of this Declaration.

Section 11.07. Severability. Invalidity of any of these covenants or restrictions by judgment or court order shall in no way affect or limit any other provisions, which shall remain in full force and effect.

Section 11.08. Conflicts. In case of any conflict between this Declaration, the Association's Articles of Incorporation, and the Association Bylaws, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control.

Section 11.09. Interpretation. Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions this Declaration shall be final, conclusive, and binding as to all persons and property benefitted or bound hereby.

Section 11.10. Captions and Titles. All captions, titles, or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify, or otherwise affect any provision hereof or to be used in determining the intent or context thereof.

2024-01-14 14:14:14

IN WITNESS WHEREOF, the undersigned Declarant has hereunto set its hand and seal as of the day and year first above written.

FIDELITY NATIONAL TITLE AGENCY, an Arizona corporation ("Fidelity"), as Trustee under Trust Numbers 60,149, 60,306, 60,307 and 60,308 only and not in its individual corporate capacity.

By: Maryda L Hill

Its: TRUST OFFICER

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

This instrument was acknowledged before me this 27 day of February, 2008, by MARYDA L. HILL for the purposes stated herein.

Laura E. Martinez
Notary Public

My Commission Expires: June 1, 2009



STATE OF ARIZONA
DEPARTMENT OF REAL ESTATE

SUBDIVISION PUBLIC REPORT

FOR

OCOTILLO PRESERVE

Registration No. DM08-054520

SUBDIVIDER

UNITY ARIZONA LIMITED PARTNERSHIP, BY : MOUSE, INC.
A MONTANA CORPORATION AS GENERAL PARTNER
3225 HARROW DRIVE
BILLINGS, MT 59102

May 6, 2008

Effective Date

PROPERTY REPORT DISCLAIMER

This report is NOT A RECOMMENDATION NOR AN ENDORSEMENT by the State of Arizona of this land but is provided for informational purposes ONLY. The report reflects information provided by the subdivider and obtained by the Department in its review process in accordance with the provisions of Title 32, Chapter 20, Article 4, of the Arizona Revised Statutes, as amended. **NOTE** that not all of the information in this report has been verified by the Department; certain information has been accepted by the Department as true and accurate based on attestation of the subdivider and/or the subdivider's agents. You should verify all facts before signing any documents. The Department has not passed upon the quality or quantity of any improvement or structure and does not assume responsibility in either event.

PHOENIX OFFICE:
2910 N. 44th Street
First Floor
Phoenix, Arizona 85018
(602) 468-1414 ext. 400

TUCSON OFFICE:
400 West Congress
Suite 523
Tucson, Arizona 85701
(520) 628-6940

THE ARIZONA DEPARTMENT OF REAL ESTATE

REQUIRES THAT:

1. You BE GIVEN this public report;
2. YOU SIGN A RECEIPT indicating that you received this report;

RECOMMENDS:

1. You DO NOT SIGN ANY AGREEMENT before you have read this report;
2. You see the EXACT PROPERTY you are interested in BEFORE SIGNING any document for lease or purchase.

ARIZONA LAW STATES:

1. THE SALE OR LEASE OF SUBDIVIDED LANDS PRIOR TO ISSUANCE OF THIS REPORT OR FAILURE TO DELIVER THIS REPORT TO YOU SHALL RENDER THE SALE OR LEASE RESCINDABLE BY YOU. ACTION TO RESCIND MUST BE BROUGHT WITHIN 3 YEARS FROM DATE OF EXECUTION OF PURCHASE AGREEMENT.
2. CONTRACTS OR AGREEMENTS FOR THE PURCHASE OF AN UNIMPROVED LOT (WITHOUT A BUILDING)* MAY BE RESCINDED BY YOU WITHOUT CAUSE BY SENDING OR DELIVERING WRITTEN NOTICE OF RESCISSION BY MIDNIGHT OF THE SEVENTH CALENDAR DAY FOLLOWING THE SIGNING.
3. IF YOU HAVE SIGNED A PURCHASE AGREEMENT FOR THE PURCHASE OF AN UNIMPROVED LOT (WITHOUT A BUILDING)* PRIOR TO INSPECTING THE LOT, YOU HAVE SIX MONTHS TO INSPECT AND UPON INSPECTION MAY RESCIND THE PURCHASE AGREEMENT.

