AMENDED DECLARATION OF RESTRICTIONS OF

OCOTILLO COVE

October 30, 2023

KNOWN ALL PERSONS BY THESE PRESENTS:

The Ocotillo Cove Homeowner's Association, Inc., an Arizona Corporation, has the responsibility to protect the members and preserve and manage the business and property of the development of Ocotillo Cove, the legal description of which is:

**Lots 1 through 34 inclusive and common areas 1, 2, and 3, Ocotillo Cove, a subdivision of Pima County, Arizona, according to the Plat of record in the office of the County Recorder of Pima County, Arizona, in Book 52 of Maps and Plats, at page 43 thereof.**

Ocotillo Cove Homeowner's Association, Inc. does now certify, declare, and publish the following amendments to the original Declaration of Restrictions to Ocotillo Cove of May 5, 1999, and recorded June 9, 1999, as authorized by 11 and 19 of the initial Declarations, and the Bylaws and Rules and Regulations of Ocotillo Cove Homeowner's Association, Inc. These Amended Declarations of Restrictions completely replace and supersede the original declarations and shall, from now on, govern the plan for improvement, development, ownership, and sale of the above property and shall be the governing conditions, restrictions, and covenants binding each lot of Ocotillo Cove and each of its members.

These Amended Conditions, Restrictions, and Covenants shall run with the land as a servitude in favor of every parcel.

(1) No lot shall be used except for residential purposes. This does not prevent a home office or home business so long as such activity does not include such things as publicity or advertising signs, customer traffic, parking problems/congestion, non­residential and disturbing noise, smoke, or fumes due to home-based business being conducted at the residence. No building exceeding two stories in height shall be erected, altered, placed, or permitted to remain on any lot.

(2) Deleted – see Rules and Regulations Number 5

(3) No derrick or other structure designed for use in boring for water, oil, or natural gas shall be erected, placed, or permitted upon any part of said property, nor shall any water, oil, natural gas, petroleum, asphaltum or hydrocarbon products or substances be produced or extracted from that place, except as expressly required by a water company having franchise rights thereon.

(4) Deleted – see Rules and Regulations Number 14

(5) No horses, cattle, sheep, goats, hogs, rabbits, pigeons, poultry, or other livestock shall be kept or maintained upon any part of said property. However, this paragraph shall not be construed as prohibiting the keeping of ordinary domestic pet animals upon said property if they are not kept, bred, or maintained for commercial purposes.

(6) Deleted – see Rules and Regulations Numbers 7 and 15

(7) All buildings shall be located on lots by city or county regulations, whichever may be in effect at the construction time.

(8) The ground floor area of the main structure, exclusive of one-story open porches and garages, of any dwelling erected on any lot indicated herein shall be not less than one thousand (1000) square feet for a one-story dwelling.

(9) Each wall built as part of the original home construction upon the properties and placed on the dividing line between the lots shall constitute a party wall. To the extent not inconsistent with the provisions of these restrictions, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply hereto.

(10) Deleted – see Rules and Regulations Number 2

(11) Ocotillo Cove Homeowners Association is the governing body for all owners of the lots for the protection, improvement, alteration, maintenance, repair, replacement, administration, and operation of the Common Areas (as referenced in the Ocotillo Cove subdivision plat, attached hereto by this reference), the assessment of expenses, payments to the Association, disposition of insurance proceeds, and other matters as provided in this Declaration and the Articles and Bylaws.

The Association shall not be deemed to be conducting business of any kind, and funds received by the Association shall be held and applied per the provisions of this Declaration, the Articles and Bylaws, the laws of Pima County, Arizona, the State of Arizona, and the United States of America.

The affairs of the Association shall be conducted by the Board of Directors as herein provided and by the Articles and Bylaws. Each director shall be a lot owner. A maximum of one owner from each lot shall be permitted to serve simultaneously as either a board member on the Ocotillo Cove Homeowners Association Board of Directors or as a committee member on a standing committee. One serving as a board member and one on a committee simultaneously will not be permitted. Election or appointment of Directors will be provided in the Bylaws. If a Director ceases to meet such qualifications during their term, they will terminate to be a Director, and that place on the Board will be deemed vacant.

(12) Deleted – see Article II of the Bylaws

(13) Any dispute or disagreement between the owners, occupants, or any other persons subject to this Declaration, the Articles, Bylaws, or Rules and Regulations of the Association may be arbitrated by the Homeowners Association. All decisions by the Board of Directors shall be final and binding.

{14) Unless elsewhere explicitly provided in this Declaration, the Articles or Bylaws, any provisions, except those about the amendment, of this Declaration, the Articles of Bylaws which requires a vote or written permission of the members shall be deemed satisfied by the following:

(a) The vote by the specified percentage of members in person or proxy.

