

ARTICLES OF INCORPORATION OF THE OCOTILLO COMMUNITY ASSOCIATION

Pursuant to that certain Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Lien Reservations and Easements, dated October 7, 1985, recorded April 7, 1986, as Document No. 86-167478 in the office of the County Recorder of Maricopa County, Arizona, as the same may be amended from time to time (the "Declaration"), and in compliance with the requirements of Arizona Revised Statutes §10-1001 et seq. (the "Act"), the undersigned have this day voluntarily associated themselves together for the purpose of forming a nonprofit corporation and do hereby adopt the following Articles of Incorporation:

ARTICLE I DEFINITIONS

The words and terms used herein shall be deemed to have the same meanings as are given those words and terms in the Declaration. "Declarant" as used herein shall refer to Ocotillo West Joint Venture, an Arizona joint venture partnership, and the successors and assigns of Declarant's rights and powers under the Declaration. "Ocotillo" as used herein to describe a place shall refer to the real property described in the Declaration as Ocotillo.

ARTICLE II NAME

The name of the corporation is THE OCOTILLO COMMUNITY ASSOCIATION, hereafter called the "Association."

ARTICLE III PRINCIPAL PLACE OF BUSINESS

The principal and known place of business and office of the Association shall initially be located at 1500 East Bethany Home Road, Suite 200, Phoenix, Arizona 85014. Thereafter, it is contemplated that the principal and known place of business of the Association will be located on Ocotillo and a statement setting forth such change of known and principal place of business shall be filed as provided under the Act.

ARTICLE IV STATUTORY AGENT

William A. Imparato, a bona fide resident of the State of Arizona for the last three (3) years, whose address is 1500 East Bethany Home Road, Suite 200, Phoenix, Arizona 85014, is hereby appointed the initial statutory agent of the Association.

ARTICLE V

PURPOSES, POWERS AND CHARACTER OF AFFAIRS

Section 1. Purposes and Initial Purposes. This Association does not contemplate pecuniary gain or profit to the Members thereof. The specific purposes and the initial purpose for which the Association is formed are:

- (a) To encourage and facilitate social and recreational activities for the Owners, Lessees and Residents of Ocotillo;
- (b) To provide for the orderly development, maintenance, preservation and architectural control, as provided in Declaration of Ocotillo;
- (c) To promote the health, safety and welfare of the owners, Lessees and Residents within Ocotillo and any additions thereto as may hereafter be brought within the jurisdiction of the Association; and
- (d) To perform all other obligations and responsibilities of the Association as set forth in the Declaration.

Section 2. Powers. For the purposes set forth in Section 1 above, and subject to any limitations set forth in the Declaration, the Association shall have the power to:

- (a) Exercise all of the powers and privileges and to perform all of the duties and obligations of the Association set forth in the Declaration, as the same may be amended as being from time to time as therein provided, said Declaration being incorporated herein as if set forth at length;
- (b) Fix, levy, collect and enforce payment of, by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;
- (c) Acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;
- (d) Borrow money, guarantee payment or performance of obligations, and mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
- (e) Dedicate, sell or transfer all or any part of the Common Area to any public agency, authority, or utility 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 the City of Chandler effective prior to the date of the Declaration or specified on a recorded subdivision plat, no such dedication or transfer shall be effective unless an instrument signed by the Owners of two-thirds (2/3) of the Memberships in each class of Members agreeing to such dedication or transfer has been recorded, or such dedication or transfer is otherwise accomplished in accordance with the Declaration;

(f) Participate in mergers and consolidations with other nonprofit corporations organized for the same purposes or annex additional property and Common Area; provided, however, that, except as otherwise expressly permitted by the Declaration, such merger, consolidation or annexation shall have the assent of the Owners of two-thirds (2/3) of the Memberships in each class of Members;

(g) Establish and adopt Bylaws, the Ocotillo Rules and other rules and regulations deemed necessary and expedient to carry into effect the objects and purposes of the Association; and

(h) Have and to exercise any and all powers, rights and privileges which a corporation organized under the Act may by law now or hereafter have or exercise.

