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SUBDIVISION DISCLOSURE REPORT
(PUBLIC REPORT)

FOR
FINAL PLAT FOR ESTATES AT OLD SPANISH TRAIL RE-PLAT
AKA
ESTATES AT OLD SPANISH TRAIL

Registration No. DM13-056463

SUBDIVIDER
DELL MAR HOMES, L.L.C.
AN ARIZONA LIMITED LIABILITY COMPANY
12839 N. Whitlock Canyon Drive
Oro Valley, Arizona 85755

Effective Date April 17, 2013
1ST Amendment Date: June 3, 2013
2ND Amendment Date: April 17, 2014

PROPERTY REPORT DISCLAIMER

This report is NOT A RECOMMENDATION NOR AN ENDORSEMENT by the State of Arizona of this land. The application and public report have not been subjected to a detailed examination by the Department. The report was prepared by the subdivider and none of the information in this report has been verified by the Department; all information has been accepted by the Department as true and accurate based on attestation of the subdivider/or the subdivider's agents. The purchaser should verify all facts before signing any documents. The Department assumes no responsibility for the quality or quantity of any improvement in this development.

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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 CONTRACTS OR AGREEMENTS FOR THE PURCHASE OF AN UNIMPROVED LOT (WITHOUT A BUILDING)* MAY BE RESCINDED BY YOU WITHOUT CAUSE BY SENDING OR DELIVERING WRITTEN NOTICE OF RESCISSION BY MIDNIGHT OF THE SEVENTH CALENDAR DAY FOLLOWING THE SIGNING.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

The Original Lots for this report included: Lots 1, 5-9, 19-21, 32-39, 40-54, 55 and 56. The original option agreement for these lots expired, but a new option agreement has been signed and a new memorandum of option has recorded. Lots 8, 19 and 33 have been sold.

This Amended report includes lots 1, 5, 6, 7, 20, 21, 32 and 34 thru 56.

The map of this subdivision is recorded in Book 62 page16, records of Pima County, Arizona.

The subdivision is approximately 69.38 acres in size. It has been divided into 56 Lots. Lot boundaries will be staked.

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.

PURCHASERS ARE ALSO ADVISED THAT THE DECLARATION OF CONVENANTS, CONDITIONS AND RESTRICTIONS (CC&R'S) FOR FINAL PLAT FOR ESTATES AT OLD SPANISH TRAIL RE-PLAT THE SUBDIVISION PROVIDES FOR AN ARCHITECTURAL REVIEW COMMITTEE TO REVIEW AND APPROVE ALL MODIFICATIONS, ALTERATIONS, ADDITIONS OR CHANGES TO THE ORIGINAL SCOPE, CONSTRUCTION, OR IMPROVEMENTS OF ANY RESIDENCE.

SUBDIVISION LOCATION

Location: Old Spanish Trail and Camino Loma Alta, Vail, Pima County, Arizona

UTILITIES

Electricity: Tucson Electric Power, P.O. Box 711, Tucson, Arizona 85702-0711 (520) 623-7731 (www.tucsonelectric.com). There is a \$13.50 plus tax establishment fee and a deposit may be required.

Telephone: Centurylink, 1-800-366-8201, www.centurylink.com. There is a \$30.00 establishment fee and a deposit may be required.

*It is possible that you may not have telephone service at the time of closing. You are advised to contact your service provider to determine the status of telephone service. You may also want to consider temporary alternatives, i.e. a cellular telephone.

Cable: Cox Communications, 1440 E. 15th Street Tucson, Arizona 85719, 520-884-0133, www.cox.com. There are connection fees and monthly fees depending on the services chosen and a deposit may be required

Internet or Fiber Optic: Centurylink and Cox listed above can supply internet services.

Natural Gas: Southwest Gas Company, 1-520-792-3242, www.swgas.com. Hook up fee \$32.10, plus tax, deposit may be required.

Water: Saguaro Water Company, 4572 E. Camp Lowell, Tucson, Arizona 85712, 520-577-2616
Costs for purchasers to receive this service is an establishment fee of \$25.00. Deposit fee of \$25.00.

Sewage Disposal: Pima County Wastewater Management, 520-740-6609
(www.co.pima.az.us/wwm). Costs for purchasers to receive this service is a \$15.00 establishment fee. Thereafter, monthly service usage costs is \$13.61 per month.

Garbage Services: WASTE MANAGEMENT OF ARIZONA, INC., 5200 W. Ina Road, Tucson, Arizona 85743, 520-744-2600 www.wm.com. There is a \$35.00 set up fee and a monthly fee of \$17.50(minimum).

Subdivider advises that all the facilities are competed to the lot line.

PURCHASERS ARE ADVISED TO CONTACT THE ABOVE LISTED PROVIDERS REGARDING EXTENSION RULES, REGULATIONS, SERVICE CONNECTIONS, INSTALLATION CHARGES, ACCOUNT SET-UP FEES AND THE COSTS INVOLVED. COSTS ARE SUBJECT TO CHANGE BY THE SERVICE PROVIDERS.

STREETS, ROADS AND DRAINAGE

Access to the Subdivision: Access through public streets paved with Asphalt will be maintained by Pima County.

Access within the Subdivision: Public Streets are paved with Asphalt and maintained by Pima County.

Street Lights: Not available.

Flood and Drainage: Conservation areas to remain natural without improvements.

Arizona State Trust Land: The Arizona State Land Department administers over 9.3 million acres of State Trust Land. This is not public land. Trust land may be subject to future development and may not be preserved or saved for open space without compensation.

A person must have prior approval to use State Trust Land. Temporary recreational use is allowed with certain restrictions and conditions through purchase of a recreational permit. Use of State Trust Land without proper approval is a trespass.

MANY ROADS ON RURAL TRUST LANDS ARE NOT LEGAL TRAVEL ROUTES, EXCEPT FOR STATE LESSEES AND HUNTERS, AND DO NOT PROVIDE LEGAL ACCESS TO PRIVATE LAND. STATE TRUST LAND MAY BE SOLD OR LEASED FOR USES WHICH MAY EXCLUDE RECREATION. RECREATION IS A TEMPORARY USE THAT MAY BE TERMINATED AT ANY TIME.

For additional information, visit the State Land Department web page at www.land.state.az.us, or call (602) 542-4631.

LOCAL SERVICES AND FACILITIES

Schools: Acacia Elementary School (Grades K-5), 12955 E. Colossal Cave Rd., Vail, Arizona is approximately 4 ½ miles from the subdivision

Old Vail Middle School (Grades 6-8), 13299 E. Colossal Cave. Road, Vail Arizona is approximately 4 miles from the subdivision

Cienega High School Grades 9-12), 12775 E. Mary Ann Cleveland Way, Vail Arizona is approximately 5 ½ miles from the subdivision.

PURCHASERS ARE ADVISED THAT SCHOOL BOUNDARIES AND SCHOOL BUS TRANSPORTATION MAY CHANGE. YOU SHOULD CONTACT THE VAIL SCHOOL DISTRICT AT 520-879-2000 REGARDING THE CURRENT LOCATION OF SCHOOLS AND BUS SERVICE.

Shopping Facilities: Rincon Country Store, approximately 4 miles away.

Public Transportation: None

Medical Facilities: St. Joseph's Hospital, 350 N. Wilmot Road, Tucson, Arizona 85711 is approximately 17 miles from the subdivision.

Fire Protection: Rincon Valley Fire Department, costs included in property taxes.

Ambulance Service: Available through 911.

Police Services: Pima County Sheriff's Department.

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

COMMON, COMMUNITY AND RECREATIONAL FACILITIES

Within the Subdivision: Common Area "A" (Natural open space) and Common Area "B" (Open space)

Within the Master Planned Community: Not part of a Master Planned Community.

ASSURANCES FOR COMPLETION OF IMPROVEMENTS

Assurances for Completion of Subdivision Facilities: Facilities have been completed to the lot line and the completion of the facilities to the improved lots (with a house) will be included in the sales price.

Assurances for Maintenance of Subdivision Facilities: Facilities will be maintained pursuant to the Articles, Bylaws and Declaration of Covenants, Conditions and Restrictions and Estates at Old Spanish Trail Association.

PROPERTY OWNERS ASSOCIATIONS

Name and Assessments: Estates at Old Spanish Trail Association. Section 2. Annual Assessments on page 16 of the Second Amended and Restated Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for The Estates at Old Spanish Trail Replat as recorded in Sequence No. 20130810472 on March 22, 2013 states; "To provide for the uses and purposes specified in this Declaration including the establishment of replacement and maintenance reserves, the Board in each year, commencing with the year in which this Declaration is recorded, shall assess against each Lot an Annual Assessment. The amount of the Annual Assessment, subject to the provisions of Section 4 hereof, shall be in the sole discretion of the Board but shall be determined with the objective of fulfilling the Association's obligations under this Declaration and providing for the uses and purpose specified herein. A part of this assessment shall be for the account pertaining to the Conservation Easement, which shall be determined based upon the need to maintain the fund. Monies for this Conservation Easement Fund account shall be maintained in a separate account at all times; the Declarant will fund this account initially in the amount of \$14,000.00; the Lot owner shall be assessed an initial fee of \$500.00. Upon any sale of a Lot, the new Owner shall pay a Conservation Easement fee of \$500.00, which shall be deposited in the Conservation Easement fund account. In the event that funds in the account are not adequate to administer the Conservation Easement as needed, then the Association is empowered to assess special fees to accomplish the needed services for the Conservation Easement. The Association's right to assess special fees as outlined in this Section 2 is separate and apart from the Special Assessments outlined in Section 5. The Association may assess special fees as outlined in Section 2 as required, without a vote of the Owners." The current annual dues established pursuant to Section 4 of Article VII of the Covenants, Conditions, Restrictions, Assessments is \$720.00 to be collected in quarterly installments. The maximum annual dues amount of \$900.00 can be increased by the Board of Directors after January 2014, but only as permitted by Section 4.

- A. **Control of Association:** On the first of the following events: (A) within ninety (90) days after the number of class A votes exceeds the number of class B votes; or (B) at such time as the declarant notifies the board in express writing that it is relinquishing its class B membership.

Title to Common Areas: To be transferred to the Association upon completion, final inspection, release from Assurance Agreement and acceptance by the Association. There are no known liens or encumbrances.

Membership: All lot owners will be members of the Association.

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

SUBDIVISION CHARACTERISTICS

Topography: Gently Sloping

Flooding and Drainage: In a letter from Coronado Engineering & Development, Inc. dated July 15, 2010 it states that "As a result of design and upon completion of grading improvements, each lot provides a building site in which there are no hazards from the currently effective regulatory 100-year flood event. This portion of the Estates at Old Spanish Trail Replat (Lots 1-56) as indicated by FEMA FIRM Panel No. 0419C2885K for Pima County, Az and incorporated Areas effective date February 8, 1999 does lie within flood zones X. No flood plain insurance is required."

Soils: The Pavement Section Design Report done by Pattison-Evanoff Engineering, LLC dated January 27, 2004 the conclusion was in our opinion, the site's natural subsurface soil and conditions are suitable for support of the proposed pavement provided the designers, contractors, and owners follow the report recommendations. Our conclusions regarding the soils and planned pavement are given in the following discussion.

- **Expansive Properties:** The majority of soils samples at this site are granular and have low plasticity. We expect the swell potential of these soils to be low; special provisions relative to heave are probably unnecessary.
- **Soil Support Properties:** The native soils at this site have generally good soil support properties. Except for clean sands found in drainages such as at B-5, the near-surface soils at this site are remarkably consistent. We tested the most representative samples from our field investigation and found almost no variation in soil constituents. The average correlated R-Value for the subgrade soils we samples was 82.

Adjacent Lands and Vicinity: North, East and South: CR-1 (Single Family Residence) and RH (Rural Homestead) West: CR-1, CB-1 (Local Business) and CB-2 (General Business). Old Spanish Trail is designated as a scenic route and increased traffic may be experienced. There are overhead power lines in the public street right-of-way and ranching operations are conducted in the vicinity. The subdivision lies adjacent to the southern border of Davis Monthan Airport airspace territory and military flights may produce aircraft noise as a result of military flight operations.

Subdividers advise purchasers that the subdivision is located within open desert area that includes washes/creek beds; mountainous terrain; plants, insects and wildlife indigenous to a desert environment, some or all of which may be considered potential safety hazards to unsupervised children and adults.

There are no natural gas pipelines within 500 feet of the subdivision boundaries.

High Voltage Lines: There are overhead power lines in the public street right of way along Old Spanish Trail.

INFORMATION ON A PROPESED OR EXISTNG TRANSMISSION LINE AND SUBSTATION MAY BE AVAILABLE FROM THE ARIZONA CORPORATION COMMISSION OR FROM THE UTILITY COMPANY. IN ADDITION TO THE ABOVE DISCLOSED INFORMATION, BUYER SHOULD CONTACT THE UTILITY COMPANY FOR FURTHER AVAILABLE INFORMATION WHICH MAY INCLUDE STRUCTURE HEIGHTS, SCHEMATICS OF WHAT THE STRUCTURES WILL LOOK LIKE AND CONTRUCTION SCHEDULES.

SUBDIVISION USE AND RESTRICTIONS

Use: This offering is for an improved lot (with home).

Conditions, Reservations and Restrictions: The use of the property may be limited by zoning and other governmental planning and subdivision documentation, the CC&R'S as recorded in the public records of Pima County, and by any other document of record affecting the property.

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 Pima County Planning and Zoning Department. Restrictions are recorded as cited in the following title exceptions and per the subdivision plat.

AIRPORTS

Military Airport: The subdivision lies adjacent to the southern border of Davis Monthan Air Force Base.

Public Airport: Tucson International Airport, located at 7520 S. Tucson Blvd, is approximately 13 miles away from the subdivision.

SUBDIVIDER ADVISES THAT THE SUBDIVISION MAY EXPERIENCE SOME AIRCRAFT FLIGHT NOISE, INDLUDING AIR NATIONAL GUARD MILITARY

FLIGHTS, DUE TO ITS PROXIMITY TO THE AIRPORTS. PURCHASES ARE ADVISED TO INDEPENDENTLY INVESTIGATE BY VISITING THE PROPERTY AT VARIOUS TIMES TO ASSESS THE NOISE LEVELS AND ANY SENSITIVITY PURCHASER MAY HAVE TO THE NOISE LEVELS.

TITLE

Title to this subdivision is vested in Fidelity National Title Agency, Inc., an Arizona corporation, as Trustee under Trust Nos. 60,119.

Subdivider's interest in this subdivision is evidenced by a recorded Memorandum of Option Agreement listed on attached Exhibit "A". Subdivider's only interest in the development is a right to purchase lots pursuant to the described option agreement. You have no assurance that Subdivider will purchase or build homes on all development lots specified.

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 March 24, 2014 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 for the unpaid balance, if any. You should read these documents before signing them.

YOU ARE ADVISED THAT EARNEST MONEY DEPOSITS, DOWN PAYMENTS AND OTHER ADVANCED MONEY WILL BE PLACED IN A NEUTRAL ESCROW ACCOUNT WITH ESCROW AGENT.

Release of Liens and Encumbrances: Purchasers will receive title free and clear of all liens, except those shown by the public records such as real estate taxes not yet due and payable.

Use and Occupancy: Purchaser will be able to use and occupy their lot upon close of escrow and recordation of deed and all applicable financing documentation.

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 2013 is \$17.55 per \$100.00 assessed valuation. The estimated property tax for an improved lot (lot with dwelling), based on the above tax rate and average sales price of \$ 335,000.00 is \$4703.40.

Special District Tax or Assessments: None know to developer.

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

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.

