

CERTIFICATION

I hereby certify the attached to be a true and correct copy of Resolution No. 39-2006 approved after a proper motion and second, at the August 28, 2006 Regular City Council Meeting at 7:00 P.M. in Benson, Arizona and said meeting was attended by a quorum of Councilmembers and the Resolution No. 39-2006 has not been amended, changed or otherwise modified as of this date.

Dated this 29th day of August, 2006

Vicki L. Vivian

Vicki L. Vivian
City Clerk



060933586

RESOLUTION NO. 39-2006

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF BENSON, EXECUTING A PARTIAL RELEASE UNDER THE TERMS OF THAT CERTAIN THIRD PARTY TRUST AGREEMENT DATED SEPTEMBER 10, 2004, BY AND BETWEEN PIONEER TITLE COMPANY, INC., ACTING AS TRUSTEE UNDER TRUST NO. 00953570, AS AMENDED JUNE 27, 2006, AND THE CITY OF BENSON, REGARDING PROPERTIES HELD BY WHETSTONE DEVELOPMENT COMPANY, L.L.C., OTHERWISE KNOWN AS THE WHETSTONE RANCH SUBDIVISION.

WHEREAS, the City of Benson entered into a Third Party Trust Agreement, entered into on September 10, 2004 and recorded on the 24th day of September, 2004, at Fee No. 040930993, with Pioneer Title Agency, Inc., acting as Trustee under Trust No. 00953570, whereby said Agreement provided means of assuring the completion of the Whetstone Ranch Subdivision improvements as required by the Annexation Development Agreement entered into on November 3, 1993 and recorded on November 9, 1993, at Fee No. 9311-30558, and the City of Benson Subdivision Regulations; and,

WHEREAS, on the 26th day of June, 2006, an Amendment to the Trust Assurance Agreement for the Completion of Subdivision Improvements was executed providing for the release of assurance for model home lots; and,

WHEREAS, a contract to transfer a portion of the Whetstone Ranch Subdivision, which is subject to the aforementioned Agreements, has been entered into and this Resolution releasing Trustee is required to effectuate the real property transfer; and,

WHEREAS, this partial release shall have no force and effect on the remaining property within the Whetstone Ranch Subdivision and the remaining property within the Whetstone Ranch Subdivision shall continue to be encumbered by the terms of said Third Party Trust Agreement; and,

WHEREAS, a Consent of Home Builder and Release has been executed by each of the home builders which are requesting the release of lots for model homes in accordance with the Amendment to the Trust Assurance Agreement for the Completion of Subdivision Improvements. Said consents are attached hereto as Exhibits "A through D" and by reference incorporated herein.

BE IT NOW HEREBY RESOLVED that the portion of the real property within Whetstone Ranch Subdivision as more particularly described on Exhibit "E", attached hereto and by reference, incorporated herein is hereby released under the terms of the Third Party Trust Agreement, executed by and between, Pioneer Title Agency, Inc., as Trustee under Trust No. 00953570 and the City of Benson, dated September 10, 2004, and recorded on the 24th day of September, 2004, at Fee No. 040930993, Records of Cochise County, State of Arizona, and the Trustee is hereby released from any further duties. Further, the City of Benson does hereby release, without covenant or warranty, express or implied, unto the parties legally entitled thereto all right, title and interest in said property.

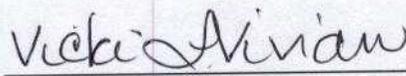
Resolved and adopted this 28th day of August, 2006, by the Mayor and City Council of Benson, Arizona.



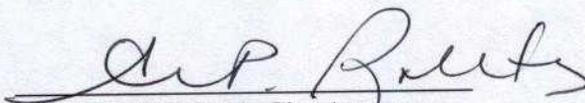
GEORGE SCOTT, Mayor

ATTEST:

Approved as to form:



VICKI L. VIVIAN, City Clerk



ANN P. ROBERTS, City Attorney

CONSENT OF HOMEBUILDER AND RELEASE

THIS CONSENT OF HOMEBUILDER AND RELEASE (the "Consent and Release") is entered into as of August 28, 2006 (the "Effective Date") between the CITY OF BENSON, ARIZONA (hereinafter referred to as the "City of Benson") and STANDARD PACIFIC OF TUCSON, INC., a Delaware corporation, (hereinafter referred to as "Homebuilder").

RECITALS

A. On or about September 10, 2004, the City of Benson, Pioneer Title Agency, and Whetstone Development Company, an Arizona corporation (hereinafter "Beneficiary"), entered into a Trust Assurance Agreement for Completion of Subdivision Improvements upon the real property described therein (the "Property"); and on or about June 27, 2006 the City of Benson, Pioneer Title Agency, and Beneficiary entered into an Amendment to the Trust Assurance Agreement for Completion of Subdivision Improvements (collectively, the "Agreement").