Section 3. Limitation of Purposes. Notwithstanding anything herein contained to the contrary, no part of the activities of the Association shall be devoted to carrying out propaganda or otherwise attempting to influence legislation and the Association shall make no gift, donation or contribution to any institution or organization engaged in such activities. The Association shall not participate or intervene, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. No part of the net earnings of the Association shall inure to the benefit of any Member or individual (other than by promoting social and recreational activities for Members, by acquiring, constructing, or providing management, maintenance, and care of the Common Area, or by a rebate of excess membership dues, fees or Assessments).

Section 4. Character of Affairs. The character of affairs which the Association initially intends actually to conduct in Arizona is to carry out the duties and responsibilities of the Association as set forth in the Declaration, including the providing of an organizational structure for the Members to engage in social and recreational activities, to provide for the operation and maintenance of Common Areas, to levy and collect assessments for the expenses of the Association, and to exert architectural control over the construction and maintenance of improvements on Ocotillo.

ARTICLE VI

MEMBERSHIP AND VOTING

Section 1. Owners of Lots and Parcels. Every owner of a Lot or Parcel which is subject to assessment shall be a Member of the Association. Each such owner shall have the following number of memberships:

(a) One (1) Membership for each Lot owned by the Member;

(b) One (1) Membership for each four completed Rental Apartments owned by a Member;

(c) In the case of (i) the owner of a Parcel designated for use as an Apartment Development but as to which construction has not been completed, one Membership for each four Rental Apartments permitted under the current zoning or approved by the Master Development Plan then in effect for Ocotillo, or (ii) the Owner of a Parcel designated for Condominium Development but as to which a horizontal property regime has not been Recorded, one Membership for each Dwelling Unit permitted upon the Parcel under the Master Development Plan then in effect for Ocotillo, the number of such Dwelling Units to be determined on the assumption

that the number of Dwelling Units within a Density Classification on the Master Development Plan will be spread evenly over all land within the Density Classification. If a site plan for a Parcel is subsequently approved by the Design Review Board and the City of Chandler for a number of Dwelling Units or Rental Apartments different from the number of Dwelling Units or Rental Apartments assumed pursuant to the Master Development Plan, the number of Memberships shall be adjusted, as to the portion of the Parcel covered by the site plan and effective as of the date of adjustment, to reflect the actual number of Dwelling Units or Rental Apartments authorized by the site plan;

(d) In the case of the Owner of a Parcel with a Land Use Classification of Single Family Residential or Cluster Residential, one Membership for each Dwelling Unit permitted upon the Parcel under the Master Development Plan then in effect for Ocotillo. If a subdivision plat or other instrument creating Lots is Recorded covering all or part of the area within the Parcel, the Parcel shall be reduced in size by the area so platted and the number of Memberships held by the Owner, as Owner of the Parcel, shall be reduced by a number equal to the number of Lots in the Recorded subdivision plat. All Memberships attributable to the Parcel shall cease when the land area ceases to be a Parcel because all of the area in the Parcel has been platted or otherwise dedicated to the public and no unplatted Single Family Residential or Cluster Residential area remains within the Parcel; and

(e) In the case of a Parcel designated for other than Single Family Residential, Cluster Residential, Apartment Development or Condominium Development Use (including, without limitation, the Clubhouse Parcel and/or the Golf Course Land), the number of Memberships and Assessments shall be determined by Declarant and included in the applicable Tract Declaration. If a Parcel shall be developed as an office or commercial Condominium, then each Condominium Unit would carry one Membership. If a Parcel is subdivided, the total Assessment on the subdivided parts must at least equal the Assessment on the original Parcel.

Each such Membership shall be appurtenant to and may not be separated from ownership of the Lot or Parcel to which the Membership is attributable. There shall be only one (1) Membership for each Lot, for each Dwelling Unit, and for each four (4) Rental Apartments, and there shall only be such number of Memberships for other uses of a Parcel as are established by a Tract Declaration as described above. Memberships shall be shared by any joint Owners of, or Owners of undivided interests in, a Lot, Parcel, Rental Apartment or Dwelling Unit.