CONDITION OF TITLE REPORT

SCHEDULE B

Fidelity National Title Insurance Company reports that Title Instruments, on the date hereof, disclose:

A. Ownership of the Interest is in the name of:

Fidelity National Title Agency, Inc, an Arizona corporation, as Trustee under Trust No. 60,119

B. The following defects, liens and encumbrances (which are not necessarily shown in their order of priority) against the Interest:

1. Property taxes, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the year 2014.
2. Property taxes, including any personal property taxes and any assessments collected with taxes, for the second installment of 2013 Taxes.
3. Water rights, claims or title to water, whether or not disclosed by the public records.
4. Liabilities and obligations imposed upon said Land by its inclusion within any district formed pursuant to Title 48, Arizona Revised Statutes.
5. Easements, covenants, conditions and restrictions as set forth on the recorded plat of said subdivision.
6. Rights of the public in and to that portion of the herein described Land as shown on the Map/Plat: Book 25 of

Surveys, page 99, Book 27 of Surveys, page 23 and Book 31 of Surveys, page 68

Affects: All Parcels

7. Matters contained in that certain document

Entitled: Ordinance No 2003-84
Recording No: Docket 12133, page 1884

Reference is hereby made to said document for full particulars.

Affects: All Parcels

8. Matters contained in that certain document

Entitled: Declaration of Covenants, Conditions and Restrictions for the Estates at Old Spanish Trail regarding membership in the Central Arizona Groundwater Replenishment District
Recording No: Docket 12343, page 2589

Reference is hereby made to said document for full particulars.

Affects: All Parcels

9. Matters contained in that certain document

Entitled: Agreement and Notice of Municipal Provider for he Estates at Old Spanish Trail regarding membership in the Central Arizona Groundwater Replenishment District

Recording No: Docket 12343, page 2603

Affects: All Parcels

Reference is hereby made to said document for full particulars.

10. Covenants, conditions, restrictions and easements 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, source of income, gender, gender identity, gender expression, medical condition or genetic information, 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

Second Amended and Restated Declaration of Covenants, Conditions and Restrictions recorded March 22, 2013 in

Recording No: 20130810472 and re-recorded May 9, 2013 in 20131290505

Liens and charges as set forth in the above mentioned declaration,

Payable to: Estates at Old Spanish Trail Association, an Arizona non-profit corporation

Affects: All Parcels

11. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Purpose: Conservation Easement
Recording Date: March 16, 2005
Recording No: Docket 12510, Page 3259

Affects: All Parcels

12. Matters contained in that certain document

Entitled: Memorandum of Option
Dated: March 10, 2014
Optionor: Tortolita Acquisitions LLC, an Arizona limited liability company
Optionee: Dell Mar Homes LLC, an Arizona limited liability company
Recording Date: March 17, 2014
Recording No: 20140760271

Thereafter, Amended Memorandum of Option, which supersedes and supplements the above entitled Memorandum, recorded March 21, 2014 in Recording No. 20140800112.
Affects: as set forth therein

Reference is hereby made to said documents for full particulars.

Tax Note:

Tax Parcel Nos.: 205-75-5790, 5830, 5840, 5850, 5980, 5990, 6100 and 6120 through 6340, inclusive

C. The following matters are disclosed by name only and the Company, without additional information, is unable to determine whether any or all of these matters are defects, liens or encumbrances against the Interest:

NONE

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, PLEASE 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.

DM13-056463
(Public Report Registration No.)

Final Plat for Estates at Old Spanish Trail Replat
(Development Name and Lot No.)

I understand that 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)



SEQUENCE: 20131290505
No. Pages: 33
5/9/2013 3:23 PM

F. ANN RODRIGUEZ, RECORDER
Recorded By: KN(e-recording)



WHEN RECORDED MAIL TO:
Fidelity National Title
6245 E. Broadway, Suite 200
Tucson, Arizona 85711

**SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS, ASSESSMENTS, CHARGES, SERVITUDES,
LIENS, RESERVATIONS AND EASEMENTS FOR**

**THE ESTATES AT OLD SPANISH TRAIL REPLAT
LOTS 1-56 AND COMMON AREAS "A" AND "B"
AS RECORDED IN BOOK 62 OF MAPS AND PLATS AT PAGE 16.**

**THIS DOCUMENT IS BEING RE- RECORDED FOR THE SOLE
PURPOSE OF ATTACHING ADDENDUM 1.**

* E RECORDING * Page 1 of 28

SEQUENCE: 20130810472
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F. ANN RODRIGUEZ, RECORDER
Recorded By: MNC (e-recording)



SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, ASSESSMENTS, CHARGES, SERVITUDES, LIENS, RESERVATIONS AND
EASEMENTS FOR

THE ESTATES AT OLD SPANISH TRAIL REPLAT
LOTS 1-56 AND COMMON AREAS "A" AND "B"
as recorded in Book 62 of Maps and Plats at page 16.

**SECOND AMENDED AND RESTATED DECLARATION
OF COVENANTS, CONDITIONS, RESTRICTIONS,
ASSESSMENTS, CHARGES, SERVITUDES, LIENS,
RESERVATIONS AND EASEMENTS**

FOR

THE ESTATES AT OLD SPANISH TRAIL RE-PLAT

THIS SECOND AMENDED AND RESTATED DECLARATION of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements (hereinafter termed the "Declaration") is made this 22nd day of March, 2013, by Fidelity National Title Agency, Inc., an Arizona corporation as Trustee under Trusts numbered 60119 and 60130 ("Declarant"). This Declaration Amends and Supercedes that certain Declaration recorded at Docket 12510 at Page 3198 and the Amended Declaration recorded at Docket 12975 at Page 1338 with regard to the property described herein only.

This Declaration mandates specific action that each Member must adhere to during their ownership of the Property and the enjoyment of the community.

This community has been designed to embrace the environmentally sensitive nature of the desert and within this Declaration are specific rules that have been developed in furtherance of this goal. Within this Declaration provision is made for remedial action by the Home Owner's Association in compliance with a Conservation Easement granted to Pima County.

Each Member, as evidenced by their signature and by the recordation of the deed of the Member's Property, (see Member's acknowledgement and acceptance, Exhibit 1.), ("Member's Acceptance"), has acknowledged the Member's acceptance of these rules. Each Member is bound to these rules.

Each Member acknowledges that there is a perpetual Conservation Easement, recorded in Book 12510 at Page 3259 in the records of the Pima County Recorder, encumbering the subdivision, including a portion of each Lot therein, which is intended to preserve the undeveloped portions of the Subdivision as a natural, undisturbed desert environment.

RECITALS

WHEREAS, Declarant is the owner of a fee interest in that certain real property in the County of Pima, State of Arizona, described as follows: *Lots 1 through 56, inclusive, and Common Areas of the Estates at Old Spanish Trails*, as recorded in the official records of the Pima County Recorder in Book 62 of Maps and Plats at Page 16 thereof. Such real property is hereinafter referred to in its entirety as the Property; and

WHEREAS, Declarant desires to develop the Property into a detached, single-family residential community; and

WHEREAS, at full development it is intended, without obligation, that such community will collectively have streets, landscaped areas, a Conservation Easement, and entryways; and

WHEREAS, Declarant has formed a non-profit corporation for the maintenance, social and recreational purposes benefiting the Property and the Owners thereof (as said terms are defined herein below), which non-profit corporation (hereinafter termed the "Association") will (1) as the agent of the Owners, monitor compliance with and maintain the Conservation Easement; (2) establish, levy, collect and disburse any Assessments and other charges imposed hereunder; and (3) as the agent and representative of the Members of the Association, administer and enforce all provisions hereof and enforce use and other restrictions imposed on the Property; and

WHEREAS Pima County, Arizona (the "County"), has indicated its desire and willingness to hold a Conservation Easement for this Property, provided that the Owners are responsible for monitoring compliance with the Conservation Easement in the manner set forth in this Declaration (whether through the Association or otherwise); and

WHEREAS, Declarant has prepared the necessary documents for the incorporation and organization of the Association; and

WHEREAS, the Declarant therefore wishes to subject all of the Property to the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements (hereinafter collectively called "Covenants") hereinafter set forth;

WHEREAS, in order to cause the Covenants to run with the Property and to be binding upon the Property and the Owners thereof from and after the date of recordation of this Declaration, Declarant hereby makes all conveyances of any portion of the Property, whether or not so provided therein, subject to the Covenants herein set forth; and by accepting Deeds, easements or other grants or conveyances to any portion of the Property, the Owners and other transferees for themselves and their heirs, executors, administrators, trustees, personal representatives, successors and assigns, agree that they shall be personally bound by all of the Covenants (including but not limited to the obligation to pay Assessments) hereinafter set forth except to the extent such persons are specifically excepted herefrom.

NOW, THEREFORE, DECLARANT hereby declares, covenants and agrees as follows:

ARTICLE I
DEFINITIONS

The following words, phrases or terms used in this Declaration shall have the following meanings:

- A. "Annual Assessment" shall mean the charge levied and assessed each year against each Lot or Owner pursuant to Article VIII, Section 2, hereof.
- B. "Architectural Committee" shall mean the committee of the Association to be created pursuant to Article XII below.
- C. "Articles" shall mean the Articles of Incorporation of the Association as the same may from time to time be amended or supplemented.
- D. "Assessable Property" shall mean any Lot, except such part or parts thereof as may from time to time constitute Exempt Property.
- E. "Assessment" shall mean an Annual Assessment, Special Assessment, and/or Maintenance Charge.
- F. "Assessment Lien" shall mean the lien created and imposed by Article VIII.
- G. "Assessment Period" shall mean the term set forth in Article VIII, Section 7.
- H. "Association" shall mean Estates at Old Spanish Trail Association, an Arizona non-profit corporation, organized by Declarant to administer and enforce the Covenants and to exercise the rights, powers and duties set forth in this Declaration, its successors and assigns.
- I. "Association Land" shall mean such part or parts of the Property, together with the buildings, structures and improvements thereon, and other real property which the Association may at any time own in

fee or in which the Association may at any time have a leasehold interest, for as long as the Association is the owner of the fee or leasehold interest.

J. "Board" shall mean the Board of Directors of the Association.

K. "Bylaws" shall mean the Bylaws of the Association as the same may from time to time be amended or supplemented.

L. "Common Area and Common Areas" shall mean (a) all Association Land; (b) all land within the Property which the Declarant, by this Declaration or other recorded instrument makes available for use by Members of the Association and evidenced its intent to convey to the Association at a later date; (c) all other lands within drainage easement areas which are not located, either in whole or in part, on a Lot, as set forth by any recorded instruments effecting the Property.

M. "Conservation Easement" shall mean: the easement established by that certain Conservation Easement agreement entered into between the Declarant and the County and recorded in Book 12510 at Page 3259, in the office of the Pima County Recorder. The Conservation Easement is subject and subordinate to all public roadway and utility easements as shown on the Plat.

N. "Conservation Land" shall mean: the property subject to the Conservation Easement, which is all common areas and all lots within the subdivision, exclusive of the Restricted Building Site Areas as shown on the Plat.

O. "Association Rules" shall mean any rules for the Association, adopted by the Board pursuant to Article VI, Section 3.

P. "Covenants" shall mean the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements set forth herein.

Q. "Declarant" shall mean and refer to the above-recited Declarant or any person or persons to whom any part or all of Declarant's rights reserved to the Declarant hereunder are assigned. The Declarant's rights shall only be assigned by a written, recorded instrument expressly assigning those rights.

R. "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations, and Easements, as amended or supplemented from time to time.

S. "Deed" shall mean a deed or other instrument conveying the fee simple title in a "Lot".

T. "Designee" shall mean a person designated by a member pursuant to Article VII, Section 8, to exercise certain of the rights of a Member.

U. "Dwelling Unit" shall mean any building or portion of a building situated upon a Lot designed and intended for use and occupancy as a residence by a single family.

V. "Exempt Property" shall mean the following parts of the Property:

- (1) All land and improvements owned by or dedicated to and accepted by the United States, the State of Arizona, Pima County, or any political subdivision thereof for as long as any such entity or political subdivision is the owner thereof or for so long as said dedication remains effective;
- (2) All Association Land, for as long as the Association is the owner thereof.

W. "Lot" shall mean any area of real property within the Property designated as a Lot on any subdivision plat recorded or approved by Declarant, including the Plat.

X. "Maintenance Charges" shall mean any and all costs assessed pursuant to Article XI, Sections 2 or 3.

Y. "Member" shall mean any person holding a Membership in the Association and the rights granted to the Owners and Declarant pursuant to Article VI to participate in the Association.

Z. "Membership" shall mean a membership in the Association and the rights granted to the Owners and the Declarant pursuant to Article VII to participate in the Association.

Aa. "Natural Open Space" shall mean that area, as described in the Plat, surrounding each Dwelling Unit that belongs to the homeowner of the residence, which area is not in the Conservation Easement but is subject to the controls and mandates of this Declaration.

Bb. "Owner" shall mean (when so capitalized) the record holder of legal title to the fee simple interest in any Lot including buyers under a contract for deed, but excluding others who hold such title merely as security. In the case of Lots the fee simple title of which is vested of record in a trustee pursuant to Arizona Revised Statutes, Section 33-801 *et seq.*, legal title shall be deemed to be in the Trustor. An Owner shall include any person who holds record title to a Lot in joint or community ownership with any other person, a trustee under a declaration of trust, or who otherwise holds an undivided fee interest in any Lot.

Cc. "Plat" shall mean the final plat for the Property as recorded in the Pima County Recorder's Office in Book 62 of Maps and Plats at Page 16.

Dd. "Recording" shall mean placing an instrument of public record in the office of the County Recorder of Pima County, Arizona, and "Recorded" shall mean having been so placed of public record.

Ee. "Single Family" shall mean a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Dwelling Unit.

Ff. "Special Assessment" shall mean any assessment levied and assessed pursuant to Article VIII, Section 5.

Gg. "Special Use Fees" shall mean special fees authorized by this Declaration which an Owner or any other person is obligated to pay to the Association over, above and in addition to any Annual or Special Assessments or maintenance charges imposed or payable hereunder.

Hh. "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall, standing at ground level on any part of a neighboring property.

ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

Section 1. General Declaration. Declarant intends to develop the Lots and/or sell the Lots for development and, to provide for the orderly development of such Lots, wishes to create certain conditions and restrictions which shall run with the Lots and shall be an encumbrance on the Lots, and shall be binding and enforceable against any and all grantees of Declarant and all successors in title to all or any portion to the Lots or any interest, whether legal or beneficial, therein. Declarant hereby declares that all of the Property is and shall be held,

conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration, as amended or modified from time to time; provided, however, property which is not part of a Lot or parcel and which is dedicated to the public or a governmental entity for public purposes shall not be subject to this Declaration and the Covenants herein contained while owned by the public or the governmental entity, although restrictions imposed in this Declaration upon the Owners concerning the use and maintenance of such public areas shall at all times apply to the Owners. This Declaration intends also to set forth the rules and regulations governing the care, management and maintenance of the Conservation Easement and that area around the Dwelling Unit which is classified as Natural Open Space, not subject to the Conservation Easement but subject to the restrictions set forth in this Declaration. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of the Property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property and every part thereof. All of this Declaration shall run with all Lots and Association Land for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, all Owners, and their successors in interest.

Section 2. Association Bound. Upon issuance of a Certificate of Incorporation by the Arizona Corporation Commission to the Association, the Covenants shall be binding upon and shall benefit the Association.

ARTICLE III
EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON AREAS

Every Owner and other Member of the Association shall have a right and easement of enjoyment in and to the Common Areas, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following:

(a) The right of the Association to suspend the voting rights, and the right to use of the Common Areas, of any Member (i) for any period during which any Assessment against his Lot remains delinquent; (ii) for a period not to exceed sixty (60) days for any infraction of this Declaration or the Association Rules, and (iii) for successive sixty (60) day periods if any such infraction is not corrected during any prior sixty (60) day suspension period.

(b) The right of the Association to dedicate or transfer all or any part of the Common Areas to Pima County, or any agency thereof, or to any other public agency or authority, or to any utility company for such purposes and subject to such conditions as may be agreed to by the Association. Unless otherwise required by zoning stipulations or agreements with Pima County effective prior to the date hereof (the Conservation Easement), or specified on a recorded subdivision plat, no such dedication or transfer shall be effective except upon the affirmative vote of not less than two-thirds (2/3) of the Owners, excluding the Declarant.