* A contract or agreement for purchase of a lot which includes a building or obligates the seller to complete construction of a building within two years from the contract date does not constitute the purchase of an unimproved lot. Therefore, if your purchase includes a lot and a building or a building to be built, you are not entitled to the rescission rights described in paragraphs 2 and 3.

GENERAL

This report includes: Lots 1 THRU 3, AND 5 THRU 12

The map of this subdivision: is recorded in Book 60, page 20, records of Pima County, State of Arizona.

The subdivision is approximately 174.07 acres in size. It has been divided into 42 lots. All "non natural open space area" delineated on the subdivision plat will be temporarily staked. Temporary rebar stakes with vertical PVC tubing will be placed at each location where a "non natural open space area" intersects a lot boundary or "non natural open space area."

YOU ARE ADVISED TO OBTAIN A COPY OF THE RECORDED MAP AND CORRECTION DOCUMENTS, IF ANY, AND NOTE ALL EASEMENTS, RESTRICTIONS AND STATEMENTS CONTAINED THEREIN.

SUBDIVISION LOCATION

Location: Houghton Rd. and Ocotillo Rim Trail, Tucson, Pima County, Arizona. Take Houghton Road South of I-10 - ten miles to subdivision.

SUBDIVISION CHARACTERISTICS

Topography: The majority of the subdivision consists of gently rolling terrain with significant intervening washes, including a large wash that runs from south to north near the easterly boundary. The area is sparsely to moderately vegetated with natural desert plants, primarily ocotillo, mesquite, palo verde, and greasewood.

Flooding and Drainage: In a letter dated October 3, 2005, by CMG Drainage Engineering, Inc., it states: "The building envelopes for Ocotillo Preserve Lots 1-42 are not located within a regulated FEHA floodplain according to the effective FIRM Panel #04019C3450K, dated February 8, 1999. The property lies within a FEMA Zone X.

A drainage report completed by CMG Drainage Engineering, Inc. for Ocotillo Preserve Lots 1-42 identified 100-year floodplain limits and erosion setbacks for natural washes draining through the subdivision. All subdivision lots contain building sites that are outside of the delineated 100-year floodplain limits and erosion setbacks."

Runoff enters the subdivision at points of concentration located primarily along the east and south boundaries. The development plan will allow runoff to enter and be conveyed through the subdivision in the existing wash network. Culverts will be provided where the existing wash network intersects with the proposed roadway network.

Soils: Not subject to subsidence or expansion. A geotechnical report prepared by Ralph Pattison, P.E., states in part... "The types of soils we encountered at this site are not expected to have expansive potentials."

Adjacent Lands and Vicinity: The land to the north, south and west is zoned RH (rural homestead) and to the east is zoned IR (institutional reserve). The subdivision is located in the

Santa Rita Foothills and borders the Coronado National Forest on its entire eastern boundary and the western portion of its southern boundary, and borders Arizona State land on the western portion of its northern boundary. The vicinity is predominantly single family residences, with an elementary approximately 2 ½ miles north of the subdivision. A church, golf course and a number of small commercial developments are approximately 2 ½ to 3 miles north. No unusual safety factors or nuisances are known to applicant.

AIRPORTS

Airport: Tucson International Airport is approximately 15 miles away

UTILITIES

Estimated costs lot purchaser will have to pay for completion of all facilities from their lot line to the dwelling depend upon the terrain and specific lot characteristics. The costs range from \$8,500 to \$12,500 including trenching and depending upon each lot and placement of the home. You are advised to obtain an estimate from a contractor per the contract.

Electricity: Trico Electric Cooperative, www.trico.org, (520) 744-2944. There is a \$35 connection fee and a possible \$100 refundable deposit. Costs range from \$2,500 to \$3,500 depending upon placement of the home.

Street Lights: None

Telephone, Cable/Internet Service: Cox Communications, 520-884-0133, www.cox.com; Costs depending upon service requested and bundle specials available. Costs range from \$2,000 to \$4,000 including trenching and depending upon placement of the home.

Natural Gas: Southwest Gas, 520-889-1888, www.swgas.com \$31.50 connection fee, deposit may be required, refundable with interest after 1 year of on time payments. Costs range from \$5,000 to \$8,000 including trenching and depending upon placement of the home.