Section 2. Lessees. Lessees of Rental Apartments are not Members of the Association, and the owner of such Rental Apartments shall hold the Memberships attributable thereto. Each Lessee of a Rental Apartment during the period of the Lease shall have the right to use of the Lakes to include boating and fishing privileges within limits established by the Board. The Board or the Lakes Patrol shall have the right to restrict such use of any Lessee for infraction of the rules for a period not to exceed sixty (60) days for each such infraction. Such Lessees shall have the right to the use of other recreation amenities unless such right is restricted in accordance with the Ocotillo Rules.

Section 3. Declarant. The Declarant shall be a Member of the Association for so long as it holds a Class B Membership pursuant to Section 4 below or owns any Lot or Parcel in Ocotillo.

Section 4. Voting. The Association shall have two (2) classes of voting Membership:

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 (1) vote for each Class A Membership held by the Owner and for which such Owner is paying a full Assessment, subject to the authority of the Board to suspend the voting rights of the Owner for violations of the Declaration in accordance with the provisions hereof.

Class B. There shall be one (1) 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, Dwelling Unit, Rental Apartment, Condominium Unit, or acre or portion of an acre in a Parcel owned by the Declarant (herein collectively referred to as "Property Interests") which would otherwise qualify for one (1) Membership in accordance with Section I above if owned by persons other than the Declarant. Subject to adjustment upon the addition of Annexable Property, for purposes of this Section only and in order to pursue the development of Ocotillo contemplated by the Master Development Plan, the Class B Member shall at any time be deemed to be the Owner of three thousand (3000) Property Interests, less the number of then outstanding Class A Memberships required to pay a full Assessment. The Class B Membership shall cease and be converted to Class A Memberships, on the basis of the number of Lots, Dwelling Units, Rental Apartments, Condominium units, acres or portions of acres and Parcels actually owned by the Declarant, on the happening of the first of the following events:

- (a) Within ninety (90) days after the total votes outstanding in the Class A Memberships required to pay a full Assessment equal the total votes outstanding in the Class B Membership; or
- (b) The first day of January, 1999; or
- (c) At any time by written notice to the Association that Declarant wishes to convert all Class B Memberships to Class A.

In determining the point at which Class B votes convert to Class A votes, those Class A votes which qualify for the reduced Assessment in Article VII of the Declaration shall not be counted as Class A votes.

Section 5. 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 (1) 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 such Member 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 (1) vote is cast for a particular membership, none of the said votes shall be counted and all said votes shall be deemed void.

Section 6. 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 4 above times the number of directors to be elected. Each Member shall have the right to cumulate his votes for one (1) 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 7. Membership Rights. Each Member shall have the rights, duties and obligations set forth in the Declaration and such other rights, duties and obligations as are set forth in these Articles and the Bylaws, as the same may be amended from time to time.

Section 8. Transfer of Membership. Except as otherwise provided in Section 9 hereof, 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 or Parcel, as applicable, and then only to the transferee of ownership to the Lot or Parcel. A transfer of ownership to a Lot or Parcel 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 or Parcel shall operate to transfer the Membership(s) appurtenant to said Lot or Parcel to the new Owner thereof.

Section 9. Use of Membership; Designees. Subject to the Ocotillo 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 the Declaration except the Member's voting rights, but such designation shall not relieve the Member of any liabilities or obligations 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 such Member's 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. The Designee need not be a Resident and need not live on Ocotillo unless the Board adopts rules requiring such residence.

Section 10. Adjustment in Votes of Class B Member.

(a) In the event the general plan of development contemplated by the Master Development Plan (or modification thereof) is not pursued to completion and an affirmative statement of abandonment of any or all parts of the general plan previously approved by the City of Chandler is Recorded in the office of the County Recorder of Maricopa County, Arizona, then, in such event the number of Property Interests deemed owned by the Declarant pursuant to Section 4 above shall be reduced by the number of Class A Memberships which would otherwise be attributable to the area so abandoned if such area were owned by persons other than the Declarant. In the event the Declarant shall make a "constructive abandonment" of the general plan of development, then, and in such event, the number of Property Interests deemed owned by the Declarant pursuant to Section 4 above shall be reduced by the number of Class A memberships which would otherwise be attributable to the area so abandoned if such area were owned by persons other than Declarant. For the purposes of this Section, a "constructive abandonment" shall be deemed to have occurred when the Declarant (i) shall fail to record a Tract Declaration with respect to any Parcel in Ocotillo for a period of one (1) year, (ii) shall have ceased all on-site and offsite construction activities at Ocotillo for a period of one (1) year, and (iii) shall have made no substantial progress towards planning or preparation for continuation of the general plan of development for a period of one (1) year. A constructive abandonment shall not occur if the lack of recordation and planning or preparation shall be due to strikes, acts of God, war, riot, insurrection, or other acts which are beyond the control of the Declarant.