(c) Association Use, which may include Common Areas.

(d) General Public Use.

(e) The Conservation Easement.

ARTICLE IV
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS APPLICABLE TO ALL PROPERTY IN SUBDIVISION

The following shall apply to all Property and all Owners within the subdivision:

Section 1. Conservation Easement. The Conservation Land is subject to the provisions of the Conservation Easement. Each Owner shall comply with all terms of the Conservation Easement and each Owner shall have a specific responsibility as to that portion of the Conservation Land owned by such Owner. The Association shall

monitor, manage and fund compliance with the Conservation Easement in the subdivision. Such monitoring shall include, but may not be limited to, the following:

(i) The Association shall retain a professional qualified in the protection and identification of natural resources to perform a physical review of the Conservation Land. The first review shall be done within thirty (30) days after installation of infrastructure in the subdivision and shall serve as a baseline for later assessment of changes. Subsequent reviews shall be on an annual basis at a minimum and shall occur on a date as close as possible to March 15. The professional shall have, at a minimum, a B.A. or B.S. in wildlife biology, botany, horticulture, landscape architecture, ecology or other similar discipline. The Association shall submit the name of the selection to Pima County and the County shall have thirty days to approve or disapprove the selection.

(ii) The biologist shall be required, as part of his or her duties, to compile a report of these reviews within 30 days of performing the review. This report, to be submitted to Pima County, with a copy delivered to the Association, will provide the information required by that body politic to ensure that the terms of the Conservation Easement are being properly observed and will be signed by the biologist as a party authorized to make such reports. The reports will contain the information outlined on the attached Addendum 1, which may be amended from time to time by the County. The report shall identify any existing violations, set forth a plan for remediation and establish reasonable deadlines by which time the remediation will be completed. The Association shall have the obligation to work with any Owners that are involved in the violation, to correct and remediate the violations as promptly as reasonably possible. The Association shall have the right to pass on to the Owner any costs and expenses of remediation caused by the violation of an Owner. Any cost, expense and attorney fees paid for by the Association on behalf of an individual Owner shall be the responsibility of said Owner. The individual Owner who is responsible must reimburse the Association for any and all costs and expenses, including attorney fees spent by the Association on behalf of the Owner within five (5) business days of notice of the amount of costs and/or expenses that were paid by the Association. Failure of the responsible Owner to reimburse the Association will result in a lien being placed on the Owners Lot for the full amount owed.

(iii) When any remediation has been completed, the Association shall notify the biologist and the biologist shall make a final review and report to Pima County regarding said violations and the manner in which the Association has addressed and rectified any violations.

(iv) In the event that the Association fails to correct any violations by the deadline set forth in the biologist's report, then Pima County may assess a fine against the Association, which is commensurate with the violation, except that if the remediation cannot be completed by the deadline because of unforeseen and unavoidable delays, Association may request an extension of the deadline, to which the County shall not unreasonably withhold its consent. In the event of the Association's failure to timely remedy a violation and failure to request an extension, then Pima County may retain an expert to remedy any such violation and any costs associated with this work shall be billed to the Association.

(v) The Association and Pima County will provide the names and addresses of the parties to whom any notification is to be made and any notices shall be sent by certified mail, return receipt requested.

This appointment of the Association as the agent of the Owners for the purpose of monitoring the Conservation Land, and compliance with the Conservation Easement, shall not relieve an Owner of the Owner's ultimate responsibility for compliance with the Conservation Easement. In the event that the Association ceases doing the monitoring as described above, the Owners shall be responsible for obtaining another

agent to perform these monitoring duties. None of the provisions in this Declaration that relate to the Conservation Easement may be amended at any time without the written consent of the County.

Section 2. Architectural Control. The Property is subject to County ordinances and architectural control as established by the Architectural Committee. No improvements, alterations, repairs, excavation, grading, landscaping or other work which in any way alters the exterior appearance of any of the Property, or the improvements located thereon, from its natural or improved state existing on the date this Declaration was first recorded shall be made or done without prior written approval of the Architectural Committee, except as otherwise expressly provided in this Declaration or in such design guidelines as the Architectural Committee may adopt and from time to time amend (the "Design Guidelines"). No building, fence, wall, residence or other structure shall be commenced, erected, maintained, improved, altered, or made without the prior written approval of the Architectural Committee except as may be provided in the Design Guidelines. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme, and all changes in the grade of Lots, shall be subject to the prior written approval of the Architectural Committee except as may be provided in the Design Guidelines and/or applicable County ordinances. No changes or deviations in or from the plans and specifications once approved by the Architectural Committee shall be made without prior written approval of the Architectural Committee except as may be provided in the Design Guidelines.

Section 3. Animals. No animal, bird, fowl, poultry or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal, bird, fowl, poultry, or livestock shall be allowed to make an unreasonable amount of noise or to become a nuisance. When outside of the confines of the fenced area around the residence, domestic pets are to be leashed or similarly restrained. The parties to this document note that domestic cats are of particular concern and must be protected from unrestrained access to the area outside of the walling or fencing around the Dwelling Unit. No structure for the care, housing or confinement of any animal, bird, fowl, poultry, or livestock shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Member, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal, bird, fowl, poultry, or livestock is a generally recognized house or yard pet, whether such a pet is a nuisance, or whether the number animals or birds on any such property is reasonable. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained herein.

Section 4. Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling on any property shall be removed immediately after the completion of construction.

Section 5. Maintenance of Lawns and Plants. Each Owner of a Lot shall maintain the plants on the Lot, with the exception of those areas designated as Natural Open Space and those areas within the Conservation Easement, in accordance with the Architectural and Design Guidelines incorporated in this Declaration, and must adhere to the following maintenance plan for Plant maintenance:

(i) planted public right-of-way areas between sidewalks or bike paths, and the street curb in front of his property, if any;

(ii) any other public right-of-way or easement area which abuts the Owner's Lot and which is located between the boundary line of his Lot and the paved area of any street, sidewalk, bike path or similar area; and

(iii) any non-street public right-of-way or easement area adjacent to his Lot neatly trimmed, and shall keep all such areas described in (i) through (iii) properly cultivated and free of trash, weeds and other unsightly material; provided, however, that such Owner shall not be responsible for maintenance of any area over which (i) the Association assumes the responsibility in writing, (ii) the Association has been given such responsibility by a recorded instrument and/or as provided in Article XI, Section 1 of this Declaration, or (iii) Pima County assumes responsibility, for so long as the Association or Pima County assumes or has responsibility as provided in Section (1).

With respect to each Lot, no later than 180 days after the Owner's purchase of a Lot improved with a residence or 180 days after completion of a residence on a Lot (as evidenced by Pima County's issuance of a certificate of occupancy for such residence), whichever shall occur first, the Owner of such Lot shall have completed all landscaping of the front and sides of (which is all that portion of the Lot in front and on the sides of a residence located on the Lot) his Lot, including, but not limited to, areas other than the Natural Open Space and Conservation Easement according to landscaping plans approved by the Architectural Committee pursuant to the terms of the Declaration. In addition, the Architectural Committee may require landscaping by the Owner of the areas described in Subsections (i) through (iii) above.

(iv) Exotic plant species shall be planted only in confined areas (i.e. potted containers, walled yards) and certain species determined to be a threat to the natural flora and fauna of the desert are prohibited. See Architectural Design Guidelines of the Architectural Committee for a current list of prohibited plants. It is recommended that lawns be restricted in size in order to conserve water.

(v) The preceding paragraphs notwithstanding, the Natural Open Space surrounding the gradable area surrounding each Dwelling Unit and within the building envelope is a buffer for the Conservation Easement. This area shall be governed by Pima County Ordinances regarding Natural Open Space and no activity contrary to said ordinance shall be permitted. The Association shall be responsible for all maintenance of the Natural Open Space and the Owner of any Lot shall cooperate fully with providing access to the Association to conduct such maintenance of the Natural Open Space as is deemed necessary.

Section 6. Nuisances: Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors or loud noises shall be permitted to arise or emit there from, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, firecrackers, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such property. Normal construction activities and parking in connection with the building of improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved by the Architectural Committee. In addition, any construction equipment and building materials stored or kept on any Lot during construction of improvements may be kept only in areas approved by the Architectural Committee, which may also require screening of the storage areas. The Board in its reasonable discretion shall have the right to determine the existence of any such nuisance.

Section 7. Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

Section 8. Repair of Building. No building or structure on any Lot shall be permitted to fall into disrepair and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then, subject to the approvals required by Section 2 above, such building or structure shall be immediately repaired or rebuilt or shall be demolished.

Section 9. Antennas. Subject to applicable federal and state law, no antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any Lot, whether attached to a building or structure except in compliance with the Design Guidelines adopted by the Board.

Section 10. Mineral Exploration. No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

Section 11. Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot, except in covered containers of a type, size and style which are approved by the Architectural Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to affect such collection. All rubbish, trash, or garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot. Containers are to be outside on the day of collection only. To minimize the effect of unnecessary traffic within the community, the Board may specify on an annual basis a maximum of two refuse collection providers to be selected from by the Members for trash collection services from Lots within the Property. If the Board changes allowed providers, any Members using a provider that has been replaced by another provider may complete their contract with said provider but at the time for renewal shall replace said provider with an approved provider.

Section 12. Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot unless they are erected, placed and maintained exclusively within a fenced service yard or otherwise concealed and shall not be Visible From Neighboring Property.

Section 13. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except (i) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other improvements; or (ii) that which Declarant or the Association may require for the operation and maintenance of the Property.

Section 14. Signs. Subject to the provisions of Arizona Revised Statutes § 33-1808 as such statute may be amended from time to time, no signs whatsoever (including, but not limited to, commercial, political and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Lot except:

- (i) Signs required by legal proceedings.
- (ii) No more than two (2) identification signs for individual residences, each with a face area of seventy-two (72) square inches or less.
- (iii) Signs (including "for sale" and "for lease" signs) the nature, number, and location of which have been approved in advance and in writing by the Architectural Committee.
- (iv) Promotional and advertising signs of builders or any Lot approved from time to time by Declarant as to number, size, colors, design, message content, location and type.
- (v) Such other signs (including, but not limited to, construction job identification signs, builder identification signs, and subdivision signs) which are in conformance with the requirements of Pima County or other governmental agencies and which have been approved in writing by the Architectural Committee as to size, colors, design, message content and location or which otherwise comply with the Design Guidelines.

Section 15. Restriction on Further Subdivision, Property Restrictions and Rezoning. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner, without the prior written approval of the Board, which approval must be evidenced on the plat or other instrument creating the subdivision, easement or other interest. This provision shall not, in any way, limit Declarant from subdividing or separating into Lots any property at any time owned by Declarant. Only the entirety of a Lot, together with the improvements thereon, may be rented, and then only for single-family residential purposes. No further covenants, conditions, restrictions or easements shall be recorded by any Owner, or other person against any Lot without the provisions thereof having been first approved in writing by the Board and any covenants, conditions, restrictions or easements recorded without such approval being evidenced thereon shall be null and void.

Section 16. Utility Easements. There is hereby created a blanket easement upon, across, over and under each Lot for ingress to, egress from, and the installation, replacing, repairing and maintaining of, all utility and service lines and systems, including, but not limited to water, sewers, gas, telephones, electricity, television cable or communication lines and systems, etc. as such utilities are installed in connection with the initial development of the Lot and the construction of the first Dwelling Unit or other building thereon. Pursuant to this easement, a providing utility or service company may install and maintain facilities and equipment on the property and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of buildings on the Lots. Notwithstanding anything to the contrary contained in this Subsection, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on any Lot except as initially programmed and approved by the Declarant or the Architectural Committee. The creation and utilization (in compliance with this paragraph) of these easements shall not be deemed a violation of the Conservation Easement.

Section 17. Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee.

Section 18. Overhead Encroachments. No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way, common area or neighboring property from ground level to a height of eight (8) feet without the prior approval of the Architectural Committee.

Section 19. Trucks, Trailers, Campers and Boats. Except as permitted by Arizona Revised Statutes § 33-1809 as such statute may be amended from time to time, no motor vehicle classed by manufacturer rating as exceeding 3/4-ton, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or on any street in the Property so as to be Visible From Neighboring Property, the Common Areas or the streets; provided, however, the provisions of this Section shall not apply to pickup trucks of less than 3/4-ton capacity with camper shells not exceeding seven (7) feet in height measured from ground level which are parked as provided in Section (21) below and are used on a regular and recurring basis for basic transportation.

Section 20. Motor Vehicles. No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any Lot or street on the Property, and no inoperable vehicle may be stored or parked on any such Lot or street, so as to be Visible From Neighboring Property or to be visible from Common Areas or streets; provided, however, that the provisions of this Section shall not apply to (i) emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any improvement approved by the Architectural Committee; or (ii) vehicles parked in garages on Lots so long as such vehicles are in good operating condition and appearance and are not under repair.

Section 21. Parking. Vehicles of all Owners and of their employees, guests and invitees, are to be kept in garages, carports, residential driveways of the Owner, and other designated parking areas wherever and whenever such facilities are sufficient to accommodate the number of vehicles at a Lot; provided, however, this Section shall not be construed to permit the parking in the above described areas of any vehicle whose parking on the Property is otherwise prohibited or the parking of any inoperable vehicle.

Section 22. Right of Entry. During reasonable hours and upon reasonable notice to the Owner or other occupant of a Lot, any member of the Architectural Committee, any member of the Board, or any authorized representative of either of them, shall have the right to enter upon and inspect any Lot, and the improvements thereon, except for the interior portions of any completed residence, for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with and such persons shall not be deemed guilty of trespass by reason of such entry.

Section 23. Developer and Declarant's Exemption. Except as restricted by the Conservation Easement and applicable Pima County regulations and/or ordinances, nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant or Developer, or the duly authorized agents of either of them, of structures, improvements or signs necessary or convenient to the development or sale of any portion of the Property; provided that such improvements, structures and signs shall not obstruct access to any Lot, shall only be placed on Common Areas or Lots owned by Declarant, and shall not be inconsistent with the rights of any Lot purchaser.

Section 24. Health, Safety and Welfare. In the event additional uses, activities, and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners, the Board may make rules restricting or regulating their presence on the Property as part of the Association Rules or may direct the Architectural Committee to make rules governing their presence on Lots as part of the architectural guidelines.

Section 25. Model Homes. The provisions of this Declaration which prohibit non-residential use of Lots and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes by persons engaged in the construction of residential dwellings within the Property and parking incidental to the visiting of such model homes so long as the location of such model homes is approved by the Architectural Committee, and the construction, operation and maintenance of such model homes otherwise comply with all of the provisions of this Declaration. The Architectural Committee may also permit Lots and other areas to be used for parking in connection with the showing of model homes so long as such parking and parking areas are in compliance with the rules and regulations of Pima County or other applicable governmental authority and any rules of the Architectural Committee. Any homes constructed as model homes shall cease to be used as model homes at any time the Owner or builder thereof is not actively engaged in the construction and sale of single family residences within the Property and no home shall be used as a model home for the sale of homes not located on the Property.

Section 26. Single Family Residential Use. All Lots shall be used, improved, and devoted exclusively to single-family residential use. No gainful occupation, profession, trade or other nonresidential use other than the keeping of an office for private use shall be conducted on any such property and no person shall enter into any Lot for engaging in such uses or for the purpose of receiving products or services arising out of such usage. No structure whatever, other than one private, single family residence, together with a private garage, a guest house or servant quarters, shall be erected, placed or permitted to remain on any Lot and no facilities for the preparation of food shall be provided or permitted in any guest house or servants' quarters erected on said Lot. All buildings constructed on the Property or any Lot shall be limited to one story. There shall be no construction whatsoever by Owner on the Natural Open Space surrounding the Dwelling Unit. The height of any and all residential buildings constructed on the Lots shall not exceed twenty-two (22) feet.