B. Under the terms of the Agreement, the Property was placed in Trust with Pioneer Title Agency. The Property, or portions thereof, may only be released from the Trust if such property meets the requirements set forth in the Agreement.

C. Homebuilder desires to purchase Lots 93, 94, 95 and 96 of The Canyons at Whetstone Ranch (the "Lots"), as recorded in Book 15, Map 23 of the Records of Cochise County, Arizona, which are subject to the Agreement and part of the Property.

D. Under the terms of the Agreement, Homebuilder must execute this Consent and Release in order to release the Lots from the Trust, so that Beneficiary may subsequently sell the Lots to Homebuilder.

CONSENT AND RELEASE

1. Homebuilder acknowledges the existence of the Agreement and all terms set forth therein.
2. Homebuilder acknowledges that the release of the Lots is for the purpose of allowing Homebuilder to acquire the Lots and construct model homes and related improvements upon the Lots.
3. Homebuilder acknowledges that, under the terms of the Agreement, a Certificate of Occupancy shall not be provided to the Homebuilder for any homes or improvements constructed on the Lots until all the improvements required under the Agreement in connection with such Lots (the "Improvements") have been satisfactorily completed and accepted by the City of Benson, and provided further that the Lots released and improvements associated with such lots can function independently on a permanent basis in the event the remaining portion of the subdivision is never developed.

4. Homebuilder acknowledges and agrees that the responsibility for the completion of the Improvements necessary to obtain a Certificate of Occupancy will remain the responsibility of Beneficiary, its successors and assigns or Homebuilder and not the City of Benson.

5. Homebuilder agrees to release the City of Benson from any claim based on the failure to complete the Improvements required to obtain a Certificate of Occupancy.

6. Homebuilder acknowledges that, prior to the completion of the Improvements necessary to obtain a Certificate of Occupancy, roads may not permit access for fire apparatuses to the Lots. Homebuilder agrees to release the City of Benson from any claim based on any damage sustained by Homebuilder to the Improvements resulting from any fire on a Lot prior to the issuance of a Certificate of Occupancy for such Lot..

IN WITNESS WHEREOF, this Consent of Homebuilder and Release has been entered into as of the Effective Date.

The foregoing Consent of Homebuilder and Release is accepted by:

“Homebuilder”

STANDARD PACIFIC OF TUCSON, INC.,
a Delaware corporation

By Paula Meade
Paula Meade
Its Vice President
Date 8/14/06

“City of Benson”

CITY OF BENSON, ARIZONA

By [Signature]
Its Mayor
Date 8-29-06

APPROVED AS TO FORM:

[Signature]
Ann P. Roberts, Esq.
City of Benson Attorney
Date 8/29/06

STATE OF ARIZONA)
) ss.
COUNTY OF COCHISE))

On August 29, 2006, before me, Vicki Vivian, a Notary Public in and for said County and State, personally appeared George Scott on behalf of the CITY OF BENSON, ARIZONA, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Vicki L. Vivian
Notary Public

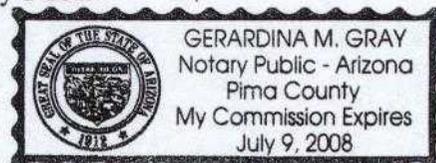
STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

On August 14, 2006, before me, Gerardina M. Gray, a Notary Public in and for said County and State, personally appeared PAULA MEADE, Vice President of Standard Pacific of Tucson, Inc., personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

My Commission Expires:
7-9-2008

Gerardina M. Gray
Notary Public



CONSENT OF HOMEBUILDER AND RELEASE

THIS CONSENT OF HOMEBUILDER AND RELEASE (the "Consent and Release") is entered into as of August 28, 2006 (the "Effective Date") between the CITY OF BENSON, ARIZONA (hereinafter referred to as the "City of Benson") and D. R. HORTON, INC., a Delaware corporation and DRHI, Inc., a Delaware corporation, (hereinafter collectively referred to as "Homebuilder").

RECITALS

A. On or about September 10, 2004, the City of Benson, Pioneer Title Agency, and Whetstone Development Company, an Arizona corporation (hereinafter "Beneficiary"), entered into a Trust Assurance Agreement for Completion of Subdivision Improvements upon the real property described therein (the "Property"); and on or about June 27, 2006 the City of Benson, Pioneer Title Agency, and Beneficiary entered into an Amendment to the Trust Assurance Agreement for Completion of Subdivision Improvements (collectively, the "Agreement").