(b) As all or any portion of the Annexable Property is added to the Covered Property by Supplemental Declaration pursuant to the provisions of Article XIV of the Declaration, an appropriate adjustment to the votes entitled to be cast by the Class B Membership will be made based upon the additional Property Interests thereby acquired by Declarant.

Section 11. Suspension of Voting Rights. Any Member who fails to pay the Annual Assessments, Special Assessments, Effluent Assessments or Maintenance Charges provided for under the Declaration within sixty (60) days of the due date thereof, shall have all voting rights as provided herein suspended until such amounts plus any accrued interest and/or penalties are paid in full. The Board may also suspend the voting rights of any Member (a) for any period during which any Assessment against his Lot or Parcel remains delinquent, (b) for a period not to exceed sixty (60) days for any infraction of the Declaration, a Tract Declaration or the Ocotillo Rules, and (c) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period.

ARTICLE VII BOARD OF DIRECTORS

The control and management of the affairs of this Association shall be vested in a Board of Directors of not less than five (5) nor more than eleven (11) directors who need not be Members of the Association. The names and addresses of the persons who are to serve as directors beginning with the incorporation of the Association until their successors are elected and qualified, are:

<u>Names</u>	<u>Addresses</u>
Guy G. Donahue	1500 E. Bethany Home Road Suite 200 Phoenix, Arizona 85014
Ted E. Garrett, Jr.	625 Silver SW Suite 200 P.O. Box 25625 Albuquerque, New Mexico 87125
A. Stewart Jean	1500 E. Bethany Home Road Suite 200 Phoenix, Arizona 85014
Daniel J. Patterson	793 North Alma School Road Suite 1 Chandler, Arizona 85224
A. Wayne Smith	2120 South Rural Road Tempe, Arizona 85282

ARTICLE VIII AMENDMENTS

Section 1. Amendments. These Articles may be amended by the affirmative vote of ninety percent (90%) of the votes of Members of the Association cast at a duly called meeting of the Members; provided, however, after twenty (20) years from the date of recordation of the Declaration, the affirmative vote of only seventy-five percent (75%) of the Members casting votes at a duly called meeting of the members shall be necessary to adopt an amendment to these Articles.

Section 2. Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions. Anything in these Articles to the contrary notwithstanding, the Board shall have the right to amend all or any part of these Articles to such an extent and with such language as may be requested by the Federal Housing Administration (“FHA”) or the Veterans Administration (“VA”) and to further amend these Articles 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 these Articles, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or Parcel(s) or any portions thereof. In the event of such an amendment, articles of amendment shall be executed, filed and published as provided under Arizona law. It is the desire of Declarant to retain control of the Association and its activities through the Board of Directors during the anticipated period of planning and development of Ocotillo and until the Class B membership ceases pursuant to Article VI, Section 4 above. If any amendment requested pursuant to the provisions of this Section deletes, diminishes or alters such control, the Board shall have the right to prepare, provide for and adopt, as an amendment hereto, other and different control provisions.

ARTICLE IX DURATION AND DISSOLUTION

The Association shall exist so long as the Declaration is in effect, which shall be for an initial period of thirty (30) years from the date the Declaration is Recorded and for successive extension periods of ten (10) years each unless the Declaration is terminated, and the Association dissolved by the affirmative vote of Members casting not less than ninety percent (90%) of the total votes to be cast at an election held for such purpose within six (6) months prior to the expiration of the initial effective period or any ten (10) year extension period. The Declaration may be terminated, and the Association dissolved, at any time if ninety percent (90%) of the votes cast by each class of Members shall be cast in favor of termination and dissolution at an election held for such purpose. Anything in the foregoing to the contrary notwithstanding, no vote to terminate the Declaration and this Association 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 VIII, Section 3 of the Declaration on seventy-five percent (75%) of the Lots and Parcels upon which there are such recorded first mortgages and deeds of trust. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to such similar purposes.

