

# **THE OCOTILLO COMMUNITY ASSOCIATION**

## **DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, ASSESSMENTS, CHARGES, SERVITURES, LIENS, RESERVATIONS AND EASEMENTS**

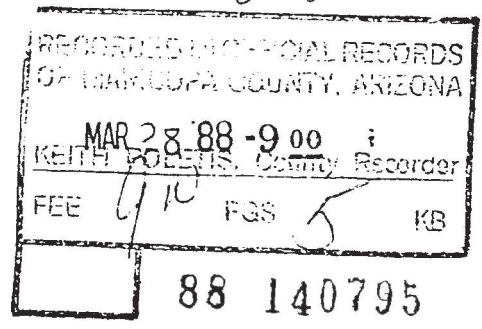
Recorded in Official Records of Maricopa County, Arizona  
April 7, 1986  
Document No. 86167478

**PLUS**

- Certificate of First Amendment, Recorded October 13, 1987, Document No. 87629100
- Certificate of Second Amendment, Recorded March 28, 1988, Document No. 88140795

3-28-88

WHEN RECORDED MAIL TO:  
Mark A. VanderStoep  
6303 S. Rural Rd  
Suite 3  
Tempe, AZ 85283



CERTIFICATE OF SECOND AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,  
ASSESSMENTS, CHARGES, SERVITUDES, LIENS, RESERVATIONS  
AND EASEMENTS FOR OCOTILLO

The undersigned President and Secretary of The Ocotillo Community Association, an Arizona nonprofit corporation, do hereby certify as follows:

A. Ocotillo West Joint Venture, an Arizona joint venture partnership ("Declarant"), heretofore executed that certain Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Ocotillo, dated October 7, 1985, and Recorded in the Office of the Recorder of Maricopa County, Arizona, on April 7, 1986, as Instrument No. 86 167478, as supplemented by that certain Supplementary Declaration of Covenants, Conditions and Restrictions for Ocotillo executed by Declarant on November 11, 1986, and Recorded on December 16, 1986, in the Office of the Recorder of Maricopa County, Arizona, as Instrument No. 86 695210 and rerecorded November 20, 1987, as Instrument No. 87 702652, and as amended by that certain certificate of First Amendment to Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations, and Easements for Ocotillo dated October 2, 1987, and Recorded on October 13, 1987, in the Office of the Recorder of Maricopa County, Arizona, as Instrument No. 87 629100 (collectively, the "Declaration").

B. All capitalized terms used in the Certificate of Second Amendment not expressly defined herein shall have the same meanings as are assigned to such terms in the Declaration.

C. The Declaration provides that it may be amended at an election duly called and held pursuant to the provisions of the Articles and Bylaws by the affirmative vote of Members casting ninety percent (90%) Of the votes of each Class of Members at the election, voting either in person or by proxy for the adoption of the amendment.

D. Members casting not less than ninety percent (90%) of the votes of each Class of Members at an election duly called and held pursuant to the provisions of the Articles and Bylaws voted affirmatively, either in person or by proxy, for the adoption of the following amendments:

1. The following subsection (Ee) is hereby added to Section 2 of Article IV of the Declaration:

(Ee) Errant Golf Ball Easement. Declarant hereby reserves for itself and its agents, licensees, guests, invitees, successors and assigns, including persons using the Golf Course, a nonexclusive easement for the passage and/or impact of errant golf balls incidental to the use of the Golf Course, whether on the ground or through the air, onto, upon, or over any and all portions of the Covered Property; provided, however, that this easement shall not be deemed to allow ingress or egress over the Covered Property by any person to retrieve golf balls or to allow any person to intentionally drive golf balls over or land golf balls upon portions of the Covered Property other than the Golf Course.

2. Section 6 of Article VII of the Declaration is hereby deleted in its entirety and the following substituted therefore:

Section 6. Effluent Assessment. It is acknowledged that each Owner of a Parcel will become obligated, pursuant to the initial sales contract and/or a Tract Declaration, to receive and accept delivery from the Ocotillo Management Group, Declarant and/or the Association, as applicable (the "Delivering Entity"), to pay for, and to use and dispose of on its Parcel, a minimum daily volume of the effluent. It is intended that the Association shall, as a part of the Water Management Agreement and on behalf of the Delivering Entity, administer the delivery and metering of effluent to Parcels in Ocotillo and the billing and collection of all charges therefore, as established by this Declaration and/or the applicable Tract Declaration. All such effluent related charges applicable to each Parcel or Lot and/or the Owner thereof are herein referred to as the Effluent Assessment, shall be payable on such periodic basis as the Association shall from time to time determine, and shall be subject to the Assessment Lien. It is acknowledged that effluent will be metered to Parcels on a bulk basis, and that the Effluent Assessment pertaining to any Lot in a subdivided Parcel shall equal the Effluent Assessment for such Parcel multiplied by a fraction the numerator of which is one (1) and the denominator of which is the total number of unmetered Lots into which such Parcel has been subdivided. Billings for the Effluent Assessment shall be sent to the Owner of the Parcel, the subassociation, if established, of a subdivided Parcel, or to each individual Lot Owner in a subdivided Parcel, which does not have a separate Association. The Effluent Assessment shall be the actual cost of the effluent or water to the Association and no additional charge for the effluent or water may be added.