Section 27. Drainage Improvements. The drainage from, to, or on any Lot or Common Area and all drainage improvements and facilities, as originally constructed by the Developer pursuant to plans approved by the County and/or other applicable governmental authorities, (collectively the "Drainage Improvements") shall not be altered, disturbed or obstructed by any Owner; provided, however, that the Developer may alter or construct any Drainage Improvement to the extent required by the County or any other governmental authority, and the Developer is hereby granted a license to enter upon any Lot or Common Area to the extent deemed necessary or convenient by Developer for the purpose of accomplishing such alteration or construction.

Section 28. Fencing: Natural Open Space. A Lot owner may not fence the perimeter of the Lot. Fencing, walling or similar structures are permitted within the Lot only to delineate backyard areas or the boundary between gradable areas and the Natural Open Space. The Natural Open Space (i.e. non-gradable areas) form a buffer to the Conservation Land and this space is to be maintained at all times in its natural state. To this effect, a Lot owner shall not engage in motorized or non-motorized vehicle use on the Natural Open Space or on the Conservation Land except such as are necessary for emergency use and/or mitigation activities conducted by the Association (this restriction includes bicycles). In addition, no herbicides or insecticides may be used on the Natural Open Space and the Conservation Land, except as directed by the biologist or Applicable County Authorities, no artificial lighting shall be

installed thereon, and there shall be no activities such as fires or outdoor cooking which would negatively affect the flora and fauna of the Conservation Land.

ARTICLE V
TRACT DECLARATIONS

Tract Declarations, if any, designating the purpose for which portions of the Property may be used and all additional covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements applicable to such portions of the Property shall be subject to approval of Declarant so long as there is a Class B Member, and thereafter shall be subject to the approval of the Board.

ARTICLE VI
ORGANIZATION OF ASSOCIATION

Section 1. Formation of Association. The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

Section 2. Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws as the same may be amended from time to time. The initial Board, and each Board thereafter, so long as there is a Class B Member, shall consist of three (3) Members or other persons, designated by Declarant. The Board may also appoint various committees and appoint a Manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the Manager or any other employee of the Association.

Section 3. The Association Rules. By a majority vote of the Board the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations to be known as the Association Rules, with the exception of any rules related to the Conservation Easement and Natural Open Space, which shall not be amended and which shall exist in perpetuity or until such time as such rules are amended with the consent of Pima County. The Association Rules may restrict and govern the use of any Common Area by any Member or the family and Designees of such Member; provided, however, that the Association Rules shall not discriminate among Members and shall not be inconsistent with this Declaration, the Articles or Bylaws. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

Section 4. Personal Liability. No member of the Board or of any committee of the Association, no officer of the Association, and no Manager or other employee of the Association shall be personally liable to any Member, or to any other person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, the Manager, any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section 4 shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

ARTICLE VII
MEMBERSHIPS AND VOTING

Section 1. Owners of Lots. Every Owner of a Lot, which is subject to Assessments, shall be a Member of the Association. Each such Owner shall have one (1) Membership for each Lot Owned by the Member. Each such Membership shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable. There shall be only one Membership for each Lot, which Memberships shall be shared by any joint Owners of, or Owners of undivided interests in, a Lot.

Section 2. Declarant. The Declarant shall be a Member of the Association for so long as Declarant holds a Class B Membership pursuant to Section 3 below or owns any property within the Property.

Section 3. Voting. The Association shall have two classes of voting Memberships:

Class A. Class A Memberships shall be all Memberships, except the Class B Membership held by the Declarant, and each Owner shall be entitled to one vote for each Class A Membership held by the Owner, subject to the authority of the Board to suspend the voting rights of the Owner for violations of this Declaration in accordance with the provisions hereof.

Class B. There shall be one Class B Membership, which shall be held by the Declarant and the Class B Membership shall be entitled to three (3) votes for each Lot owned by the Declarant. The Class B Membership shall cease and be converted to Class A Memberships on the happening of the first of the following events:

- (a) Within ninety (90) days after the number of Class A votes exceeds the number of Class B votes; or
- (b) At such time as the Declarant notifies the Board in an express writing that it is relinquishing its Class B Membership.

For purposes of this paragraph only, the number of Lots owned by Declarant prior to the sale of any Property shall be equal to the number of Lots as specified on the Plat as of the date of recordation thereof.

Section 4. Right to Vote. No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Membership must be cast as a unit, and fractional votes shall not be allowed. In the event that a Membership is owned by more than one person or entity and such owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other owners of the same Membership unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast for a particular Membership, none of the said votes shall be counted and all said votes shall be deemed void.

Section 5. Cumulative Voting for Board Members. In any election of the members of the Board, every owner of a Membership entitled to vote at such an election shall have the number of votes for each Membership equal to the number of directors to be elected, except that the Class B Member shall have the number of votes designated in Section 3 above times the number of directors to be elected. Each Member shall have the right to cumulate his votes for one candidate or to divide such votes among any number of the candidates. The candidates receiving the highest number of votes, up to the number of the Board members to be elected, shall be deemed elected.

Section 6. Membership Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Articles and Bylaws as the same may be amended from time to time.

Section 7. Transfer of Membership. Except as provided in this Section 7 of this Article VII, the rights and obligations of the owner of a Class A Membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to an Owner's 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 Memberships appurtenant to said Lot to the new Owner thereof.

Section 8. Use of Membership: Designees. Subject to the Association Rules, all of the owners of a Membership may designate one or more non-Members (herein referred to as a "Designee") to exercise all of the rights of the Member under this Declaration except the Member's voting rights, but such designation shall not relieve the Member of any liabilities or obligation as an Owner or with respect to the Membership. So long as such designation is in effect, the Member shall be permitted to exercise only his voting rights and the Board may, among other things, in its discretion, set maximum or minimum periods for which such designation may be in effect and limit the number of persons who may be so designated by any Member at any one time.

ARTICLE VIII
COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

Section I. (a) Creation of Lien and Personal Obligation of Assessments and Maintenance Charges. Owner by accepting a Deed or entering into a recorded contract for sale of any portion of the Property (whether or not it shall be so expressed in such Deed or contract) is deemed to covenant and agree to pay to the Association the following assessments and charges: (1) Annual Assessments established by this Article VIII for a General Fund and a Conservation Easement Fund, the latter being a separate account, the funds of which will be used exclusively for the monitoring of compliance with, and the maintenance of the Conservation Easement and matters related thereto, (2) Special Assessments for capital improvements or other extraordinary expenses or costs related to the Conservation Easement as established by this Article VIII, and (3) Maintenance Charges established by Article XI, Sections 2 and 3, all such Assessments to be established and collected as hereinafter provided. The Annual Assessments, Special Assessments and Maintenance Charges, together with interest, costs and reasonable attorney's fees, shall be a charge on the Lot, and shall be a continuing servitude and lien upon the Lot against which each such Assessment is made. Each such Annual and Special Assessment and Maintenance Charge, together with interest, cost and reasonable attorney's fees, shall also be the joint and several personal obligation of each person who was the Owner of the Lot at the time when the Assessment fell due.

The Board's failure to fix assessment amounts or rates or to deliver to each Owner an assessment notice shall not be deemed a waiver, modification or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Annual Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Owner may exempt himself or herself from liability for assessments by non-use of the Common Areas, abandonment of a Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

(b) Declarant's Option to Fund Budget Deficits. For so long as there is a Class B Membership, Declarant may satisfy its obligation for assessments on Lots which it owns either by paying such assessments in the same manner as any other Owner or by paying, on an annual basis, the difference between the amount of assessments levied on all other portions of the Property subject to assessment and the amount of actual expenditures by the Association during the preceding fiscal year (the "Budget Deficit"), provided that, if the Declarant elects to pay the Budget Deficit under the latter provision, in no event shall the Declarant be responsible for payments in excess of assessment amounts otherwise payable on Lots owned by the Declarant if the Declarant had elected to pay assessments in the same manner as any other Owner. Unless Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. Regardless of Declarant's election, Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class B Membership, Declarant shall pay assessments on its unsold Lots in the same manner as any other Owner.

(c) Sale of Property. If during any assessment period Declarant conveys any real property subject to this Declaration (the "Sale Property") for which Declarant has elected, pursuant to subsection (b), to pay the budget deficit rather than assessments on a per Lot basis, then the Association may require the grantee of the Sale Property to pay to the Association an amount equal to the pro rata portion of the assessments that would have been payable with respect to the Sale Property for the applicable assessment period had Declarant not made such election; provided the grantee shall have no such obligation if the Sale Property is otherwise exempt from assessment pursuant to Section 11 of this Article. The amount of such pro rata portion shall be based on the number of days remaining in the assessment period in which such conveyance occurs. The following shall be strictly enforced by the HOA and shall remain in effect until such time as this agreement is terminated; **UPON THE SALE, RE-SALE, EXCHANGE, LEASE, SALE PURCHASE OR OPTION OF THE SALE PROPERTY AS REFERENCED ABOVE, THIS AGREEMENT SHALL REMAIN IN FORCE AND EFFECT WITHOUT EXCEPTION OR REVISION.**

Section 2. Annual Assessments. To provide for the uses and purposes specified in this Declaration, including the establishment of replacement and maintenance reserves, the Board in each year, commencing with the year in which this Declaration is recorded, shall assess against each Lot an Annual Assessment. The amount of the Annual Assessment, subject to the provisions of Section 4 hereof, shall be in the sole discretion of the Board but shall be determined with the objective of fulfilling the Association's obligations under this Declaration and providing for the uses and purposes specified herein. A part of this assessment shall be for the account pertaining to the Conservation Easement, which shall be determined based upon the need to maintain the fund. Monies for this Conservation Easement Fund account shall be maintained in a separate account at all times; the Declarant will fund this account initially in the amount of \$14,000.00; the Lot owner shall be assessed an initial fee of \$500.00. Upon any sale of a Lot, the new Owner shall pay a Conservation Easement fee of \$500.00, which shall be deposited in the Conservation Easement Fund account. In the event that funds in the account are not adequate to administer the Conservation Easement as needed, then the Association is empowered to assess special fees to accomplish the needed services for the Conservation Easement. The Association's right to assess special fees as outlined in this Section 2 is separate and apart from the Special Assessments outlined in Section 5. The Association may assess special fees as outlined in Section 2 as required, without a vote of the Owners.

Section 3. Uniform Rate of Assessment. The amount of any Annual or Special Assessment against each Lot shall be fixed at a uniform rate per Membership, except that the Owner of a Lot (excluding the Declarant for so long as the Declarant is a Class B Member) shall pay only twenty-five percent (25%) of the Annual Assessment attributable to his Membership (herein, a "Reduced Rate") until the earlier of (i) the completion of a Dwelling Unit on the Lot or (ii) six (6) months from the commencement of construction of a Dwelling Unit on the Lot. For purposes of this Section, a Dwelling Unit or other building shall be deemed completed when the County has issued a Certificate of Occupancy in respect of such structure. If the Owner of a Lot ceases to qualify for the Reduced Rate during the period to which an Annual Assessment is attributable, the Assessment attributable to a Membership shall be prorated between the applicable rates on the basis of the number of days in the period that the Owner qualified for each rate. Annual Assessments may be collected on a monthly, quarterly or annual basis and Special Assessments may be collected as specified by the Board unless otherwise determined by the resolution of the Members of the Association approving the Special Assessments. The foregoing notwithstanding, in the event of a Budget Deficit, each Owner entitled to a Reduced Rate under the foregoing provision shall pay, not less than annually, within ten business days after receipt of written notice from the Association, an amount equal to its pro rata share of the Budget Deficit (which pro rata share shall be a fraction, the numerator of which shall be the number of Lots owned by such Owner which are subject to the Reduced Rate, and the denominator of which shall be the total number of Lots in the Property), provided that in no event shall an Owner be responsible for payments in excess of assessment amounts otherwise payable on Lots owned by such Owner if the Reduced Rate did not apply.

Section 4. Maximum Annual Assessments. Subject to any other terms of this Declaration, the Annual Assessment to be established by the Board may not exceed a certain amount, hereinafter referred to as the "Maximum Annual Assessment," which Maximum Annual Assessment shall be determined and shall vary in accordance with the following provisions:

(a) Until January 1 of the year following the Recording of this Second Amended Declaration, the Maximum Annual Assessment shall be Nine Hundred Dollars (\$900.00) for each Membership.

(b) From and after January 1 of the year immediately following the recording of this Second Amended Declaration, the Board may, without a vote of the Members, increase the Maximum Annual Assessment during each fiscal year of the Association by the greatest of (i) 10% of the Maximum Annual Assessment for the immediately preceding fiscal year, (ii) the amount permitted by law, or (iii) an amount based upon the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) U.S. City Average (1982-84=100), issued by the United States Department of Labor, Bureau of Labor Statistics (the "Consumer Price Index"), which amount shall be computed in the last month of each fiscal year by subtracting X from Y, then dividing the result by X, then multiplying the quotient by the Maximum Annual Assessment for the year immediately preceding the year for which the Maximum Annual Assessment is to be determined where:

X = Consumer Price Index for September of the calendar year immediately preceding the year in which the Annual Assessments commenced.

Y = Consumer Price Index for September of the year immediately preceding the calendar year for which the maximum Per Membership Assessment is to be determined.

If the Consumer Price Index ceases to be published, then the index which shall be used for computing the increase in the Maximum Annual Assessment permitted under this Subsection shall be the substitute recommended by the United States government for the Consumer Price Index or, if no such successor index is recommended by the United States government, the index selected by the Board.

(c) From and after January 1 of the year immediately following the recording of this Second Amended Declaration, the Maximum Annual Assessment may be increased by an amount greater than the maximum increase allowed pursuant to (b) above, only by a majority vote of Members entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

Section 5. Special Assessments for Capital Improvements and Extraordinary Expenses. In addition to the Annual Assessments authorized above, the Association may levy, in any Assessment Period, one or more Special Assessments applicable to that period only for a) any extraordinary expenses related to the maintenance and preservation of the Conservation Easement and the Conservation Land; b) defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Association Land, including fixtures and personal property related thereto, or for the purpose of defraying other extraordinary expenses provided that any such Assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy duly called for such purpose. In connection with any such Special Assessment, Owners qualifying for paying only twenty-five percent (25%) of the Annual Assessment attributable to their Memberships pursuant to Section 3 above shall also be required to pay only twenty-five percent (25%) of the Special Assessment otherwise attributable to each such Membership.

Section 6. Notice and Quorum for Any Action Authorized Under Section 4 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 4 or 5 of this Article shall be sent to all Members no less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes (exclusive of suspended voting rights) of each class of Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent

meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Establishment of Annual Assessment Period. The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year, except that the first Assessment Period shall commence upon the filing of this Second Amended Declaration and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period by recording with the County Recorder of Pima County, Arizona, an instrument specifying the new Assessment Period.

Section 8. Rules Regarding Billing and Collection Procedures. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making the Assessments provided herein and for the billing and collection of the Annual and Special Assessments and the Maintenance Charges imposed pursuant to Article XI, Section 2 and 3, provided that said procedures are not inconsistent with the provisions hereof. The Rules and Regulations contemplated by this section shall, by way of illustration and not limitation, grant to the Association the right to require concurrently with the conveyance of a Lot the payment of all Assessments in respect of the Lot then outstanding, together with an estimated prepayment of Assessments for the next two (2) calendar months thereafter, as a condition precedent to the recognition by the Association of a successor grantee as a Member of the Association. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement at the address of the Member on the records of the Association, that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Membership changes during an Assessment Period; successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners. In case the owner of a Membership becomes liable for payment of an increased sum pursuant to Section 3 of this Article during the Assessment Period, he shall notify the Association but his failure to notify the Association shall not relieve him of the liability for such amounts.