B. Under the terms of the Agreement, the Property was placed in Trust with Pioneer Title Agency. The Property, or portions thereof, may only be released from the Trust if such property meets the requirements set forth in the Agreement.

C. Homebuilder desires to purchase Lots 76, 77 and 78 of The Canyons at Whetstone Ranch (the "Lots"), as recorded in Book 15, Map 23 of the Records of Cochise County, Arizona, which are subject to the Agreement and part of the Property.

D. Under the terms of the Agreement, Homebuilder must execute this Consent and Release in order to release the Lots from the Trust, so that Beneficiary may subsequently sell the Lots to Homebuilder.

CONSENT AND RELEASE

1. Homebuilder acknowledges the existence of the Agreement and all terms set forth therein.

2. Homebuilder acknowledges that the release of the Lots is for the purpose of allowing Homebuilder to acquire the Lots and construct model homes and related improvements upon the Lots.

3. Homebuilder acknowledges that, under the terms of the Agreement, a Certificate of Occupancy shall not be provided to the Homebuilder for any homes or improvements constructed on the Lots until all the improvements required under the Agreement in connection with such Lots (the "Improvements") have been satisfactorily completed and accepted by the City of Benson, and provided further that the Lots released and improvements associated with such lots can function independently on a permanent basis in the event the remaining portion of the subdivision is never developed.

4. Homebuilder acknowledges and agrees that the responsibility for the completion of the Improvements necessary to obtain a Certificate of Occupancy will remain the responsibility of Beneficiary, its successors and assigns or Homebuilder and not the City of Benson.

5. Homebuilder agrees to release the City of Benson from any claim based on the failure to complete the Improvements required to obtain a Certificate of Occupancy

6. Homebuilder acknowledges that, prior to the completion of the Improvements necessary to obtain a Certificate of Occupancy, roads may not permit access for fire apparatuses to the Lots. Homebuilder agrees to release the City of Benson from any claim based on any damage sustained by Homebuilder to the Improvements resulting from any fire on a Lot prior to the issuance of a Certificate of Occupancy for such Lot.

IN WITNESS WHEREOF, this Consent of Homebuilder and Release has been entered into as of the Effective Date.

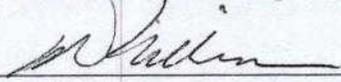
The foregoing Consent of Homebuilder and Release is accepted by:

“Homebuilder”

D. R. HORTON, INC., a Delaware corporation

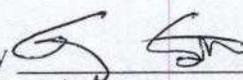
By 
Its V.P. OF LAND
Date 8-14-06

DRHI, Inc., a Delaware corporation

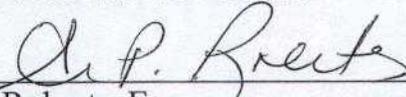
By 
Its V.P. OF LAND
Date 8-14-06

“City of Benson”

CITY OF BENSON, ARIZONA

By 
Its Mayor
Date 8-29-06

APPROVED AS TO FORM:


Ann P. Roberts, Esq.
City of Benson Attorney
Date 8/29/06

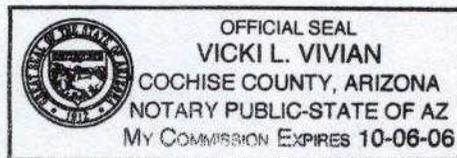
STATE OF ARIZONA)
) ss.
COUNTY OF COCHISE)

On August 29, 2006, before me, Vicki Vivian, a Notary Public in and for said County and State, personally appeared George Scott on behalf of the CITY OF BENSON, ARIZONA, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Vicki L. Vivian
Notary Public

My commission expires: 10-6-06



STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

On August 11, 2006, before me, Mary L. Shumaker Notary Public in and for said County and State, personally appeared R. Thomas Williams, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Mary L. Shumaker
Notary Public

My commission expires:



CONSENT OF HOMEBUILDER AND RELEASE

THIS CONSENT OF HOMEBUILDER AND RELEASE (the "Consent and Release") is entered into as of August 28, 2006 (the "Effective Date") between the CITY OF BENSON, ARIZONA (hereinafter referred to as the "City of Benson") and PEPPER VINER at WHETSTONE RANCH, L.L.C. an Arizona limited liability company, (hereinafter referred to as "Homebuilder").

RECITALS

A. On or about September 10, 2004, the City of Benson, Pioneer Title Agency, and Whetstone Development Company, an Arizona corporation (hereinafter "Beneficiary"), entered into a Trust Assurance Agreement for Completion of Subdivision Improvements upon the real property described therein (the "Property"); and on or about June 27, 2006 the City of Benson, Pioneer Title Agency, and Beneficiary entered into an Amendment to the Trust Assurance Agreement for Completion of Subdivision Improvements (collectively, the "Agreement").

