

RESOLUTION NO. 13-2006

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 13, 2005, BY AND BETWEEN PIONEER TITLE COMPANY, INC., ACTING AS TRUSTEE UNDER TRUST NO. 308560 AND THE CITY OF BENSON, REGARDING PROPERTIES HELD BY COCHISE TERRACE, L.L.C.

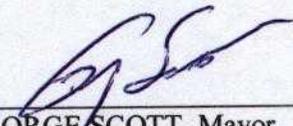
WHEREAS, the City of Benson entered into an Third Party Trust Agreement, entered into on September 13, 2005 and recorded on October 18, 2005, at Fee No. 051039965, with Pioneer Title Agency, Inc., acting as Trustee under Trust No. 308560, whereby said Agreement provided means of assuring the completion of the Cochise Terrace R.V. Resort Ranch Subdivision improvements as required by the City of Benson Subdivision Regulations; and,

WHEREAS, a contract to transfer a portion of the Cochise Terrace R.V. Resort 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 Cochise Terrace R.V. Resort Ranch Subdivision and the remaining property within the Cochise Terrace R.V. Resort Ranch Subdivision shall continue to be encumbered by the terms of said Third Party Trust Agreement.

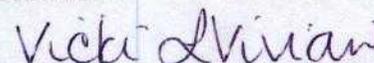
BE IT NOW HEREBY RESOLVED that the portion of the real property within Cochise Terrace R.V. Resort Ranch Subdivision as more particularly described on Exhibit "A", attached hereto and by reference, incorporated herein is hereby released under the terms of the Third Party Trust Agreement, executed by and between, Pioneer Title Agency, Inc., as Trustee under Trust No. 308560 and the City of Benson, dated September 13, 2005, and recorded on the 18th day of October, 2005, at Fee No. 051039965, 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 10th day of April, 2006 by the Mayor and City Council of Benson, Arizona.

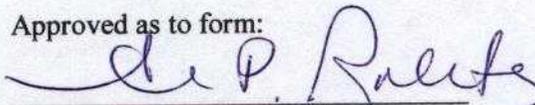


GEORGE SCOTT, Mayor

ATTEST:



VICKI L. VIVIAN, City Clerk

Approved as to form:


ANN P. ROBERTS, City Attorney

EXHIBIT "A"

Lots 76 through 102, inclusive, a resubdivision of a portion of COCHISE TERRACE, according to Book 15 of Maps, page 42 and 42A, records of Cochise County, Arizona; and thereafter Ratification of Plat recorded in Document No. 0511-42821, records of Cochise County, Arizona.

TRUST ASSURANCE AGREEMENT FOR COMPLETION OF SUBDIVISION IMPROVEMENTS

THIS TRUST ASSURANCE AGREEMENT FOR COMPLETION OF SUBDIVISION IMPROVEMENTS (this "Agreement") is entered into and dated for reference purposes as of September 13, 2005, between, Pioneer Title Agency, Inc., an Arizona corporation, as Trustee under Trust No. 308560, (herein referred to as "Trustee"), Cochise Terrace, L. L. C., an Arizona Limited Liability Company as Beneficiary of Trust No. 308560, (hereinafter referred to as "Beneficiary") and the CITY OF BENSON, ARIZONA, (herein referred to as the "City of Benson").

RECITALS

- A. Trustee is owner of a certain parcel of real property (the "Property") located in the City of Benson, Arizona, and described in Exhibit "A" attached hereto. The property is the subject of a subdivision plat identified as: Cochise Terrace R. V. Resort Ranch, recorded in the Office of the Cochise County Recorder, State of Arizona, in Book 13 of Maps and Plats, Pages 91 hereinafter referred to as the "Subdivision"; and
- B. Beneficiary has established Trust No. 308560 for the purpose of developing a subdivision of the City of Benson and has conveyed legal title to the Property to Trustee.
- C. The parties hereto wish to establish specific terms, conditions and guidelines for compliance with the provision of A.R.S. § 11-806.01 and the City of Benson Subdivision Regulations.

AGREEMENT

In consideration of the City of Benson approving a final plat for the Property which is the subject matter of this Agreement, and in order to comply with A.R.S. § 11-806.01, the parties mutually agree that:

1. Property. The Property which is the subject matter of this Agreement is described in Exhibit "A" attached hereto.
2. Assurances. This Agreement is submitted as a means of assuring the completion of the subdivision improvements required by A.R.S. § 11-806.01, City of Benson Subdivision Regulations, all Plans and Specifications approved and on file with the City of Benson, and any special conditions, if applicable, on Exhibit "B" attached hereto and made a part hereof. These subdivision improvements

include but are not limited to, streets, alleys, sidewalks, curbs and gutters, sanitary sewer systems, water supply, lot staking and monuments, traffic and street signs, and drainage and flood control improvements, if applicable.

3. Existing Utilities. Any relocation or modification of existing utilities or public improvements necessary to construct the improvements shall be done at no expense to the City. Subdivider's performance of this requirement shall be considered in determining whether to release assurances under Sections 12 and 13 hereinafter.