Section 9. Collection Costs and Interest on Delinquent Assessments. Any Assessment or installment thereof not paid when due shall be deemed delinquent and shall bear interest from thirty (30) days after the due date until paid at a rate equal to the greater of (a) twelve percent (12%) per annum or (b) the then prevailing interest rate on loans insured by the Federal Housing Association, or (c) the then prevailing interest rate on loans guaranteed by the Veterans Administration, and the Member shall be liable for all costs, including attorney's fees, which may be incurred by the Association in collecting the same. The applicable interest rate on delinquent Assessments shall be determined on a daily basis. The Board may also record a Notice of Delinquent Assessment against any Lot as to which an Assessment is delinquent and constitutes a lien and may establish a fixed fee to reimburse the Association for the Association's cost in recording such Notice, processing the delinquency and recording a notice of payment, which fixed fee shall be treated as a collection cost of the Association secured by the Assessment Lien.

Section 10. Evidence of Payment of Annual and Special Assessments and Maintenance Charges. Upon receipt of a written request by a Member or any other person, the Association within a reasonable period of time thereafter shall issue to such Member or other person a written certificate stating (a) that all Annual and Special Assessments and Maintenance Charges (including interest, costs and attorney's fees, if any, as provided in Section 9 above) have been paid with respect to any specified Lot as of the date of such certificate, or (b) if all Annual and Special Assessments and Maintenance Charges have not been paid, the amount of such Annual and Special Assessments and Maintenance Charges including interest, costs and attorney's fees, if any, due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or lender on, the Lot in question.

Section 11. Property Exempted from the Annual and Special Assessments and Assessment Lien. Exempt Property shall be exempted from the assessment of the Annual and Special Assessments and, except as provided in

Article XI, Section 3, from Maintenance Charges and the Assessment Lien; provided, however, that in the event any change of ownership of Exempt Property results in all or any part thereof becoming Assessable Property in any year, the same thereupon shall be subject to the assessment of the Annual and Special Assessments and, if exempt therefrom, Maintenance Charges (prorated as of the date it became Assessable Property) and the Assessment Lien.

Section 12. The Conservation Easement. Each and every owner of a Lot has an ongoing obligation to maintain and fund the Association's obligations set forth herein with respect to the monitoring and preservation of the Conservation Easement, and to fund another entity to conduct such monitoring if for any reason the Association ceases to do so. Nothing in this Declaration shall absolve the Lot owner from this ongoing obligation, which is perpetual in nature and will survive any dissolution of the Association.

ARTICLE IX
ENFORCEMENT OF PAYMENT OF ANNUAL AND SPECIAL ASSESSMENTS
AND MAINTENANCE CHARGES AND OF ASSESSMENT LIEN

Section 1. Association as Enforcing Body. The Association, as the agent and representative of the Members, shall have the exclusive right to enforce the provisions of this Declaration. However, if the Association shall fail or refuse to enforce this Declaration or any provision hereof for an unreasonable period of time after written request to do so, then any Member may enforce them on behalf of the Association, but not at the expense of the Association, by any appropriate action whether in law or in equity.

Section 2. Association's Remedies to Enforce Payment of Annual and Special Assessments and Maintenance Charges. If any Member fails to pay the Annual or Special Assessments or installments when due, or to pay Maintenance Charges assessed pursuant to Article XI, Sections 2 and 3, the Association may enforce the payment of the Annual or Special Assessments, Maintenance Charges and/or the Assessment Lien by taking either or both of the following actions, concurrently or separately and, by exercising either of the remedies hereinafter set forth, the Association does not prejudice or waive its right to exercise the other remedy:

(a) Bring an action at law and recover judgment against the Member personally obligated to pay the Annual or Special Assessments or the Maintenance Charges;

(b) Any other remedy available under the laws of the State of Arizona to ensure collection of any and all monies due and owing.

Section 3. Subordination of Assessment Lien to First Mortgage or Deed of Trust; Priority of Lien. The Assessment Lien provided for herein shall be subordinate to any first mortgage lien held by or first position deed of trust in which the beneficiary is a lender who has lent funds with the Lot as security for the purchase of said Lot and any improvements thereon, or held by the lender's successors and assigns and shall also be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. Except as above provided, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Lot. Sale or transfer of any Lot shall not affect the Assessment Lien; provided, however, that if the sale or transfer is pursuant to foreclosure of a mortgage or deed of trust to which the Assessment Lien is subordinate, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or deed of trust sale, or any grantee taking by deed in lieu of foreclosure, shall take the Lot free of the Assessment Lien for all Annual and Special Assessments and Maintenance Charges that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure; but upon the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure, the Assessment Lien immediately shall become and remain superior to any and all other charges, liens or encumbrances (except liens for taxes or other public charges which by applicable law are expressly made superior), and such mortgage or deed of trust foreclosure sale purchaser or grantee shall take subject to all Annual and Special Assessments, Maintenance Charges and the Assessment Lien thereof accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure.

Section 4. Costs to be Borne by Member in Connection with Enforcement of Payment of Annual and Special Assessments and Maintenance Charges. In any action taken pursuant to Section 2 of this Article, the Member shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Annual and Special Assessment and Maintenance Charges together with interest and the Association's collection costs and attorney's fees, including those costs and fees specified in Article VIII, Section 9.

ARTICLE X USE OF FUNDS- BORROWING POWER

Section 1. Purposes for which Association's Funds may be Used. The Association shall be responsible for the control, maintenance, safety and liability, and payment of ad valorem taxes, if any, relating to the Common Areas. The Association shall apply all funds and property collected and received by it (including the Annual and Special Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source, together with interest on any and all such sums) for the common good and benefit of the Property and the Members by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Property, which may be necessary, desirable or beneficial to the general common interests of the Property and the Members. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: social interaction among Members, maintenance of landscaping on Common Areas and public right of way and drainage areas within the Property, and recreation, (including liability insurance, communications, transportation, health, utilities, public services, safety and indemnification of officers and directors of the Association). The Association also may expend its funds for any purposes which any municipality may expend its funds under the laws of the State of Arizona or such municipality's charter. Monies in the special fund for the Conservation Easement may only be used for purposes related to said Conservation Easement.

Section 2. Borrowing Power. The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such period of time as is necessary or appropriate; provided, however, that the Common Areas or any part thereof may not be mortgaged without the consent of at least two-thirds (2/3) of the Owners, excluding the Declarant, and further provided that if ingress or egress to any residence is through a Common Area, any conveyances or encumbrances of such area shall be subject to the benefiting Owners' easement.

Section 3. Association's Rights in Spending Funds From Year to Year. The Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Annual or Special Assessments, fees or otherwise), and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

Section 4. Administration of Special Use Fees. The Association is authorized to bill for, sue for, collect, administer and disburse all Special Use Fees and the payment thereof shall be secured by the Assessment Lien; provided, however, that all Special Use Fees collected shall, if imposed in connection with a particular improvement, be separately accounted for as to each separate improvement pertaining to which they are collected and shall be expended on the particular improvements in which they pertain.

Section 5. Insurance. The Association shall maintain insurance against liability incurred as a result of death or injury to persons or damage to property on the Common Areas.

ARTICLE XI MAINTENANCE

Section 1. Common Areas and Public Rights of Way. The Association, or its duly delegated representative, shall maintain and otherwise manage the Common Areas and Natural Open Space as defined on the Plat, including, but

not limited to, the landscaping, walkways, detention and retention areas, paths, parking areas, drives, roadways, and recreational facilities; provided, however, the Association shall not be responsible for providing or maintaining the landscaping structures or other improvements on any part of a Lot unless (i) the Association assumes in writing the responsibility for such maintenance or (ii) such responsibility is set forth herein or in a recorded instrument as hereinafter provided. The Association shall also maintain any landscaping and other improvements not on Lots which are adjacent to the exterior boundaries of the Property, which are within areas shown on a subdivision plat or other plat of dedication for the Property, and which are intended for the general benefit of the residents of the Property, except the Association shall not maintain areas which (i) the City of Tucson, Pima County, or other governmental entity is maintaining or (ii) are to be maintained by the Owners of a Lot pursuant to this Declaration unless the Association elects to maintain such areas and as to which the Association has made such an election to maintain. Specific areas to be maintained by the Association may be identified on subdivision plats recorded or approved by the Declarant and in Deeds from the Declarant to a transferee of a Lot, but the failure to so identify such areas shall not affect the Association's rights or responsibilities with respect to such Common Areas and other areas intended for the general benefit of the Property.

The Board shall use a reasonably high standard of care in providing for the repair, management and maintenance of said property so the Property development will reflect a high pride of ownership. In this connection the Association may, in the discretion of the Board:

(a) Reconstruct, repair, replace or refinish any improvement or portion thereof upon Association Land except that no permanent improvements shall be made by the Association on any Common Area that is not Association Land and the Association shall provide only maintenance on Common Areas which are not Association Land;

(b) Replace injured and diseased trees and other vegetation in any Common Area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

(c) Place and maintain upon any Common Area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;

(d) Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration.

The Board shall be the sole judge as to the appropriate maintenance of all Common Areas and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

In the event any subdivision plat, deed restriction or this Declaration permits the Board to determine whether or not Owners of certain Lots will be responsible for maintenance of certain Common Areas or public right-of-way areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners for the Association or an individual Owner to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Association to contract with others for the performance of the maintenance and other obligations of the Association under this Article XI and, in order to promote uniformity and harmony of appearance, the Board may also cause the Association to contract to provide maintenance services to Owners of Lots having such responsibilities in exchange of the payment of such fees as the Association and Owner may agree upon.

Notwithstanding anything herein to the contrary, until such time as the County directs otherwise, the Association shall have an Arizona Registered Professional Civil Engineer prepare a certified inspection report for the Drainage and Detention/Retention Facilities at least once each year. Such inspection report shall be retained in the Association's books and records and shall be subject to review by the staff of the County, upon written request. The staff of the County has the right to inspect the private Drainage and Detention/Retention Facilities to verify that the

Association is adequately performing any scheduled and unscheduled maintenance activities. The Association shall be obligated to reimburse the County for any costs associated with maintaining the private Drainage and Detention/Retention Facilities in the event that it determines that the Association has been deficient in its obligation to adequately maintain such facilities.

Notwithstanding any of the foregoing, with regard to the Conservation Easement the Board is controlled by the requirements set forth herein and by the recommendations and direction of the biologist and Pima County.

Section 2. Assessment of Certain Costs of Maintenance and Repair of Common Areas and Public Areas. In the event that the need for maintenance or repair of the Conservation Land, Common Areas and other areas maintained by the Association is caused through the intentional, willful or negligent act of any Member, his family, guests, invitees or Designees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Member and the Member's Lot is subject and shall be secured by the Assessment Lien. Any charges or fee to be paid by the Owner of a Lot pursuant to Section 1 of this Article XI in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Assessment Lien.

Section 3. Improper Maintenance and Use of Lots. In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Property which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration, or in the event the Owner of any Lot is failing to perform any of its obligations under this Declaration, or the architectural guidelines and standards of the Architectural Committee, the Board may by Resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen (14) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the Assessment Lien.

ARTICLE XII
ARCHITECTURAL CONTROL COMMITTEE

Section 1. Establishment. The Declarant shall establish an Architectural Committee to perform the functions of the Architectural Committee set forth in this Declaration and may adopt the procedural rules and regulations for the performance of such duties by the Architectural Committee, including procedures for the preparation, submission and determination of the application for any approvals required by this Declaration. The Architectural Committee shall consist of such number of regular members and alternate members as the Declarant may designate and such members shall be appointed by the Declarant. The initial Architectural Committee shall consist of three (3) regular members.

Appointees need not be architects or Owners and do not need to possess any special qualifications of any type except such as the Declarant may, in its discretion, require. The Architectural Committee shall hold regular meetings as needed, a quorum for such meeting shall consist of a quorum of the regular members, and the concurrence of a majority of the regular members shall be necessary for any decision of the Architectural Committee. A simple majority of the members of the Architectural Committee shall constitute a quorum of said committee. An alternate member, approved by the Declarant, may participate at any meeting at which there is not a quorum of regular members present, may constitute a quorum by his (their) presence and shall have all of the authority of a regular member while so participating. The Architectural Committee may promulgate architectural guidelines and standards to be used in rendering its decisions (the "Architectural Guidelines"). Subject to the provisions of Section 2 of this Article, the decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration.

Section 2. Reconsideration. Any Owner aggrieved by a decision of the Architectural Committee may request that the Committee reconsider its decision. Such procedures would include the requirement that the Owner has modified the requested action or has new information, which would in the Committee's opinion warrant a reconsideration. If the Committee fails to allow reconsideration or if the Committee, after reconsideration, again rules in a manner aggrieving the Owner, the decision of the Committee is final.

Section 3. Fee. The Board may establish a reasonable processing fee to defer the costs of the Association in considering any requests for approvals submitted to it, which fee shall be paid at the time the request for approval is submitted.

Section 4. Appointment of Architectural Committee Members. Architectural Committee members are appointed by the Declarant and may be replaced at the discretion of the Declarant. Declarant's right to appoint Architectural Committee members shall cease and the Board shall be vested with that right and all other rights of the Declarant pertaining to the Architectural Committee as stated in this Article XII, at such time Declarant no longer owns any Property, or when such right is expressly relinquished by Declarant to the Board in writing, whichever condition occurs first.

Section 5. Limited Liability of Committee Approval. Approval by the Committee shall relate only to the conformity of plans and specifications to general architectural and landscaping plans for the area covered by this Declaration, and such plans, drawings, and specifications are not approved as to adequacy of engineering design or architectural competence. By approving such plans, drawings, and specifications, the Committee does not assume liability or responsibility therefor, or for any defect in any structure constructed from such plans, drawings and specification. Members of the Board shall have absolutely no personal responsibility to any person with regard to any actions taken by them in their capacity as such members.

ARTICLE XIII RIGHTS AND POWERS OF ASSOCIATION

Section 1. Association's Rights and Powers as Set Forth in Articles and Bylaws. In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its Articles and Bylaws. Such rights and powers, subject to the approval thereof by any agencies or institutions deemed necessary by Declarant, may encompass any and all things which a natural person could do or which now or hereafter may be authorized by law, provided such Articles and Bylaws are not inconsistent with the provisions of this Declaration and are necessary, desirable or convenient for effectuating the purposes set forth in this Declaration. After incorporation of the Association, a copy of the Articles and Bylaws of the Association shall be available for inspection at the office of the Association during reasonable business hours.

Section 2. Association's Rights of Enforcement of Provisions of this and Other Instruments. The Association, as the agent and representative of the Owners, shall have the right to enforce the Covenants set forth in this Declaration and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, Deed, declaration or other instrument which (a) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (b) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Declarant. The Association and its authorized agents may enter any Lot in which a violation of any restriction set forth herein exists and may correct the violation at the expense of the Owner of the Lot. Any expenses, and any fines imposed shall be a special assessment secured by a lien upon the Lot. All remedies and rights available at law or equity shall be available in the event of any breach by any Owner or any if Owner's occupants, guests or invitees.

Section 3. Contracts with Others for Performance of Association's Duties. Subject to the restrictions and limitations contained herein, the Association may enter into contracts and transactions with others, including Declarant and its affiliated companies, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more directors or officers of the Association or members of any committee is employed by or otherwise connected with Declarant or its affiliates, provided that the fact of such interest shall be disclosed or known to the other

directors acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such director, officer or committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee of which he is a member which shall authorize any contract or transaction described above or grant or deny any approval sought by the Declarant, its affiliated companies or any competitor thereof and may vote thereat to authorize any such contract, transaction or approval with like force and effect as if he were not so interested.

Section 4. Change of Use of Association Land and Procedure Therefor. Upon (a) adoption of a resolution by the Board stating that in the Board's Opinion the then present use of a designated part of the Association Land or of the Association's interest in other Common Areas is no longer in the best interests of the Owners and residents and (b) the approval of such resolution by a majority of the votes of Members who are voting in person or by proxy at a meeting duly called for such purpose, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use (i) shall be for the benefit of the Owners, and (ii) shall be consistent with any deed restrictions (or zoning regulations) restricting or limiting the use of the Association Land. The provisions of this section do not apply to the Conservation Easement, which shall exist in perpetuity as set forth herein.