B. Under the terms of the Agreement, the Property was placed in Trust with Pioneer Title Agency. The Property, or portions thereof, may only be released from the Trust if such property meets the requirements set forth in the Agreement.

C. Homebuilder desires to purchase Lots 3, 4, 5 and 22 of The Canyons II at Whetstone Ranch (the "Lots"), as recorded in Book 15, Map 43 of the Records of Cochise County, Arizona, which are subject to the Agreement and part of the Property.

D. Under the terms of the Agreement, Homebuilder must execute this Consent and Release in order to release the Lots from the Trust, so that Beneficiary may subsequently sell the Lots to Homebuilder.

CONSENT AND RELEASE

1. Homebuilder acknowledges the existence of the Agreement and all terms set forth therein.

2. Homebuilder acknowledges that the release of the Lots is for the purpose of allowing Homebuilder to acquire the Lots and construct model homes and related improvements upon the Lots.

3. Homebuilder acknowledges that, under the terms of the Agreement, a Certificate of Occupancy shall not be provided to the Homebuilder for any homes or improvements constructed on the Lots until all the improvements required under the Agreement in connection with such Lots (the "Improvements") have been satisfactorily completed and accepted by the City of Benson, and provided further that the Lots released and improvements associated with such lots can function independently on a permanent basis in the event the remaining portion of the subdivision is never developed.

4. Homebuilder acknowledges and agrees that the responsibility for the completion of the Improvements necessary to obtain a Certificate of Occupancy will remain the responsibility of Beneficiary, its successors and assigns or Homebuilder and not the City of Benson.

5. Homebuilder agrees to release the City of Benson from any claim based on the failure to complete the Improvements required to obtain a Certificate of Occupancy

6. Homebuilder acknowledges that, prior to the completion of the Improvements necessary to obtain a Certificate of Occupancy, roads may not permit access for fire apparatuses to the Lots. Homebuilder agrees to release the City of Benson from any claim based on any damage sustained by Homebuilder to the Improvements resulting from any fire on a Lot prior to the issuance of a Certificate of Occupancy for such Lot.

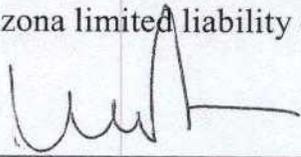
7. Nothing in this Consent and Release shall be construed to limit or expand any rights or obligations between Beneficiary and Homebuilder pursuant to their outstanding agreements, as may be amended hereafter.

IN WITNESS WHEREOF, this Consent of Homebuilder and Release has been entered into as of the Effective Date.

The foregoing Consent of Homebuilder and Release is accepted by:

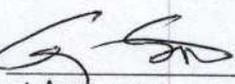
“Homebuilder”

PEPPER VINER at WHETSTONE RANCH, L.L.C.,
an Arizona limited liability company

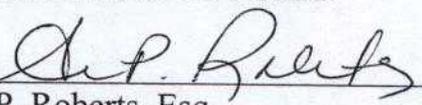
By 
Its CEO of Pepper Viner at Whetstone Ranch, L.L.C.
Date 8-17-06

“City of Benson”

CITY OF BENSON, ARIZONA

By 
Its Mayor
Date 8-29-06

APPROVED AS TO FORM:


Ann P. Roberts, Esq.
City of Benson Attorney
Date 8/29/06

STATE OF ARIZONA)
) ss.
COUNTY OF COCHISE)

On August 29, 2006 before me, Vicki Vivian, a Notary Public in and for said County and State, personally appeared George Scott on behalf of the CITY OF BENSON, ARIZONA, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Vicki Vivian
Notary Public

My Commission Expires:
10-6-06



STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

On August 17, 2006 before me, TREASA GREENOUGH a Notary Public in and for said County and State, personally appeared William Viner, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Treasa M. Greenough
Notary Public Treasa Zachareas

My Commission Expires:
May 29, 2007



CONSENT OF HOMEBUILDER AND RELEASE

THIS CONSENT OF HOMEBUILDER AND RELEASE (the "Consent and Release") is entered into as of August 28, 2006 (the "Effective Date") between the CITY OF BENSON, ARIZONA (hereinafter referred to as the "City of Benson") and CANYON VISTA LAND, L.L.C., an Arizona limited liability company, (hereinafter referred to as "Homebuilder").