4. Conveyances and Transfers of Title. Trustee shall not transfer title to, consummate contracts for sale of Property, lease, or in any way convey, in whole or in part, any of the Property without obtaining prior written approval from the City of Benson, except as authorized in this Agreement. A Release of Assurances and authorization to convey the Property shall be given by the City of Benson upon satisfactory completion, or partial completion, as applicable, in accordance with the City of Benson Subdivision Ordinances and the Annexation Development Agreement between the City of Benson dated November 3, 1993 (the "Development Agreement").

5. Bulk Sales. Notwithstanding Section 4, Trustee may sell or convey all of the Property described in Section 1 in one (1) more bulk transactions, provided that such successor, prior to the conveyance, shall have either been assigned and assumed all of Beneficiaries rights and obligations under this Agreement or entered into an appropriate agreement with the City of Benson to assure completion of the improvements, and the City of Benson has approved, in writing, the transfer.

6. Conveyance Out of Trust for the Purpose of Encumbrance: Condition on Other Interests. Notwithstanding Section 4, Trustee may convey the Property to Beneficiary for the limited purposes of encumbering the Property or allowing any obligations secured by the Trust, other than those which are the subject of this Agreement with the City of Benson, to be subordinated to loans for the purpose of constructing on-site or off-site improvements for the benefit of the Property or to create a security interest in the Property for loans for the purchase of the Property or the construction of such on-site or off-site improvements. In such event, the Property shall immediately thereafter be reconveyed to Trustee. This Agreement shall be deemed to be a condition on and restriction on the rights and interests of any third party whose interest in the Property arises after the date of this Agreement, however such interest is created, the same as if such party were included as a signatory of this Agreement.

7. Substitution of Assurances. Subdivider ("the Subdivider") or Beneficiary may offer substitute assurances at any time during the term of this Agreement in accordance with the provisions of the City of Benson Subdivision Regulations. The Assurance shall be in a form and amount acceptable to the City of Benson, and shall to the extent applicable, partially or wholly replace the Assurances in this Agreement.
8. The Improvements shall not be considered completed unless and until they have been constructed in accordance with all applicable plans, City, State, and Federal regulations, and inspected by City for compliance with said plans and regulations. Further, all utility Improvements shall not be considered completed unless and until the City has received all necessary approvals for operation of the utility systems from the appropriate State and/or Federal regulatory agencies, if applicable. All improvements shall be completed within two (2) years of the date of the signing of this document.
9. Inspection and Approval of Improvements. The City of Benson shall provide for inspection of the improvements to ensure satisfactory completion. Until the improvements have been satisfactorily completed, the rights-of-way in which the improvements are located have been dedicated or conveyed to the City, and the City, by formal action, has accepted said dedication or conveyance of the improvements and rights-of-way in which they are located, the City of Benson will not release the Property subject to this Agreement. Once satisfactorily completed, the Property shall be released as provided in Sections 12 and 13 below. Release of the Property or any portion of the Property from this Agreement shall be deemed to constitute the City's acceptance of the dedication or conveyance of any improvements related to the portion of the Property released.
10. Warranty. Subdivider warrants that the improvements will be free from defects for a period of one (1) year from the date City accepts the dedication or conveyance of the improvement from the Subdivider.
11. Payment of Applicable Property Taxes. The City of Benson shall not release, in whole or in part, any of the Property described in Section 1 until all Property and taxes and assessments due and owing on the subject Property have been paid in full.
12. Partial Release of Assurances. The City of Benson, upon receipt of a written request from Beneficiary, shall give the Trustee a Release of Assurances for all or a portion of the lots created by the subdivision plat described in Section 1, provided that all of the improvements required in connection with such lots have been satisfactorily completed and accepted, 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.

13. Release of Assurances. Upon completion of all improvements required under this Agreement, or upon receipt of acceptable substitute assurances replacing this Agreement, the City of Benson shall release the Assurances in this Agreement, and this Agreement shall be deemed cancelled.

14. Failure to Complete Improvements. Trustee and Beneficiary hereby agree that in the event the required improvements are not completed within the time period provided by Section 8, the City of Benson may replat that portion of the Property described in Section 1 for which a release of assurances has not been given. The purpose of the new plat will be to abandon the portion of the subdivision not completed, and return that portion of the Property to approximately the same boundary configurations of record as existed before the subdivision plat was recorded. Prior to the initiating any action to replat, the City of Benson shall provide Trustee and Beneficiary with thirty (30) days written notice of the intent to replat.

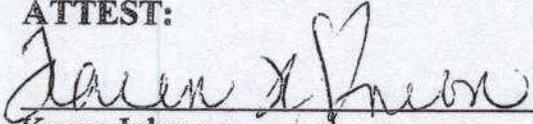
The City of Benson, by this Agreement, is expressly authorized to replat this Property after the required notice has been provided. All expenses by the City of Benson, including legal costs if applicable, in executing a replat shall be paid for by Beneficiary, and shall, if unpaid, become a lien on the Property.