3. The following Section 6 is hereby added to Article XI of the Declaration:

Section 6. No Waiver. The approval by the Design Review Board of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring the approval of the Design Review Board, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

4. The following Section 5 is hereby added to Article XII of the Declaration:

Section 5. No Warranty of Enforceability. Although Declarant is not aware that any of the Covenants contained in the Declaration are invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any particular Covenant. Any Owner acquiring a Lot or Parcel in reliance on one (1) or more of the Covenants assumes all risk of the validity and enforceability thereof, and neither Declarant nor the Association shall be liable in damages or otherwise to any person in the event any Covenant is hereafter determined to be invalid or unenforceable in whole or in part.

5. Section 2 of Article XIII of the Declaration is hereby amended by deleting the third and fourth sentences thereof in their entirety and substituting the following therefore:

A Tract Declaration may be amended by Recording with the County Recorder of Maricopa County, Arizona, a written amendment duly executed and acknowledged by not less than ninety percent (90%) [or, after twenty (20) years from the date of the Recording of the Declaration, seventyfive percent (75%)], or such greater percentage as may be required by applicable law, of the Owners of all Lots and Parcels subject to such Tract Declaration, together with the written approval of the Board to such amendment, to be evidenced on the Recorded amendment. As a condition to the approval by the Board of such amendment, the Board may require reasonable evidence that any consents or approvals to such amendment required by the holders, guarantors, or insurers of any first mortgages and/or deeds of trust encumbering Lots or Parcels subject to such Tract Declaration have been obtained. All amendments or modifications to a Tract Declaration shall be consistent with and subordinate to this Declaration.

6. Section 1B of Article XV of the Declaration is hereby amended by deleting the first paragraph thereof in its entirety and substituting the following therefore:

The Water Management Agreement among the Ocotillo Management Group, Declarant and the Association provides, among other things, (a) for the transfer of title of the Lakes from Declarant to the Association, subject to the reservation of the right to use the Lakes for the storage and distribution of effluent by Declarant and/or the Water Management Group, and (b) that the Ocotillo Management Group shall make available at a reasonable charge to the Association, and the Association shall purchase and use, amounts of effluent reasonably necessary to maintain and irrigate the Common Areas, and as may be provided in Tract Declarations for certain Parcels, subassociation or other Parcel or individual Lot landscaping or water features.

In the Event that Declarant, in its sole desecration, shall determine that an assignment to an Owner of "Water Units" under the Partnership Agreement establishing the Ocotillo Management Group, dated December 19, 1984, as amended, is necessary in order to permit the delivery to a Lot or Parcel of effluent, the Owner of such Lot or Parcel shall, upon request of Declarant, accept such assignment of "Water Units" and execute such further documents or instruments as Declarant shall reasonably require in connection therewith, including, without limitation, a document designating Declarant or the Association as the owner's agent and/or attorney in fact for purposes of exercising such Owner's rights as the holder of "Water Units" in the Ocotillo Management Group.

7. The following Section 13 is hereby added to Article XVI of the Declaration:

Section 13. Reservation of Trade Name. It is understood and acknowledged that Declarant may construct various other residential and other developments and may use the term "Ocotillo" in the names of any such development and any homeowners' and other associations affiliated therewith. Declarant hereby reserves all right, title and interest in the name "Ocotillo" for said uses and any other use as Declarant may choose, to the fullest extent permitted by law. The Association and all owners shall be entitled to the nonexclusive use of the name "Ocotillo" only with reference to, and in connection with the Declaration, the Association or its authorized activities, and for no other purpose without the prior written consent of Declarant. The Association shall execute such consents, approvals, confirmations, acknowledgments and other instruments as Declarant may request in order to evidence and confirm the rights and interests of Declarant in the name "Ocotillo."

E. To the extent not inconsistent herewith, all other terms and conditions of the Declaration are confirmed to remain in full force and effect and shall be binding on the real property described on Exhibit A attached hereto and incorporated herein by this reference and all parties having or hereafter acquiring any right, title, or interest therein.

Dated this 22nd day of March, 1988.

THE OCOTILLO COMMUNITY ASSOCIATION, an Arizona non-profit corporation

By: [Signature]  
Its: President

Attest:

By: [Signature]  
Its: Secretary

STATE OF ARIZONA )  
 ) ss  
County of Maricopa )

The foregoing instrument was acknowledged before me this 22 day of March 1988, by Michael J. Palermo the President of The Ocotillo Community Association, an Arizona non-profit corporation, on behalf of the Corporation.

[Signature]  
Notary Public

My Commission Expires:  
My Commission Expires Feb. 3, 1992

STATE OF ARIZONA )  
 ) ss  
County of Maricopa )

The foregoing instrument was acknowledged before me this 22 day of March 1988, by M. J. Palermo, the Secretary of The Ocotillo Community Association, an Arizona non-profit corporation, on behalf of the Corporation.

[Signature]  
Notary Public

My Commission Expires:  
My Commission Expires Feb. 3, 1992