Section 5. Third Party Auditing. From time to time a third party authorized by Pima County may audit the accounts of the Homeowners' Association. Any such auditor shall provide the Association with 30 day notice of its intent to conduct such and audit except in the event of an emergency.

ARTICLE XIV: TERM: AMENDMENTS: TERMINATION

Section 1. Term: Method of Termination. This Declaration shall be effective upon the date of its Recording hereof and, as amended from time to time, shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is Recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Members casting ninety percent (90%) of the total votes cast at an election held for such purpose within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension. The Declaration may be terminated at any time if ninety percent (90%) of the votes cast by each class of Members shall be cast in favor of termination at an election held for such purpose. Anything in the foregoing to the contrary notwithstanding, no vote to terminate this Declaration shall be effective unless and until the written consent to such termination has been obtained, within a period from six (6) months prior to such vote to six (6) months after such vote, from the holders of Recorded first mortgages or deeds of trust to which the Assessment Lien is subordinate pursuant to Article IX, Section 3 above, on seventy-five percent (75%) of the Lots upon which there are such Recorded first mortgages and deeds of trust. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the County Recorder of Pima County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon these Covenants shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles. The Members may not terminate this Declaration as to any of the provisions pertaining to the Conservation Easement, which has perpetual existence.

Section 2. Amendments. This Declaration may be amended by recording with the County Recorder of Pima County, Arizona, a Certificate of Amendment, duly signed and acknowledged as required for a Certificate of Termination in Section 1 of this Article. The Certificate of Amendment shall set forth in full the amendment adopted, and, except as provided in Section 3 of this Article, shall certify that at an election duly called and held pursuant to the provisions of the Articles and Bylaws the Members casting seventy-five percent (75%) of the votes in each Membership class at the election voted affirmatively for the adoption of the amendment. Anything in this Article to the contrary notwithstanding, so long as there is no Class A Member, this Declaration may be amended by Declarant any time by a recording with the County Recorder of Pima County, Arizona a Certificate of Amendment signed by Declarant with its signature acknowledged. Neither Declarant nor the Members may amend this Declaration as to any of the provisions pertaining to the Conservation Easement.

Section 3. Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions. Anything in this Article to the contrary notwithstanding, Declarant reserves the right to amend all or any part of this Declaration, the Association Articles of Incorporation, the Association Bylaws, and/or the Plat without obtaining the approval or consent of any Owner or mortgagee, to the extent required to correct clerical errors or to such an extent and with such language as may be requested by, or necessary to comply with the requirements of, the Federal Housing Administration ("FHA") or the Veterans Administration ("VA"), or any other federal, state municipal, or other local authority with jurisdiction over the Property or any portion thereof, and, further, to amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or any portions thereof. Any such amendment shall be effected by the Recording, by Declarant, of a Certificate of Amendment duly signed by or on behalf of the partners, authorized agents, or authorized officers of Declarant, as applicable, with their signature acknowledged, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. The Recording of such a Certificate shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate, when recorded, shall be binding upon all of the Property and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Section deletes, diminishes or alters such control, Declarant shall have the right to prepare, provide for and adopt as an amendment hereto, other and different control provisions. Except as provided in this Section 3 and in Section 2, above, Declarant shall not have any right to amend this Declaration otherwise than in accordance with and pursuant to the provisions of Sections 2 and 3 of this Article.

Section 4. Dissolution. In the event that the Homeowners' Association dissolves or is dissolved either voluntarily or involuntarily, then the Funds pertaining to the Conservation Easement shall be transferred to an entity that is ready, willing and able to perform under the terms of this Declaration, as such terms refer to the Conservation Easement, and said entity shall become the assignee/successor in interest of the Association for the purposes of monitoring and maintaining the Conservation Easement under the terms set forth in this Declaration, as such terms refer to the Conservation Easement. The Association shall designate this entity as its successor and shall execute any and all documents necessary to affect the transfer to this entity of all rights, powers, duties and obligations set forth herein. The purpose of this section is to ensure that at all times there will be an entity governing and maintaining the Conservation Easement as set forth herein, and the successor entity is recognized as a third party beneficiary of this Declaration.

Section 5. Assignment. The Association may not assign its rights and responsibilities set forth herein as such rights and responsibilities relate to the Conservation Easement unless the County consents in writing. In the event that the Association wishes to make such an assignment, it shall select an entity willing and able to assume the responsibility for all matters pertaining to the Conservation Easement and shall submit to Pima County the name, address and telephone number of the entity selected, listing other entities selected in order of preference. In the event of a disapproval, the Association may then submit the name of another entity for approval.

ARTICLE XV MISCELLANEOUS

Section 1. Interpretation of the Covenants. Except for judicial construction, the Association, by its Board, 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 hereof shall be final, conclusive and binding as to all persons and property benefited or bound by the Covenants and provisions hereof.

Section 2. Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

Section 3. Rule Against Perpetuities. If any interest purported to be created by this Declaration would otherwise be unlawful, void or voidable under the Rule against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be (a) those which would be used in determining the validity of the challenged interest; plus (b) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

Section 4. Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association shall have the right, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

Section 5. Declarant's Disclaimer of Representations. Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on a recorded plat or other instrument recorded in the office of the County Recorder of Pima County, Arizona, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Property can or will be carried out, or that any land now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect.

Section 6. References to the Covenants in Deeds. Deeds to and instruments affecting any Lot or any part of the Property may contain the Covenants herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the Covenants shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors administrators, successors and assigns.

Section 7. Successors and Assigns of Declarant. Any reference in this Declaration to Declarant shall include any successors or assignees of Declarant's rights and powers hereunder provided that Declarant's rights and powers may only be assigned by a written, recorded instrument expressly assigning such rights and powers.

Section 8. Gender and Number. Wherever the context of this Declarant so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural and words in the plural shall include the singular.

Section 9. 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 of the provisions hereof or to be used in determining the intent or context thereof.

Section 10. Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper of general circulation within the County of Pima or the Property. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

Section 11. Non-waiver. Failure of the Association to enforce any of the restrictions, rights, reservations, limitations and/or covenants contained herein shall not in any event be construed or held to be a waiver thereof or consent to any further or succeeding breach or violation thereof.

Section 12. FHA/VA Approval/Amendment to Comply With Certain Requirements.

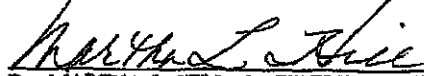
a. If this Declaration is approved by the FHA or the VA in connection with any loan programs made available by FHA or VA and any loans have been made which are insured or guaranteed by FHA or

VA, then as long as there is a Class B Membership, the following actions will require the prior approval of the FHA or the VA, as applicable, unless the need for such approval has been waived by FHA or VA: Dedications of Common Areas; amendment of this Declaration; and annexation of additional properties.

b. Anything in this Declaration or the Association Articles or Bylaws to the contrary notwithstanding, the Board may amend this Declaration, the Association Articles of Incorporation, or Bylaws or the Plat, without obtaining the approval or consent of any Owner or mortgagee, in order to conform this Declaration or the Plat to the requirements 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 governmental agency whose approval of the project in which the Property is located.

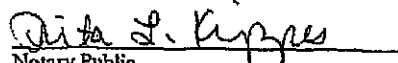
IN WITNESS WHEREOF, the undersigned, as Declarant, has hereunto caused its name to be signed by the signatures of its duly authorized officials as of the day and year first above written.

FIDELITY NATIONAL TITLE AGENCY INC.,
AN ARIZONA CORPORATION, AS TRUSTEE
UNDER TRUSTS NUMBERED 60119 and 60130
ONLY AND NOT IN ITS CORPORATE CAPACITY.


By: MARTHA L. HILL, for FIDELITY NATIONAL TITLE
AGENCY, INC.
"Declarant"

STATE OF ARIZONA)
) ss.
County of Pima)

On this 22nd day of MARCH, 2013, before me, the undersigned Notary Public, personally appeared MARTHA L. HILL, TRUST OFFICER OF FIDELITY NATIONAL TITLE AGENCY, INC., who, being authorized so to do, executed the foregoing instrument for the purposes therein contained.


Notary Public

My Commission Expires:

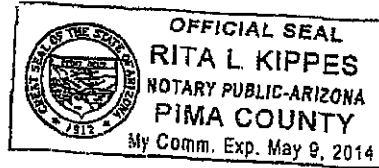


EXHIBIT 1

The undersigned, contracted to purchase a lot in the subdivision known as the Estates at Old Spanish Trail, understands that his subdivision is governed by a recorded instrument known as the Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for the Estates at Old Spanish Trail. As future Member(s) of the Estates at Old Spanish Trail Association, the undersigned hereby acknowledge(s) the they have read, and have been provided with, a copy of the Declaration and any amendments thereto. The Member(s) further acknowledge(s) that they have been made aware of the fact that there is a Conservation Easement on a portion of the subdivision and the said Easement must be maintained and financed by the Association pursuant to the terms of the Declaration.

The Member(s) further acknowledge(s) that, prior to closing escrow on any lot located in the subdivision known as the Estates at Old Spanish Trail, they will have to complete the biological orientation program, administered by a biologist approved by the Association.

DATED this date: _____



P. O. Box 3145
Tucson, AZ 85702-3145

Located in the Old Courthouse at:
115 North Church Avenue, Tucson, AZ

<http://www.recorder.pima.gov>

F. Ann Rodriguez
Pima County Recorder

Recording history one document at a time.

Christopher J. Roads
Chief Deputy Recorder
Registrar of Voters

Document Recording: (520) 724-4350
Voter Registration: (520) 724-4330
Fax: (520) 623-1785

The foregoing instrument is a full, true and correct copy of the original record in this office.


Sequence #: 20130810472 # of Pages: 28

Docket #: _____

Starting Page#: _____ Ending Page #: _____

F. ANN RODRIGUEZ, County Recorder
In and for the County of Pima, State of Arizona

By: Cristina Ramirez



Deputy Recorder

May 2, 2013
Date

**FIRST AMENDED AND RESTATED BYLAWS OF
ESTATES AT OLD SPANISH TRAIL ASSOCIATION**

Pursuant to Article XIV hereof, these First Amended and Restated Bylaws of the Estates at Old Spanish Trail Association amends and supersedes all prior By-Laws of the Association adopted prior to the date set forth below.

ARTICLE I

NAME AND LOCATION

The name of the corporation is Estates At Old Spanish Trail Association, hereinafter referred to as the "Association". The principal office of the corporation shall be located at 2601 N. Campbell Ave., Ste. 101, Tucson, Arizona 85719, however meetings of the members and directors may be held at such places within the State of Arizona, County of Pima, as may be designated by the Board of Directors.

ARTICLE II

DEFINITIONS

1. "Association" shall mean and refer to Estates At Old Spanish Trail Association, its successors and assigns.
2. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners.
3. "Declarant" shall mean and refer to Fidelity National Title Agency, Inc., an Arizona corporation, as Trustee under Trusts numbered 60119 and 60130, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.
4. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for the Estates At Old Spanish Trail Replat Lots 1-56, Common Areas A and B applicable to the Properties recorded in the Office of the Pima County Recorder, Arizona and as amended from time to time.
5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with exception of the Common Areas.
6. "Member" shall mean and refer to those persons entitled to membership in the Association as provided in the Declaration.

7. "Owner" shall mean and refer to the record owners, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

8. "Properties" shall mean and refer to that certain real property described in the Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for the Estates At Old Spanish Trail Replat Lots 1-56, Common Areas A and B, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

ARTICLE III

MEETING OF THE MEMBERS

1. Annual Meetings. The first annual meeting of the members shall be held within one year from the date of incorporation of the Association, and each subsequent regular annual meeting of the members shall be held on the same day of the same month of each year thereafter, at the hour of 7:00 p.m. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

2. Special Meetings. Special meetings of the members may be called at any time by the President or by the Board of Directors, or upon written request of the members who are entitled to vote one-half (1/2) of all of the votes of the membership.

3. Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least 30 days but not more than 60 days before such meeting to each member entitled to vote, addressed to the members' address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, date and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

4. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, fifty percent (50%) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these bylaws. If however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented; provided, however, that if the adjournment is for more than thirty (30) days, notice shall be given to each member entitled to vote at the meeting.

5. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot. An

owner may not revoke a proxy except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is revoked on presentation of a later dated proxy executed by the same owner. A proxy terminates one (1) year after the date of its execution, unless it specifies a shorter term or unless it states that it is coupled with an interest and is irrevocable, whereupon it shall terminate twenty-five (25) months after the date of its execution.

ARTICLE IV

BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE

1. Number. The affairs of this Association shall be managed by a Board. The initial Board and each Board thereafter for so long as there is a Class B Member shall consist of three (3) directors appointed by the Class B Membership, who need not be Members of the Association nor Owners of Lots. Commencing with the first annual meeting of the Members when there is no longer a Class B Member, the Board shall consist of, and the voting Members shall elect, five (5) Directors, each of whom must be a Member or an individual designated by a corporation, partnership, or other non-individual Member, including Declarant, as a Class A Member.

2. Term of Office. The Directors shall be elected at the annual meeting of the Members, and the term of the Directors, so long as there is a Class B Member, shall be one (1) year or until the Director shall resign, die or be removed. The terms for the five (5) Directors elected at the first annual meeting of the Members when there is no longer a Class B Member shall be one (1) director for a one (1) year term, two (2) Directors for a two year term, and two (2) Directors for a three (3) year term, thus establishing a staggered Board. In succeeding years, all directors shall be elected for a three (3) year term.

3. Removal. Any Director may be removed from the Board, with or without cause, by Members having two-thirds (2/3) of the votes entitled to be cast by the Members present in person or by proxy at a meeting of the Members, except that the Declarant shall appoint the Directors during the pendency of the Class B Membership as provided in the Declaration, and no Director may be removed without Declarant's consent during such time. Any director so removed by the Members shall be replaced by a Director elected by the Members at the same meeting. In the event of death, or resignation of a Director, his or her successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his or her predecessor.

4. Compensation. No Director shall receive compensation for any service he or she may render to the Association that is within his or her duties as a Director. However, any Director may be reimbursed for his or her actual expenses incurred in the performance of his or her duties.

ARTICLE V

NOMINATION AND ELECTION OF DIRECTORS

1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more Members of the Association. The nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among individual Members or individuals designated by corporate, partnership, and other non-individual Members.

2. Election. Election to the Board of Directors shall be by secret written ballot. In any such election, every Owner entitled to vote shall be entitled to cast the number of votes attributable to such Owner multiplied by the number of Directors to be elected. Each Owner shall have the right to cumulate the Owner's votes for one (1) candidate or to divide such votes among any number of the candidates. Voting for Directors may be by mail.

3. Right of Appointment. Notwithstanding the above, the Directors shall, so long as the Class B Membership exists, be nominated, appointed or removed solely by the Declarant.

ARTICLE VI

MEETINGS OF DIRECTORS

1. Regular Meetings. Regular meetings of the Board of Directors shall be held at least once per calendar year, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two (2) Directors, after not less than three (3) days written notice to each Director.

3. Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

1. Powers. In addition to all other powers, the Board of Directors shall have power to:

a. Adopt and publish rules and regulations governing the use of the Common Area and facilities not inconsistent with the Declaration, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;

b. Suspend the voting rights and the right to use of any recreational facilities of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;

c. Exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the Membership by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;

d. Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors;

e. Employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties; and

f. Grant easements over, across or under the Common Areas for public utilities, ingress, egress and such other purposes as may be deemed advisable by the Board to the extent permitted by the Declaration.

2. Duties. It shall be the duty of the Board of Directors to:

a. Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class A Members who are entitled to vote;

b. Supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

c. As more fully provided in the Declaration:

1. fix the amount of the annual assessment against each Lot;

2. send written notice of each assessment to every Owner subject thereto; and

3. foreclose the lien against any property for which assessments are not paid within thirty (30) days after the due date or to bring an action at law against the Owner personally obligated to pay the same, provided same is cost effective in the sole discretion of the Board of Directors.

d. Issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.

e. Procure and maintain liability and hazard insurance on property owned by the Association in the amounts required by the Declaration or otherwise determined by the Board of Directors in their sole discretion;

f. Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

g. Cause the Common Areas to be maintained;

h. Cause the exterior of the dwellings to be maintained by the Owners of such dwellings and cause any other areas for which the Association is responsible, to be maintained; and

i. Manage the affairs of the Association.