15. Effect on Trust Agreement. Trustee and Beneficiary agree that any provision of Trust No. 00954147 that is incompatible or inconsistent with this Agreement shall be null and void and not enforceable. The Trust shall not be revoked prior to a full Release of Assurances without prior written consent of the City of Benson. Nor shall any amendment which would alter this Assurance Agreement be effective until the City of Benson has approved such amendment.

16. Purpose of Agreement. The purpose and intent of this Agreement is to prohibit the sale of individual subdivision lots to the public prior to the completion of the subdivision improvements that are associated with such lots. The sale or conveyance of such lots without the necessary improvements is harmful to the public and places excessive burdens on the City of Benson. The terms and conditions of this Agreement shall be construed and interpreted as broadly as necessary to accomplish this purpose.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates shown following their respective names below.

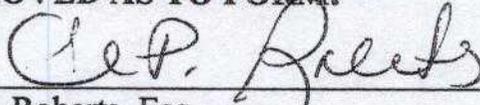
ATTEST:



Karen Johnson
City of Benson Clerk

Date 9/20/05

APPROVED AS TO FORM:

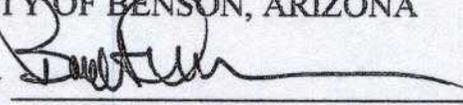


Ann P. Roberts, Esq.
City of Benson Attorney

Date 9/20/05

"City of Benson"

CITY OF BENSON, ARIZONA

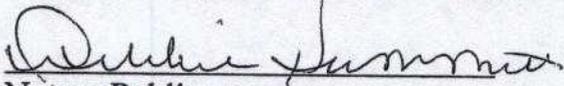
By 

Boyd Kraemer
City of Benson City Manager

Date 9/20/05

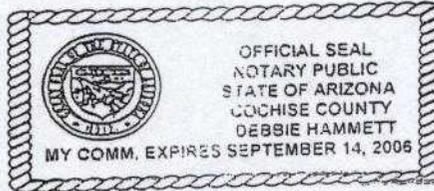
STATE OF ARIZONA)
) ss.
COUNTY OF)

On this the 14 day of September, 2005, before me, the undersigned officer, personally appeared by ARTHUR L. BALE who acknowledged himself to be the Manager of Cochise Terrace, L. L. C., an Arizona limited liability company, and that he as such officer being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.



Notary Public

My Commission Expires: 9-14-06



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**TRUST ASSURANCE AGREEMENT
FOR COMPLETION OF SUBDIVISION IMPROVEMENTS**

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RECITALS

A. Trustee is owner of a certain parcel of real property (the "Property") located in the City of Benson, Arizona, and described in Exhibit "A" attached hereto. The property is the subject of a subdivision plat identified as: Cochise Terrace R. V. Resort Ranch, recorded in the Office of the Cochise County Recorder, State of Arizona, in Book 48 of Maps and Plats, Pages 41 hereinafter referred to as the "Subdivision"; and¹⁵ 42 & 42A

B. Beneficiary has established Trust No. 308560 for the purpose of developing a subdivision of the City of Benson and has conveyed legal title to the Property to Trustee.

C. The parties hereto wish to establish specific terms, conditions and guidelines for compliance with the provision of A.R.S. § 11-806.01 and the City of Benson Subdivision Regulations.

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FEE # 051039965
OFFICIAL RECORDS
COCHISE COUNTY
DATE 10/18/05 HOUR 4
REQUEST OF
PIONEER TITLE AGENCY
CHRISTINE RHODES-RECORDER
FEE 12.00 PAGES 8

051039965

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates shown following their respective names below.

ATTEST:

Karen Johnson
Karen Johnson
City of Benson Clerk

Date 9/20/05

APPROVED AS TO FORM:

Ann P. Roberts
Ann P. Roberts, Esq.
City of Benson Attorney

Date 9/20/05

"City of Benson"

CITY OF BENSON, ARIZONA

By Boyd Kraemer

Boyd Kraemer
City of Benson City Manager

Date 9/20/05

1-520-586-2292

051039965

STATE OF ARIZONA)
) ss.
COUNTY OF COCHISE)

On this the 14 day of September, 2005, before me, the undersigned
officer, personally appeared by ARTHUR L. BALE who acknowledged himself to
be the Manager of Cochise Terrace, L. L. C., an Arizona limited liability
company, and that he as such officer being authorized so to do, executed the
foregoing instrument for the purposes therein contained by signing the name of the
corporation by himself as such officer.

Debbie Johnson

Notary Public

My Commission Expires: 9-14-06



051039965

EXHIBIT "A"

LOTS 76 - 163 AND PORTION OF COMMON AREAS B & C OF COCHISE
TERRACE AS SHOWN IN BOOK 13 OF MAPS, PAGES 42 AND 42A WHICH IS A
RESUBDIVISION OF PLAT MAP RECORDED AT BOOK 13, PAGE 91 AND 91C
OF OFFICIAL RECORDS OF COCHISE COUNTY, ARIZONA.

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