(b) Written consent signed by the specified percentage of members as provided by the Bylaws.

(c) If no percentage of members is otherwise specified, then the vote or written consent of the majority of Owners shall be required.

(15) To the fullest extent permitted by law, neither the Board of Directors nor any member of the Association shall be liable to any owner or to the Association or any other person for any damage, loss, or prejudice suffered or claimed on account of any decision, course of action, act, inaction, omission, error, negligence, or the like made in good faith and which the parties above reasonably believed to be within the scope of their respective duties. The HOA shall be authorized to obtain appropriate insurance for the operation of the business of the HOA.

(16) The Association shall always keep, or cause to be held, correct records of account by the provisions and requirements of the Bylaws. By the provisions of the Bylaws, the Board of Directors shall have the power to impose and collect reasonable Association fees.

(17) Easements for drainage facilities are reserved as shown on the recorded Plat. Within these drainage easements, no structure, planting, or other material shall be placed or permitted to remain which may change the direction of drainage channels in the easements or obstruct the flow of water through drainage channels in the easements.

(18) The owners (Association) shall be solely responsible for the operation, maintenance, and liability for drainage structures and detention basins:

(a) The owners' responsibility (Association) is to have an Arizona Registered Professional Civil Engineer prepare a certified inspection report for the drainage and detention/retention facilities at least once yearly.

(b) These regular inspection reports must be on file with the owner for review by City staff upon request.

(c) City staff may periodically inspect the drainage and detention/retention facilities to verify that scheduled and unscheduled maintenance activities are adequately performed.

(d) The owners (Association) agree to reimburse the City for all costs associated with maintaining the drainage and detention/retention facilities should the City find the owners (Association) deficient in their obligation to operate and maintain their facilities adequately.

(19) All provisions, conditions, restrictions, and covenants herein shall be binding on all lots and parcels of real estate and the owners thereof, regardless of the source of title of such owners. Any breach thereof, if continued for thirty (30) days from and after the date that the owner or other property owners shall have notified in writing the owner or lessee in possession of any lot upon which a breach has been committed to refrain from a continuance of such action and to correct such violation, shall warrant the Ocotillo Cove Homeowner's Association or other lot owner to apply to any Court of Law or equity having jurisdiction thereof for an injunction or other appropriate relief, and award to the plaintiff bis or her reasonable expenses in prosecuting such suit, including reasonable attorney fees. At the sole discretion of the OCHOA, the Board may fine the offending member until compliance is made. Such fine shall be per the statutes in effect and reasonably calculated to ensure compliance with the CCRs. A penalty for violating the preceding provisions, conditions, and restrictions of covenants shall be subordinate to any mortgage or deed of trust made in good faith for value as to any portion of said property.

(20) No delay or omission on the part of the owners or owner of any lot or lots in said property in exercising any right, power, or remedy herein provided for in the event of any breach of any of the provisions, conditions, restrictions, and covenants herein contained shall be construed as a waiver thereof or acquiescence therein: and no right of action shall accrue nor shall any action be brought or maintained by anyone whomsoever against the undersigned for or on account of the failure or neglect of the undersigned to exercise any right, power or remedy herein provided conditions, restrictions or covenants which may be unenforceable.

(21) If any one or more of the provisions, conditions, restrictions, and covenants herein set forth shall be held by any court of competent jurisdiction to be null and void, all remaining provisions, conditions, restrictions, and covenants herein set forth shall continue unimpaired and in full force and effect.

(22) No fence, wall, hedge, or shrub planted which obstructs sight lines at elevations between two (2) and six (6) feet above the roadway shall be placed or permitted to remain on any comer lot within the triangular area fonned by the street property lines and a line connection then at points twenty-five (25) feet from the intersection of the street lines, or in case of a rounded property comer from the junction of the street property lines extended. The same sight line limitations shall apply on any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(23) The provisions above, conditions, restrictions, and covenants, and each and all thereof, shall run with the land and continue and remain in full force and effect at all times and against all persons until January 1, 2009. At this time, they shall be automatically extended for five (5) years and after that for successive five-year periods, unless on or before the end of one of such extension periods, the owners of a majority of the lots in said subdivision shall be written instrument, duly recorded, declare the termination or modification of the same.

In witness of this, the Ocotillo Cove Homeowners Association, Inc. has duly presented these Amended Restrictions to the members. A majority of the members, with the appropriate quorum, have passed the resolution adopting the Amended Restrictions to become effective immediately on this day of 2023.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

President of Ocotillo Cove Homeowner's Association, Inc. For the Board of Directors

STATE OF ARIZONA )

) SS.

COUNTY OF PIMA)

This instrument was acknowledged before me on this 30th day of October 2023

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Grantor.

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 NOTARY PUBLIC

My commission expires:

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