ARTICLE VIII

OFFICERS AND THEIR DUTIES

1. Enumeration of Officers. The officers of this Association shall be a President and Vice-President, who shall at all times be members of the Board of Directors, a Secretary, and a Treasurer, and such other officers as the Board may from time to time by resolution create.

2. Election of Officers. So long as there is a Class B Member, all officers of the Association shall be appointed and removed by the Class B Member. Thereafter, the officers shall be elected by the Board at the first meeting of the Board of Directors following each annual meeting of the Members.

3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he or she shall sooner resign, or shall be removed, or otherwise disqualified to serve.

4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board, except that so long as there is a Class B Member, officers may be removed only by the Class B Member. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

6. Vacancies. A vacancy in any office may be filled by appointment by the Board except that any vacancy created by the removal of an officer by the Class B Member shall be filled only by the Class B Member. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one (1) of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

8. Duties. The duties of the officers are as follows:

President: The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

Vice-President: The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by him or her by the Board.

Secretary: The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association, if any, and affix it on all papers requiring said seal; serve notice of the meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board.

Treasurer: The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual review of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the Membership at its regular annual meeting, and deliver a copy of each to the Members.

The Treasurer and President may in writing delegate to a professional management company the authority to execute checks for ordinary and necessary operating expenses of the Association. Capital expenses shall require the signature of the Treasurer and President.

ARTICLE IX

COMMITTEES

The Association shall appoint an Architectural Control Committee, as provided in the Declaration, and a Nominating Committee, as provided in these Bylaws, subject to Declarant's rights to appoint the Architectural Committee pursuant to the Declaration. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE X

HEARINGS

1. **General Sanction Hearing.** In the event the Board shall exercise its right: 1) to suspend voting rights; 2) to suspend the rights of an Owner or his or her family to use the Common Areas; or 3) to impose any monetary penalty, the Board shall first give the sanctioned party written notice of the basis for such sanctions, and the sanctioned party shall be granted an opportunity to be heard by the Board no less than five (5) working days after such notice has been given. The form of such notice and the specific procedures for the hearing shall be determined by the rules and regulations adopted by Board resolutions.

2. **Architectural Control Committee – Non-Conforming Improvement Hearings.** In the event the Architectural Control Committee desires, pursuant to the Declaration, to make or direct a third party to make architectural improvements, alternations, or repairs upon an Owner's Lot, the Committee shall first give written notice to the Owner specifying the nature of the nonconformity of the Architectural Improvements, as defined in the Declaration, and providing the Owner with a hearing date before the Committee which shall be more than five (5) but less than sixty (60) days of the date of mailing or delivery of the written notice to said Owner. The form of said written notice and the procedural guidelines for the hearing shall be determined by the rules and regulations adopted by Board resolution.

ARTICLE XI

BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable costs set by the Board.

(3)

ARTICLE XII

ASSESSMENTS

As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum (but not to exceed the maximum rate permitted by Arizona law), and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorney fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his Lot.

Lots owned by Declarant and Developer, as defined in the Declaration, are exempt from assessment as provided in the Declaration.

ARTICLE XIII

CORPORATE SEAL

The Association shall not have a corporate seal.

ARTICLE XIV

AMENDMENTS - CONFLICTS

1. These Bylaws may be amended by the Board of Directors of the Association, subject to amendment or repeal by the vote of not less than three fourths (3/4) of each class of Members voting at a meeting at which a quorum of members is present, except that if the provisions hereof have been approved by the Federal Housing Administration or by the Veterans Administration, the Federal Housing Administration or the Veterans Administration shall have the right to veto amendments while there is Class B Membership. No amendment may conflict with any right reserved unto the Declarant or other Class B Member.

2. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws or the Articles, the Declaration shall control.

ARTICLE XV

FISCAL YEAR


The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

ARTICLE XVI

NOTICE

All notices, demands, statements or other communications required to be given or served under these Bylaws shall be in writing and shall be deemed to have been duly given and served if delivered personally or sent by U.S. Mail, postage paid, or in the case of a notice pursuant to Article VII, 1(b) of these Bylaws, registered or certified U.S. Mail, return receipt requested, postage paid: (1) if to an Owner, at the address that the Owner shall designate in writing and file with the Secretary or, if no such address is designated, at the Owner's property address within the Estates at Old Spanish Trail or (2) if to the Association, the Board or any manager employed by the Association with respect to management of the Common Areas, at the principal office of the manager or such other address as shall be designated by notice in writing to the Owners, with copies mailed or delivered personally to Declarant and to the Association at its then principal office. A notice given by mail, whether regular, certified, or registered, shall be deemed to have been received by the person to whom the notice is addressed on the earlier of the date the notice is actually received or three (3) days after the notice is mailed. If a Lot is owned by more than one (1) person, notice to one (1) of the Owners of the Lot shall constitute notice to all the Owners of the Lot.

IN WITNESS WHEREOF, I have executed these First Amended and Restated Bylaws this 29 day of March 2013.


By: Bradley J. Foote, President

ATTEST:


Frank DeLicio, Secretary

The Architectural Guidelines have been created as a general reference to the CC&R's and Conservation Easement. The governing documents for the Estates at Old Spanish Trail, without exception, are the recorded CC&R's, the Conservation Easement and the Scenic Rout restriction.

Estates at Old Spanish Trail
Architectural Guidelines

The Declaration of Covenants, Conditions and Restrictions for Estates at Old Spanish Trail (the "CC&Rs") provides for an Architectural Committee (the "AC"). The AC reviews additions, modifications and alterations (collectively referred to in this document as an "Alteration") to all lots within the Estates at Old Spanish Trail community and establishes rules and guidelines for such Alterations so that a uniform standard for maintenance can be achieved. The AC is a committee of at least 3 people, all owners of Lots in or residents of Estates at Old Spanish Trail.

These Guidelines have been created:

- To assist homeowners in preparing acceptable applications,
- To increase awareness and understanding of the CC&Rs, and the Conservation Easement
- To maintain a reasonably uniform appearance for the Estates at Old Spanish Trail community so that homeowners' investments will be reasonably protected. This document provides Design Guidelines (the "Guidelines") for Estates at Old Spanish Trail homeowners to follow when considering changes to the exterior of their homes and property. The Guidelines do not replace the CC&Rs or Conservational Easement that govern the community but rather help to clarify and supplement them. Compliance with the Guidelines as well as the CC&Rs and Conservational Easement is required prior to the Alteration of any lot improvement within Estates at Old Spanish Trail. If there are any conflicts between the Conservation Easement, the CC&Rs and/or the Guidelines, the Conservation Easement and CC&Rs shall have priority.

The Guidelines may eliminate the need to submit certain Alterations for approval, but if an owner determines approval is necessary after reviewing the CC&R's and the Conservation Easement and these Guidelines, the owner shall submit the following to the AC for approval prior to construction or installation of the Alteration:

- The completed request form.
- Plans and specifications for the proposed work, including, if applicable:
 - a) Site plan for the lot, showing the Alteration in its proposed location along with all other improvements on the lot. Dimensions from the Alteration to the nearest existing improvement should also be shown. If plants are a part of the Alteration, the type of plant should be shown on the site plan.
 - b) Plans and specifications for all above ground construction showing materials, height, width and paint color(s).

c) The time frame for beginning and completion of the work. The AC may request additional information.

The AC shall either approve or disapprove each request within forty-five (45) days after receipt of the request. If the AC sends no notice within the forty-five (45) days, then the Alteration requested is deemed approved. If a request is denied within forty-five (45) days, then written denial shall be forwarded to the owner stating the reason for denial.

Declarant has the right to appoint the members of the AC until control of the Association has been turned over to the homeowners; thereafter the members of the AC are appointed by the Board of Directors of the Estates at Old Spanish Trail Association.

Alterations made by The Declarant under the CC&Rs or Builders with whom the Declarant has contracted or offered as an option SHALL NOT require AC approval when installed by The Declarant under the CC&Rs or Builders with whom the Declarant has contracted at the time the house is being constructed.

1. ANTENNAS/SATELLITE DISHES

DBS antennas (satellite dishes) less than forty inches in diameter SHALL NOT require preapproval.

These dishes must be screened where possible to minimize the visual impact. Satellite dishes and other antennas larger than forty inches shall not be allowed. TV and radio antennas are encouraged to be placed in the attic crawl space; all other locations shall require architectural approval.

2. AWNINGS

Awnings over windows shall require written requests and approvals of the AC. Color should be complementary to the dwelling.

3. BASKETBALL GOALS AND BACKBOARDS

Permanent basketball goals and backboards are not allowed. Portable basketball goals or backboards are allowed; however, when they are not in use they MUST NOT be visible from any common area (including streets) or neighboring property.

Portable basketball goals or backboards are only allowed to be used between the hours of 9:00 a.m. and 10:00 p.m.

4. DRIVEWAY MODIFICATIONS, MAINTENANCE, AND EXTENSIONS/GARAGES

All modifications to existing driveways, including sealant, painting or dying of concrete SHALL require written requests and approval of the AC prior to installation. A submittal for driveway coating approval must indicate any pattern to be applied, and color samples must be included.

Coatings, sealants, painting or dying of existing driveway must be a desert shade to coordinate with the house. Widening of a driveway shall require approval. Submittals for such extensions must include a plot plan of the existing lot and the exact measurements, location, and nature of the proposed modification. A reasonable setback from the property line, gradable area and Conservation Easement land may be imposed may be imposed.

Page 3 of 8

5. FLAGS

The display of one American flag mounted on the front of the home on either side of the garage is permitted and SHALL NOT require pre-approval. Flagpoles may not exceed 4-ft. in length and shall be mounted on the stucco portion at a height that will not allow the flag to touch the ground. Only one flagpole of any type is allowed on a lot. The Association does permit display of a reasonable number of additional American flags on the following National holidays only (to be removed no later than 5:00 p.m. of the following day): Memorial Day, Flag Day, July 4, Labor Day, and Veterans Day. The Association only permits display of the American flag as a cloth flag on a flagpole/staff. For example, it may not be displayed by attaching flat to a wall or flat on the inside or outside of a window or by hanging from eaves or on a garage door. No other type of American "flag" shall be permitted, such as "flags" made solely out of lights or paint or other materials. Homeowners wishing to display flags other than the American flag (i.e., seasonal flags, state flags, etc.) SHALL require written requests and approval of the AC prior to displaying any such flag. However, holiday flags will not require approval if installed no earlier than thirty (30) days before a holiday and removed no later than fifteen (15) days after the holiday. The addition of flagpoles on common property SHALL NOT be allowed. Stand-alone flagpoles SHALL NOT exceed 20 feet in height or 3 inches in diameter, SHALL have a flag proportional to the height, and SHALL NOT encroach on neighboring property.

6. GATES

Staining gates the natural wood color originally installed by the builder SHALL NOT require approval of the AC. All changes and modifications to the appearance, color, structure, location, or placement of an existing gate SHALL require written requests and approval of the AC. New gate installations must be substantially the same as those originally installed by the builder and SHALL require prior written

approval of the AC. New gates will only be permitted on the front wall of the residence and may not open onto common areas.

7. GAZEBOS, RAMADAS, PERGOLAS AND PATIO COVERS

General — All gazebos shall be placed in the rear yard and be located a minimum of 10 feet from neighboring boundary walls

Temporary gazebos (5-7 days) SHALL NOT require approval if their size is not larger than 12 ft. X 12 ft. and their height at the peak of the gazebo does not exceed 8 ft. from the grade. The awning cover must blend with the color of the house or trim.

Permanent gazebos, Ramada's, pergolas and patio covers SHALL require the written approval of the AC should the structure exceed the height of the wall and be visible from neighboring property or common area (including streets). Submittals must include all pertinent details as to size, style, and proposed location of the structure.

Page 4 of 8

8. GUTTERS AND DOWNSPOUTS :

The installation of gutters and downspouts SHALL NOT require approval of the AC if they are painted to match the color of the house or trim adjacent to where the installation occurs.

9. LANDSCAPING/IMPROVEMENTS - FRONT YARD

New front-yard landscaping and any Alterations (except for trees and landscaping rock/gravel) SHALL NOT require approval of the AC. However, an Owner is required to comply with the following Design Guidelines with respect to front-yard landscaping and other improvements:

- Plant material must be irrigated by a permanent, underground watering system.
- No tree, shrub, or planting of any kind on any lot shall be allowed to overhang or otherwise encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet.
- Any plant or tree that has died must be removed.
- All areas visible from neighboring property must be kept reasonably free of weeds.
- All areas visible from neighboring property or common area (including streets) must be covered by plant material or decorative rock; no bare earth surfaces may be visible.
- Hardscape accents (i.e., Saltillo tile, brick pavers, flagstone) may be used to construct stepping stones and borders if the colors are compatible with the community. Acceptable colors include desert hues and other earth tones.

- Holiday lights and decorations will not require approval if installed no earlier than thirty (30) days before a holiday and removed no later than fifteen (15) days after the holiday, provided that the AC reserves the right to request reasonable modifications if deemed appropriate.

The following front-yard improvements SHALL require approval of the AC prior to the installation thereof:

- All trees
- Addition of landscaping rocks or any change to the decorative rock/gravel
- Lawn Ornaments (bird baths, fountains, statues, furniture, etc.)
- Hardscape materials (i.e., concrete, brick, flagstone, or tile) used to construct:
 - a) New or modified walkways, except if the present walkway is extended to provide access to side gate and such extension matches present walkway or if a standard walkway made of flagstone or concrete is added not to exceed 30 inches in width.
 - b) New driveways or drive extensions.
 - c) Free-standing walls or retaining walls
 - d) Porch, patio, or seating area

The AC reserves the right to request reasonable modifications to front-yard landscaping if deemed appropriate.

10. LANDSCAPING/IMPROVEMENTS - ALL REAR & SIDE YARDS

Rear-and side-yard landscaping enclosed by solid boundary wall SHALL NOT require approval of the AC and may be installed at any time. Although approval by the AC of rear- and side yard landscaping is not required, an owner is required to comply with CC&R's, Conservation Easement, Scenic Rout Restrictions and the Architectural Guidelines with respect to rear- and side-yard landscaping and other improvements.

- No tree, shrub, or planting of any kind on any lot shall be allowed to overhang or otherwise encroach upon any neighboring property or common area.
- All areas visible from neighboring property must be covered by plant material or decorative rock; no bare earth surfaces may be visible.
- Any walls removed during construction of a pool, spa, or other improvement shall be walls situated on the owner's lot; removal of walls abutting a common area shall not be allowed without approval. Any wall removed shall be replaced in its original state immediately after construction is complete, including stucco and paint (if originally constructed with stucco and paint).

- Backwashing of pools and spas must be contained entirely on the owner's lot. Backwashed water SHALL NOT be permitted to seep onto an adjoining lot, common area, or street.
- Rear-and side-yard lighting shall be confined to patio and pool areas and shall not cause glare or light spillage onto adjacent lots or common areas.
- Strings or ropes of lights on patios or wrought-iron fences are forbidden except for the Holiday period referenced under front-yard landscaping/improvements and in Lighting Section below.

The following rear- and side-yard Improvements SHALL require approval of the AC:

- Ancillary components of pools (slides, gazebos, waterfalls, etc.) if visible from neighboring property, or common area (including streets).
- Any structures (i.e., storage sheds, patio fireplaces, patio covers, gazebos, etc.) that are visible from neighboring property or common area or streets.

The AC shall reserve the right to request reasonable modifications to rear and side yard landscaping if deemed appropriate.