ARTICLE X INCORPORATORS

The names and addresses of the incorporators are as follows:

<u>Names</u>	<u>Addresses</u>
William A. Imparato	1500 E. Bethany Home Road Suite 200 Phoenix, Arizona 85014
Ted E. Garrett, Jr.	625 Silver SW Suite 200 P.O. Box 25625 Albuquerque, New Mexico 87125

ARTICLE XI INTERPRETATION

In the event that any provision hereof is inconsistent with or in derogation of the Declaration, the provisions of the Declaration shall be deemed to control.

ARTICLE XII INDEMNIFICATION

The Association shall indemnify all of its Directors and Officers, and its former Directors and Officers, to the maximum extent authorized by law, against expenses incurred by them, including without limitation legal fees, and judgments and penalties rendered or levied against them or any of them in any legal action brought against any such person for actions or omissions alleged to have been committed by any such person while acting within the scope of his or her employment as a Director or Officer of the Association, provided that the Board of Directors shall determine in good faith that such person did not act, fail to act, or refuse to act willfully or with gross negligence, or with fraudulent or criminal intent in regard to the matter involved in the action, and provided further that no such indemnification shall be available with respect to liabilities under the securities Act of 1933, and provided further that the Association shall have the right to refuse indemnification in any instance in which the person to whom indemnification would otherwise have been applicable shall have unreasonably refused to permit the Association, at its own expense and through counsel of its own choosing, to defend him or her in any such legal action. Whenever any such present or former Director or Officer shall report to the President of the Association or the Chairman of the Board of Directors that he or she has incurred or may incur any such expenses, the Board of Directors shall, at its next regular meeting or at a special meeting held within a reasonable time thereafter, determine in good faith whether such person acted, failed to act, or refused to act willfully, with gross negligence or with fraudulent or criminal intent in regard to the matter involved in the action. If the Board of Directors determines in good faith that such person did not act, fail to act or refuse to act willfully or with gross negligence or with fraudulent or criminal intent in regard to the matter involved in the action, indemnification shall be mandatory and shall be automatically extended as specified herein except as otherwise provided hereinbefore.

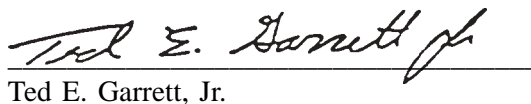
ARTICLE XIII
FHA/VA APPROVAL

If the Declaration and these Articles have been initially 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 on property in Ocotillo 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 VA, as applicable, unless the need for such approval has been waived by FHA or VA: dedication of Common Areas (except where such dedication is required as of the date hereof to the City of Chandler); and amendment of these Articles.

IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of Arizona, the undersigned, constituting the incorporators of this Association, have executed these Articles of Incorporation this 25th day of June, 1986.



William A. Imparato



Ted E. Garrett, Jr.

STATE OF ARIZONA)
) ss:
COUNTY OF MARICOPA)

The foregoing Articles of Incorporation for THE OCOTILLO COMMUNITY ASSOCIATION were acknowledged before me this 25th day of June, 1986 by William A. Imparato.



Notary Public

My Commission Expires:

April 10, 1989

STATE OF ARIZONA)
) ss:
COUNTY OF MARICOPA)

The foregoing Articles of Incorporation for THE OCOTILLO COMMUNITY ASSOCIATION were acknowledged before me this 25th day of June, 1986 by Ted E. Garrett, Jr.



Notary Public

My Commission Expires:

April 10, 1989

CONSENT TO ACT AS STATUTORY AGENT

I, having been designated to act as .Statutory Agent for THE OCOTILLO COMMUNITY ASSOCIATION, an Arizona nonprofit corporation, hereby consent to act in that capacity until removal or the resignation is submitted in accordance with Arizona Revised Statutes.



William A. Imperato