Water: City of Tucson Water, (520) 791-3242 www.ci.tucson.az.us/water Costs range from \$2,500 to \$5,000 including trenching and depending upon placement of the home. Approximately \$4,000 for services charges, installation meter fees, and connection fees.

Sewage Disposal: Individual sewage disposal systems will be required for each lot. Some lots may require design on an individual basis by an engineer registered in the State of Arizona. Some lots may require alternative individual sewage disposal systems. John Oder, PE, RLS, Consulting Civil Engineer, Tucson AZ, (520) 749-4159 has supplied the following information: The current estimated total installation cost for an operational standard individual on-site septic system is between \$7,000 and \$10,000. The estimated total cost for an operational alternative individual on-site septic system is between \$15,000 and \$30,000. **If an individual sewage disposal system cannot be installed, no refund of the purchase price will be offered.**

Note: Subdivider to complete utilities to lot lines by March 31, 2009.

THE ABOVE COSTS ARE SUBJECT TO CHANGE BY SERVICE PROVIDERS. YOU SHOULD CONTACT THE ABOVE PROVIDERS REGARDING EXTENSION RULES AND REGULATIONS, SERVICE CONNECTIONS AND COSTS INVOLVED.

STREETS, ROADS AND DRAINAGE

Access to the Subdivision: There is a mile of Houghton Road divided into ½ mile of chip seal and ½ mile paved with asphalt to Pima County standards. ½ mile of the road will be maintained by the Homeowners Association until it is paved to Pima County standards, inspected and acceptance by Pima County (approximately 6 months after its completion).

Access within the Subdivision: Asphalt-paved private streets to be completed by March 31, 2009 and maintained by the Homeowners Association.

Flood and Drainage: Culverts will be provided where the existing wash network intersects with the proposed roadway network.

COMMON, COMMUNITY AND RECREATIONAL FACILITIES

Within the Subdivision: None

ASSURANCES FOR COMPLETION

Assurances for Completion of Subdivision Facilities: A Third Party Assurance Agreement

Assurances for Maintenance of Subdivision Facilities: Recorded Covenant Conditions and Restrictions, Articles of Incorporation and Bylaws of the Homeowners' Association, Pima County, and the utility providers.

LOCAL SERVICES AND FACILITIES

Schools: Sycamore Elementary, and Corona Foothills, approximately 2½ miles away; Cienega High, approximately 13 miles away.

SCHOOL FACILITIES AND BUS SERVICE MAY CHANGE. YOU SHOULD CONTACT THE LOCAL SCHOOL BOARD REGARDING THE CURRENT LOCATION OF SCHOOLS AND BUS SERVICE.

Shopping Facilities: Houghton and Valencia, approximately 12 miles away

Public Transportation: None

Medical Facilities: There is a Carondelet Medical Urgent Care facility at Houghton and Rita Ranch Road, and at Houghton and Valencia. St. Joseph's Hospital is approximately 22 miles away.

Fire Protection: Corona de Tucson Fire District

REGISTRATION NO. DM08-054520
Ambulance Service: Available via 911

OCOTHILLO PRESERVE

Police Services: Pima County Sheriff

Garbage Services: Waste Management of Tucson, (520) 744-2600, www.wastemanagement.com Once-per-week service is \$13.75 per month individual rate, or \$10.75 group rate (available on a 3-year contract with the first year guaranteed and the second and third years at a 6% cap increase). Extra trash containers are available for \$3.00 per month per container. No charge for extra recycle containers.

LOCATIONS AND COSTS OF THE ABOVE SERVICES AND FACILITIES MAY CHANGE. YOU SHOULD VERIFY THEIR CURRENT LOCATIONS AND COSTS PRIOR TO PURCHASE.

SUBDIVISION USE AND RESTRICTIONS

Use: This offering is for vacant lot without dwelling for single family residences.

Restrictions and Other Matters of Record: Conditions, reservations and restrictions that may run with the land including City or County zoning restrictions should be investigated by you. Copies of those items which are recorded may be inspected at the Office of the Pima County Recorder. Information about zoning may be obtained at the Office of the County Planning and Zoning Department. Restrictions are recorded as cited in the following title exceptions and per the subdivision plat.

TITLE

Title to this subdivision is vested in Fidelity National Title Agency, Inc., an Arizona Corporation, as Trustee under Trust No. 60,307.

Subdivider's interest in this subdivision is evidenced by a 100% beneficial interest in the above-referenced trust.