11. LIGHTING

A reasonable number of low-voltage landscape lights SHALL NOT require pre-approval so long as they are not directed at adjacent properties or common area. The addition of new or replacement of existing wall-mounted fixtures on the front of the house SHALL require written requests and approval of the AC if they deviate greatly from the existing lighting or the overall southwest style of the homes. Any other exterior lighting, including patio areas, that is visible from neighboring property or from common area (including streets) SHALL require written requests and approval of the AC. Strings or ropes of lights on patio or fences visible from neighboring property or common area are forbidden except for the above-referenced Holiday periods. Security lights, including spot lights or floodlights SHALL require pre-approval by the AC.

12. POOLS AND SPAS

Pools and spas SHALL NOT require pre-approval of the AC. Access to rear yards for construction shall be gained by removing a front wall adjacent to the house. Removal of a common wall (opening on side or back yard) SHALL require written requests and approval by the AC. All walls must be restored to their original state at the owner's expense as soon as possible.

The homeowner is also responsible for the cost to repair or replace any damaged landscaping on common property and any disturbance outside the gradable areas. Reasonable care for the safety of others must be given by the homeowner and the pool company while the wall is down.

Pool slides or aboveground pools visible from neighboring property or common area (including streets) SHALL require written requests and approval of the AC. Consideration will be given to the proximity of the adjacent neighbors.

Backwashing (or draining) pools and spas onto common areas or streets is prohibited at all times.

13. PLAY EQUIPMENT/SWINGSETS

All Play Equipment that (a) exceeds the height of six feet (6') from ground level to the cross bar, and/or (b) has a play platform, and/or (c) is not placed a minimum of five feet (5') from all neighboring boundaries and is visible from neighboring property or from common area (including streets) SHALL require AC approval. The AC shall consider Play Equipment if it adheres to the following guidelines:

- Climbing platforms and slides shall be placed not higher than two (2) feet below the highest point of the rear yard fence to protect the privacy of neighboring owners.
- Play Equipment exceeding the height of six feet (6') and/or not placed a minimum of five (5') from all neighboring boundaries shall be screened from adjoining properties and/or common area (including streets) by shrubs or trees which will equal the height of the Play Equipment within a reasonable time period. The AC may require that the equipment be painted a color compatible with the house on the Lot.
- Brightly colored canopies, roofs, or other visual distractions that are attached to the Play Equipment SHALL NOT be visible from neighboring property or common area (including streets).
- No lights or nighttime illumination of the Play Equipment shall be allowed, except ground mounted low-voltage lighting not visible from neighboring properties or common area (including streets).
- Play Equipment (without play platforms) that does not exceed the height of six (6') from ground level to the cross bar and is placed a minimum of five feet (5') from all neighboring boundaries and is not visible from a common area (including streets) SHALL NOT require the approval of the AC, but all such equipment must comply with the foregoing requirements, except that screening and painting the Play Equipment will not be required.

14. REPAINTING OF HOUSES AND WALLS

Use of the builder's original exterior color options SHALL NOT require approval from the AC. Any other color combinations SHALL require prior written requests and approval of the AC.

15. SCREENS AND /SECURITY DOORS

Security or screen doors SHALL NOT require the approval of the AC if they are metal and painted: (a) the same color as the house or trim, or (b) the same color as the window frames.

Security or screen doors constructed of any other material or color SHALL require approval of the AC. Sunscreens on windows SHALL NOT require pre-approval of the AC if the sunscreen material is a color: (a) coordinated with the house and trim color, or (b) does not present the appearance of a solid wall without windows. Patio sunscreens SHALL NOT require approval of the AC if they are a color that is complementary to the dwelling.

16. SOLAR PANELS

Solar panels placed in a location visible from neighboring property or common area (including streets) SHALL require written requests and approval of the AC (subject to any applicable statutes or laws). Consideration will be given to the size, style, placement, and overall appearance of the device.

17. STORAGE SHEDS

Storage sheds kept below the height of the privacy or perimeter wall SHALL NOT require approval by the AC. Any storage sheds that would be visible from neighboring property or common area (including streets) SHALL require approval of the AC.

18. TRASH CONTAINERS

See the CC&R's for rules governing trash containers and providers. Trash containers may not be visible from common areas (including streets) or neighboring property except to make them available for collection. Trash containers may be placed at the curb no earlier than 5:00 p.m. on the evening prior to collection day and must be removed no later than 9:00 a.m. on the day following collection day. Installation of any screen or structure designed to hide a trash container in the front or side yard SHALL require approval of the AC.

F. ANN RODRIGUEZ, RECORDER
RECORDED BY: MDR
DEPUTY RECORDER
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AMOUNT PAID \$ 14.00

Conservation Easement

For

Estates at Old Spanish Trail

06/20/2013 3:01 PM

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT is granted this 25th day of October 2004, by Trusts numbered 60119, 60120 and 60130 of Fidelity National Title Agency, Inc, an Arizona corporation (the "Grantor") to Pima County, a political subdivision of the State of Arizona (the "Grantee", or "County"),

RECITALS:

- A. The Grantor is the owner in fee simple of certain real property located in Pima County, Arizona, described as Lots 1 through 116 and Common Areas ___ as shown on that certain plat for the Estates at Old Spanish Trail, recorded in Book 59, Page 42 of Maps and Plats in the office of the Pima County Recorder (the "Plat").
- B. The property subject to the Plat is in a relatively natural state and has significant scenic value and open space, native plant species diversity and ecological values representative of the Sonoran Desert (the "Conservation Values").
- C. Grantor has agreed to set aside a portion of the property shown on the Plat as described in Exhibit A (the "Conservation Land") for conservation and preservation purposes.
- D. Grantor, as referred to herein, is defined to include any successor owners of any portion of the Conservation Land, and any assigns of Grantor.
- E. Grantor desires and intends to grant to the County, the right to preserve and protect the Conservation Values on the Conservation Land, including the monitoring and enforcement thereof.
- F. County is qualified to hold conservation easements pursuant to the Arizona Conservation Easement Act, Arizona Revised Statutes §§ 33-271 *et seq.*

NOW THEREFORE, in consideration of the mutual covenants contained herein, based upon the common law and, further, pursuant to ARS §§ 33-271 *et seq.*, the parties hereto agree as follows:

1. Grant of Easement. Grantor does hereby convey to County a Conservation Easement, which shall run with and encumber the Conservation Land in perpetuity, of the nature and character and to the extent hereinafter set forth. This Conservation Easement is subject and subordinate to the public utility and roadway easements shown on the Plat.

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2. Purposes. It is the purpose of this Conservation Easement to preserve and protect in perpetuity the significant Conservation Values of the Conservation Land by preserving the Conservation Land in its current largely natural and undisturbed state, prohibiting ground disturbing activity and development, prohibiting the invasion of non-native plant species and any other uses or impacts on the Conservation Land that might impair or interfere with the Conservation Values of the Conservation Land.

3. Prohibited Activities. Grantor shall not permit any activity on, modification to, or use of the Conservation Land that might alter or damage the Conservation Land's natural state or adversely impact the Conservation Values. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited and shall be prevented by Grantor:

- 3.1 Development or construction of any kind, including erecting fences.
- 3.2 Livestock grazing.
- 3.3 Industrial or commercial uses of any kind.
- 3.4 Any grading or other alteration of the surface of the Conservation Land, or alteration or removal of the natural vegetative cover of the Conservation Land, including dead and down vegetation.
- 3.5 Dumping of refuse, or other unsightly, offensive or toxic materials, including bio-solids such as plant cuttings.
- 3.6 The intentional or negligent introduction of non-native species of noxious or aggressive character, which might adversely affect the natural values of the Conservation Land.
- 3.7 Dredging, mining, drilling, exploration, or extraction of minerals, hydrocarbons, soils, sand, gravel, rock or other materials on or below the surface of the Conservation Land.
- 3.8 Storage and use of biocides and chemical fertilizers, except for control of non-native invasive species.
- 3.9 Any use by motorized or non-motorized vehicles or construction of roadways for such use.
- 3.10 The intentional lighting of a fire for any purpose.
- 3.11 Orientation of artificial outside lighting in such a manner that it directly illuminates the Conservation Land.

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Notwithstanding the above, an Owner may engage in one of the prohibited activities if is for a remedial purpose, and has been approved in advance by the County.

4 Monitoring of Conservation Land. It is understood that the Conservation Land includes, but is not limited to, portions of lots within a subdivision, which lots the original Grantor intends to sell to individual owners. It is further understood that successful monitoring of the condition of the Conservation Land and compliance with this Easement, though the responsibility of each Owner with respect to such Owner's portion of the Conservation Land, can be accomplished most effectively and efficiently by a single entity. Grantor therefore agrees to establish a homeowners association (the "HOA") which shall be responsible for monitoring the Conservation Land in the manner provided in the Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations, and Easements (the "CC&Rs"), recorded in Docket 12576 at Page 3198 in the records of the Pima County Recorder, relevant portions of which are hereby incorporated by reference. In the event that the Association ceases performing these monitoring duties, the Owners shall retain another agent to perform the monitoring and reporting activities required of the Association under the CC&Rs; all the Owners shall be jointly and severally liable for any failure to do so.

5. Access and Enforcement. Grantor conveys to the County the following rights:

5.1 The right of continued and uninterrupted access to do all things necessary to preserve and protect the Conservation Values of the Conservation Land.

5.2. The right to enter upon the Conservation Land at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement. County shall also have the right of immediate entry to the Conservation Land if, in its sole judgment, such entry is necessary to prevent damage to or the destruction of the Conservation Values protected by the Conservation Easement.

5.3. The right to prevent any activity on or use of the Conservation Land that is inconsistent with the purpose of this Conservation Easement; and to require Grantor to restore any damaged areas or features.

6. Defaults and Remedies. Grantor shall be in default hereunder if it fails to timely fulfill any of its obligations hereunder, or permits the Conservation Land to be used in a manner that is in violation of, or is inconsistent with the purposes of, this Easement, and fails to cure the breach (which cure shall include the repair of any damage to the Conservation Land resulting from the breach), within thirty (30) days after receipt of a written notice from County describing the breach, except that where the breach cannot reasonably be cured within such a thirty (30) day period, Grantor shall not be in default if it begins curing such breach within the thirty (30) day period and thereafter diligently pursues the cure to completion.

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If Grantor is in default hereunder, then County may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the breach by temporary or permanent injunction, to recover any damages to which it may be entitled for breach of the terms of this Conservation Easement or injury to any protected uses or Conservation Values, including damages for any loss thereof, and to require the restoration of the Conservation Land to the condition that existed prior to any such injury.

Nothing contained in this Conservation Easement shall be construed to entitle County to bring any action against Grantor for any injury to or change in the Conservation Land resulting from (i) causes beyond Grantor's control, including unforeseeable acts of trespassers, fire, flood, storm, drought, pests, earth movement, and major vegetative disease; (ii) any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Conservation Land resulting from such causes; or (iii) any prudent action taken by Grantor in an emergency situation to prevent bodily injury to any person or significant damage to property.

7. Amendment. Neither this Conservation Easement, nor any provision of the CC&Rs that is related to this Conservation Easement, may be amended, modified, or rescinded except upon written consent by the Grantor (meaning all the owners of any portion of the Conservation Land) and the County.

8. Conveyance or Assignment. County may convey or otherwise assign its interest in this Conservation Easement to another qualified holder under Arizona law, provided that such conveyance or assignment will not modify the responsibilities of the Grantor as set forth in this Easement and in the CC&Rs. Grantor shall have the right to convey fee title to the Conservation Land, or portions thereof, subject to the terms of this Easement, and may convey easements on the Conservation Land that are not in conflict with, and do not interfere with, the Conservation Easement. This Easement shall run with the land and be binding upon all successor owners, and each new owner shall, from and after his or her acquisition of any portion of the Conservation Land, be responsible for observing and fulfilling all the obligations of Grantor with respect to his or her portion of the Conservation Land.

9. Costs, Taxes. Grantor (meaning any and all owners of any portion of the Conservation Land from time to time) shall A) retain all responsibilities and bear all costs and liabilities of any kind related to Grantor's ownership, operation, upkeep, and maintenance of any portion of the Conservation Land; B) be solely responsible for obtaining any applicable governmental permits and approvals for any activity on or use of the portion of the Conservation Land owned by Grantor, which shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements; C) pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the portion of the Conservation Land owned by Grantor by competent authority (collectively "taxes"), and shall furnish County with satisfactory evidence of payment upon request.

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10. Notices. Any notice, demand, request, consent, approval or other communication that the Grantor or the County desire or is otherwise required shall be in writing and either served personally, by facsimile, or sent by Certified Mail, Return Receipt Requested, to the parties at the addresses set forth below, or as each party may from time to time designate in writing to the other parties, or (if to an Owner) to such person's address within the Subdivision:

To Grantor: Estates at Old Spanish Trail Homeowners Association
C/O Pomegranate Development, L.L.C.
8444 N. Oracle Road, Suite 150
Tucson, Arizona 85704

To County: Pima County
Attn: Pima County Real Property Services: Manager
201 North Stone Ave.
Tucson, Arizona 85701
Phone: (520) 740-6313
Fax: (520) 740-6763

AND

Pima County Natural Resources, Parks & Recreation
Department; Natural Resources Manager
3500 West River Road
Tucson, Arizona 85741
Phone: (520) 877-6000
Fax: (520) 877-6191

11. General Provisions.

11.1. Controlling Law. The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of Arizona and any and all applicable Federal law.

11.2. Severability. If any provision of this Conservation Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Conservation Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

11.3. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Conservation Easement.

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11.4. Successors. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a perpetual servitude running with the Conservation Land.

11.5. Counterparts. This instrument may be executed in any number of counterparts, each of which may be executed by any one or more of the parties hereto, but all of which shall constitute one instrument, and shall be binding and effective when all parties have executed at least one counterpart.

11.6. Exhibits. All Exhibits or Appendices referred to in this Conservation Easement are attached to this Conservation Easement and are incorporated herein by this reference.

11.7. Effective Date. This Conservation Easement shall not become effective and binding until fully executed by the Grantor and the County.

Executed as of the 25th day of October, 2004.

GRANTOR:

FIDELITY NATIONAL TITLE AGENCY INC., AN ARIZONA CORPORATION, AS TRUSTEE
UNDER TRUSTS NUMBERED 60119, 60120 and 60130

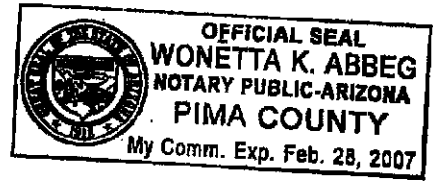
By: *Martha L. Hill*
MARTHA L. HILL, Trust Officer

STATE OF ARIZONA)
)SS
COUNTY OF PIMA)

This instrument was acknowledged before me the undersigned authority, on this 25th day of October, 2004, by MARTHA L. HILL, Trust Officer of Fidelity National Title Agency, Inc. an Arizona corporation.

Wonetta K. Abbeg
NOTARY PUBLIC

My Commission Expires:
2/28/07



GRANTEE:

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Pima County

By: Sharon Bronson
Sharon Bronson
Chair, Pima County Board of Supervisors

JAN 04 2005

Attest:

Lu. Godashian
Clerk, Board of Supervisors

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**ADDENDUM 1
ACKNOWLEDGEMENT AND ACCEPTANCE BY MEMBER**

The undersigned, contracted to purchase a lot in the subdivision known as the Estates at Old Spanish Trails, understands that this subdivision is governed by a recorded instrument known as the Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for The Estates At Old Spanish Trail. As future Member(s) of the Homeowners' Association of the Estates at Old Spanish Trail, the undersigned hereby acknowledge(s) that he/she has read, and has been provided with, a copy of the Declaration. The Member(s) further acknowledge that he/she has been made aware of the fact that there is a Conservation Easement on a portion of the subdivision and that said Easement must be maintained and financed by the Association pursuant to the terms of the Declaration.

The Member(s) further acknowledge that, prior to closing escrow on any lot located in the subdivision known as the Estates at Old Spanish Trails, he/she will have to complete the biological orientation program, administered by a biologist approved by the Association.

DATED this

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