RECITALS

A. On or about September 10, 2004, the City of Benson, Pioneer Title Agency, and Whetstone Development Company, an Arizona corporation (hereinafter "Beneficiary"), entered into a Trust Assurance Agreement for Completion of Subdivision Improvements upon the real property described therein (the "Property"); and on or about June 27, 2006 the City of Benson, Pioneer Title Agency, and Beneficiary entered into an Amendment to the Trust Assurance Agreement for Completion of Subdivision Improvements (collectively, the "Agreement").

B. Under the terms of the Agreement, the Property was placed in Trust with Pioneer Title Agency. The Property, or portions thereof, may only be released from the Trust if such property meets the requirements set forth in the Agreement.

C. Homebuilder desires to purchase Lots 17, 18 and 19 of The Canyons at Whetstone Ranch (the "Lots"), as recorded in Book 15, Map 23 of the Records of Cochise County, Arizona, which are subject to the Agreement and part of the Property.

D. Under the terms of the Agreement, Homebuilder must execute this Consent and Release in order to release the Lots from the Trust, so that Beneficiary may subsequently sell the Lots to Homebuilder.

CONSENT AND RELEASE

1. Homebuilder acknowledges the existence of the Agreement and all terms set forth therein.
2. Homebuilder acknowledges that the release of the Lots is for the purpose of allowing Homebuilder to acquire the Lots and construct model homes and related improvements upon the Lots.
3. Homebuilder acknowledges that, under the terms of the Agreement, a Certificate of Occupancy shall not be provided to the Homebuilder for any homes or improvements constructed on the Lots until all the improvements required under the Agreement in connection with such Lots (the "Improvements") have been satisfactorily completed and accepted by the City of Benson, and provided further that the Lots released and improvements associated with such lots can function independently on a permanent basis in the event the remaining portion of the subdivision is never developed.

4. Homebuilder acknowledges and agrees that the responsibility for the completion of the Improvements necessary to obtain a Certificate of Occupancy will remain the responsibility of Beneficiary, its successors and assigns or Homebuilder and not the City of Benson.

5. Homebuilder agrees to release the City of Benson from any claim based on the failure to complete the Improvements required to obtain a Certificate of Occupancy.

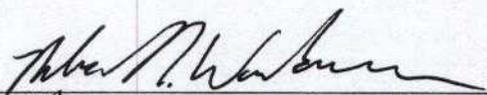
6. Homebuilder acknowledges that, prior to the completion of the Improvements necessary to obtain a Certificate of Occupancy, roads may not permit access for fire apparatuses to the Lots. Homebuilder agrees to release the City of Benson from any claim based on any damage sustained by Homebuilder to the Improvements resulting from any fire on a Lot prior to the issuance of a Certificate of Occupancy for such Lot.

IN WITNESS WHEREOF, this Consent of Homebuilder and Release has been entered into as of the Effective Date.

The foregoing Consent of Homebuilder and Release is accepted by:

“Homebuilder”

CANYON VISTA LAND, L.L.C., an
Arizona limited liability company

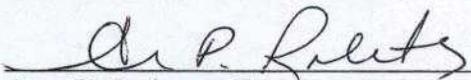
By 
Its Manager
Date 18 Aug 06

“City of Benson”

CITY OF BENSON, ARIZONA

By 
Its Mayor
Date 8-29-06

APPROVED AS TO FORM:


Ann P. Roberts, Esq.
City of Benson Attorney
Date 8/29/06

STATE OF ARIZONA)
) ss.
COUNTY OF COCHISE))

On August 29, 2006 before me, Vicki Vivian, a Notary Public in and for said County and State, personally appeared George Scott on behalf of the CITY OF BENSON, ARIZONA, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Vicki Vivian
Notary Public

My Commission Expires:
10-6-06



STATE OF ARIZONA)
) ss.
COUNTY OF Cochise)

On Aug 18, 2006, before me, Rebecca Schinzel, a Notary Public in and for said County and State, personally appeared Robert L. Workman personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Rebecca Schinzel
Notary Public

My Commission Expires:

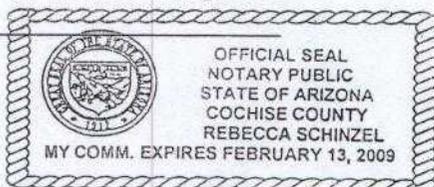


EXHIBIT "E"

Lots 17, 18, 19, 76, 77, 78, 93, 94, 95 and 96 of the Canyons at Whetstone Ranch, a subdivision recorded in Book 15 of Maps and Plats at Page 23, Records of Cochise County, Arizona; and,

Lots 3, 4, 5 and 22 of the Canyons II at Whetstone Ranch, a subdivision recorded in Book 15 of Maps and Plats at Page 23, Records of Cochise County, Arizona; and,