Title is subject, among other things, to all taxes, assessments, covenants, conditions, restrictions, limitations, reservations, rights, obligations, powers, easements, rights of way, liens, and charges of record. **YOU SHOULD INVESTIGATE THE TITLE AND SATISFY YOURSELF AS TO WHAT EFFECT, IF ANY, THESE MATTERS MAY HAVE ON THE USE OF THE LAND.** Title exceptions affecting the condition of title are listed in the Preliminary Title Report dated April 14 2008, issued by Fidelity National Title Agency, Inc. **You should obtain a title report and determine the effect of the listed exceptions.**

EXCEPTIONS: SEE EXHIBIT "A" ATTACHED

METHOD OF SALE OR LEASE

Sales: YOUR VESTED INTEREST/OWNERSHIP INTEREST IN THE PROPERTY WILL BE EVIDENCED BY THE SUBDIVIDER DELIVERING A RECORDED DEED TO YOU AND BY YOUR SIGNING A PROMISSORY NOTE AND MORTGAGE OR DEED OF TRUST

REGISTRATION NO. DM08-054520

OCOTILLO PRESERVE

FOR THE UNPAID BALANCE, IF ANY. YOU SHOULD READ THESE DOCUMENTS BEFORE SIGNING THEM.

Release of Liens and Encumbrances: Purchasers will receive title free and clear of all liens.

Use and Occupancy: Upon close of escrow and recordation of deed.

Leasehold Offering: None

THE PURCHASE CONTRACT IS A BINDING AGREEMENT. CONTRARY TO THE TERMS AND PROVISIONS OF THE CONTRACT, YOU MAY HAVE ADDITIONAL RIGHTS, REMEDIES AND WARRANTIES PROVIDED BY LAW. READ THOROUGHLY BEFORE SIGNING. IF NOT UNDERSTOOD, SEEK COMPETENT ADVICE PRIOR TO COMMITMENT TO PURCHASE.

TAXES AND ASSESSMENTS

Real Property Taxes: The combined primary and secondary property tax rate for this subdivision for the year 2007 is \$15.02 per \$100.00 assessed valuation. The estimated property tax for an unimproved lot (vacant), based on the above tax rate and average sales price of \$275,000 is \$3,304.40.

Special District Tax or Assessments: None

AMOUNT OF TAXES AND ASSESSMENTS SET FORTH ABOVE ARE APPROXIMATE ONLY AND SUBJECT TO CHANGE.

PROPERTY OWNERS ASSOCIATIONS

Name and Assessments: Ocotillo Preserve Homeowners Association, Inc. \$75 per month assessments, due Bi-Annually.

Control of Association: Upon the sale of the last lot to an individual or entity purchaser, control of the private roads will be turned over to the Homeowners Association.

Title to Common Areas: N/A

Membership: All lot owners

PAYMENTS TO PROPERTY OWNERS ASSOCIATIONS ARE SUBJECT TO CHANGE IN ACCORDANCE WITH RECORDED RESTRICTIONS. SAID ASSOCIATION MAY ALSO IMPOSE SPECIAL ASSESSMENTS.

YOU ARE ADVISED TO READ THE RECORDED DECLARATION OF (COVENANTS, CONDITIONS AND RESTRICTIONS, ARTICLES OF INCORPORATION, DECLARATION OF CONDOMINIUM, BYLAWS) FOR THIS SUBDIVISION TO DETERMINE THE RIGHTS OF LOT/UNIT OWNERS TO PARTICIPATE IN THE CONTROL OF THE PROPERTY OWNERS' ASSOCIATION AND TO DETERMINE THE RIGHTS, DUTIES AND LIMITATIONS

OF OWNERS IN AND TO USE OF THEIR LOT/UNITS. FURTHER, YOU SHOULD DETERMINE FOR YOURSELF IF SUBDIVIDER'S ARRANGEMENTS AND PLANS FOR THE PAYMENT OF ASSESSMENTS ON UNSOLD LOTS/UNITS WILL BE SUFFICIENT TO FULFILL THE NEEDS, DEMANDS AND FINANCIAL OBLIGATIONS OF THE ASSOCIATION, AS SET FORTH IN THE DECLARATION AND BYLAWS.

EXHIBIT "A"

THE FOLLOWING MATTERS AFFECTING SAID LAND WERE FOUND IN THE PUBLIC RECORDS.

1. **Regulations, conditions and** restrictions governing use of ground water pursuant to Arizona Revised Statutes 45-101 et. Seq.
2. **Property taxes**, including any personal property taxes and any assessments collected with taxes, for the second half 2007.

(See attached tax sheets for parcels affected)
3. **Property taxes**, which are a lien not yet due and payable, including any personal property taxes and any assessments collected with taxes to be levied for the year 2008.
4. **Reservations, exceptions and provisions** contained in the patent from the United States of America, and in the acts authorizing the issuance thereof, recorded

July 1, 1936, Book 190, Page 542, of Deeds
5. **Reservations, exceptions and provisions** contained in the patent from the State of Arizona, and in the acts authorizing the issuance thereof, recorded

January 13, 1987, in Docket 7950, Page 141
6. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: Trico Electric Cooperative
Purpose: electric facilities
Recorded: August 3, 1973, Docket 4568, Page 651
Affects:

Also recorded on September 3, 1974 in Docket 4843, Page 706.
7. The existence (if any) of a well site on an undefined area of the SE1/4 of NW1/4 of Section 36, as disclosed on letter dated July 9, 1973 attached to instrument recorded in Docket 4568, Page 651 on Page 655 and 656 thereof and as shown in Book 14 of Record of Surveys at Page 33.

8. Any additional rights of way, substation, gates, fences and/or access affecting areas of Sections 26,35 and 36, as more fully set forth on letter dated July 9, 1973 attached to instrument recorded in Docket 4568, Page 651, Page 655 and Page 656 thereof.

9. Any obligations imposed upon said land by its inclusion within the following named district.

District: Corona de Tucson Fire District, as disclosed by instrument recorded in Docket 5102, at Page 717.

10. Any matters arising by reason of survey recorded in Book 8 of Record of Surveys at page 56.

11. Any matters arising by reason of survey recorded in Book 14 of Record of Surveys at page 33.

12. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Purpose: ingress, egress and right of way for public utility purposes
Recorded: Docket 10538, Page 2066
Affects:

13. Covenants, conditions, and restrictions (but omitting any covenants or restrictions, if any, including, but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law), as set forth in the document:

Recorded: in Docket 10539, Page 2165

Declaration of Scrivener's Error recorded in Docket 10777, Page 231 and re-recorded in Docket 11717, Page 4588
recorded in Docket 10982, Page 2088
and Declaration Joiner recorded in Docket 11094, Page 231.

Liens and charges for upkeep and maintenance as set forth in the above mentioned declaration.

14. Matters contained in that certain document entitled "Ingress and Egress Easement and Restrictive Covenant dated June 26, 1997 and recorded June 27, 1997 in Docket 10576, Page 1804.

15. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Purpose: ingress, egress and utilities
Recorded: Docket 10701, Page 1454
Affects:

And as disclosed by Map recorded in Book 60, page 20 of Maps and Plats and as affected by Partial Abandonment of Easement recorded in Docket ____, Page ____ (said Abandonment only as affecting Lot 28, 29 and 30 of subject property described in this report);

NOTE: Remaining Benefited Properties having an interest in said easement are as follows: As to tax parcels 305-38-0090; 305-38-010B and 305-38-010C and Public Utility Companies.

16. Rights of the public to any portion of the land lying within the area commonly known as Houghton Road as established by Proc. No. 1233.

Affects the East 75' (more or less) of the North 1/2 of Section 35 and the West 75 feet (more or less) of Section 36. Said portions are not maintained by Pima County.
17. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Purpose: ingress, egress and utilities
Recorded: Docket 11261, Page 1797
Affects:
18. Terms and conditions as set forth in Encroachment Agreement recorded in Docket 11559, Page 748.
19. Any matters arising by reason of Affidavit of Disclosure recorded in Docket 11759, Page 2011.
20. Supervisors Memorandum to name street or easement recorded April 29, 1999 in Docket 11036, Pages 1613 and 1615.
21. **Easements, restrictions, and matters** shown on the recorded map of said subdivision.
22. Covenants, conditions, and restrictions (but omitting any covenants or restrictions, if any, including, but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law), as set forth in the document:

Recorded: in Docket 13251, Page 1275

Liens and charges for upkeep and maintenance as set forth in the above mentioned declaration.
23. Covenants, conditions, and restrictions (but omitting any covenants or restrictions, if any, including, but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law), as set forth in the document:

Recorded: in Docket 12794, Page 1930
24. A Substitute assurance agreement for completion of subdivision improvements (third party trust) between

Trustee: Fidelity National Title Agency, Inc., an Arizona corporation, as trustee under Trust No.'s 60,149; 60,306; 60,307 and 60,308
Beneficiary: as set forth in said instrument
Agency: Pima County
Recorded in: March 16, 2007, in Docket 13013, Page 2473

REGISTRATION NO.

and Thereafter Amendments to Trust recorded in Docket 13013, Page 2483; Docket 13013, Page 2485; Docket 13013, Page 2487 and in Docket 13013, Page 2489 .

25. The effect if any by reason of map recorded in Book 56 of Record of Surveys page 65.

26. Financing Statement(UCC-1) filed in the Office of the County Recorder, showing

Debtor: ASC Investments Limited Partnership, an Arizona limited partnership
Secured Party: Advanced Capital Mortgage Inc.
Assignee of
Secured Party: none
Recorded: May 31, 2007, in Docket 13066, Page 8649

27. A deed of trust to secure an indebtedness in the amount shown below, and any other obligations secured thereby

Amount: \$3,700,000.00
Dated: May 30, 2007
Trustor: ASC Investments Limited Partnership, an Arizona limited partnership
Trustee: Fidelity National Title Agency, Inc., an Arizona corporation
Beneficiary: Advanced Capital Mortgage Inc.
Recorded: May 31, 2007, in Docket 13066, Page 8654

An assignment of the beneficial interest under said deed of trust which names:

Assignee: as described on the attached Assignee Beneficiary Exhibit on said instrument
Loan No.:
Recorded: June 1, 2007, in Docket 13067, Page 4474

An agreement to modify the terms and provisions of said deed of trust as therein provided

Executed by: ASC Investments Limited Partnership, an Arizona limited partnership
and Advanced Capital Mortgage
Recorded: March 10, 2008 in Docket 13259, Page 2579

(Affects Lots 13, 14, 17, 18, 20-27, 28, 30-35 and 39-42)

28. A deed of trust to secure an indebtedness in the amount shown below, and any other obligations secured thereby

Amount: \$650,000.00
Dated: May 31, 2007
Trustor: Platinum Development Arizona, LLC, an Arizona limited liability company
Trustee: Bank of Oklahoma, N.A.
Beneficiary: Bank of Oklahoma, N.A.
Recorded: June 13, 2007, in Docket 13075, Page 1518

(Affects Lots 4, 15, 16, 19, 36 and 38)

REGISTRATION NO.

29. Financing Statement(UCC-1) filed in the Office of the County Recorder, showing

Debtor: ASC Investments Limited Partnership
Secured Party: Barnett Living Trust dated 1/4/03
Assignee of
Secured Party:
Recorded: March 24, 2008, in Docket 13269, Page 64

30. This report is for informational purposes only and is not to be considered a commitment to issue any form of title insurance. It is for the use only of the party who ordered it and liability, if any, is limited to the amount of the fee paid. Receipt and use of this report shall be evidence of the acceptance of the terms hereof.

31. There are no other recorded matters affecting the title to the land described in this report.

END OF EXCEPTIONS

REGISTRATION NO.

PUBLIC REPORT RECEIPT

The developer shall furnish you, as a prospective customer, with a copy of the Public Report required by the Arizona Department of Real Estate. It is recommended that you read the report before you make any written offer to purchase or lease an interest in the development and before you pay any money or other consideration toward the purchase or lease of an interest in the development.

FOR YOUR PROTECTION, DO NOT SIGN THIS RECEIPT UNTIL YOU HAVE RECEIVED A COPY OF THE REPORT AND HAVE HAD THE OPPORTUNITY TO READ IT. BY SIGNING THIS RECEIPT, THE BUYER HAS ACCEPTED THE PUBLIC REPORT AND ACKNOWLEDGES THE INFORMATION IT CONTAINS.

DM08-054520

(Public Report Registration No.)

OCOTHLO PRESERVE

Lot 14

(Development Name and Lot No.)

I understand the report is not a recommendation or endorsement of the development by the Arizona Department of Real Estate, but is for information only.

(Buyer's Name)

(Current Address)

(Date)