



## BOARD OF SUPERVISORS AGENDA ITEM REPORT

Requested Board Meeting Date: July 2, 2019

**Title:** Rocking K South Neighborhood 1 Parcel E-2, Lots 1-159, Common Areas "A" & "B"- P18FP00009

### Introduction/Background:

This is a proposed subdivision within Rocking K South Neighborhood 1

### Discussion:

The Final Plat and Assurance Agreement are being presented for approval and signatures.

### Conclusion:

Final Plat Rocking K South Neighborhood 1 Parcel E-2 and Assurance Agreement for approval and signatures

### Recommendation:

Staff recommends approval.

### Fiscal Impact:

N/A

### Board of Supervisor District:

☐ 1      ☐ 2      ☐ 3      ☒ 4      ☐ 5      ☐ All

Department: Development Services Telephone: 520-724-9900

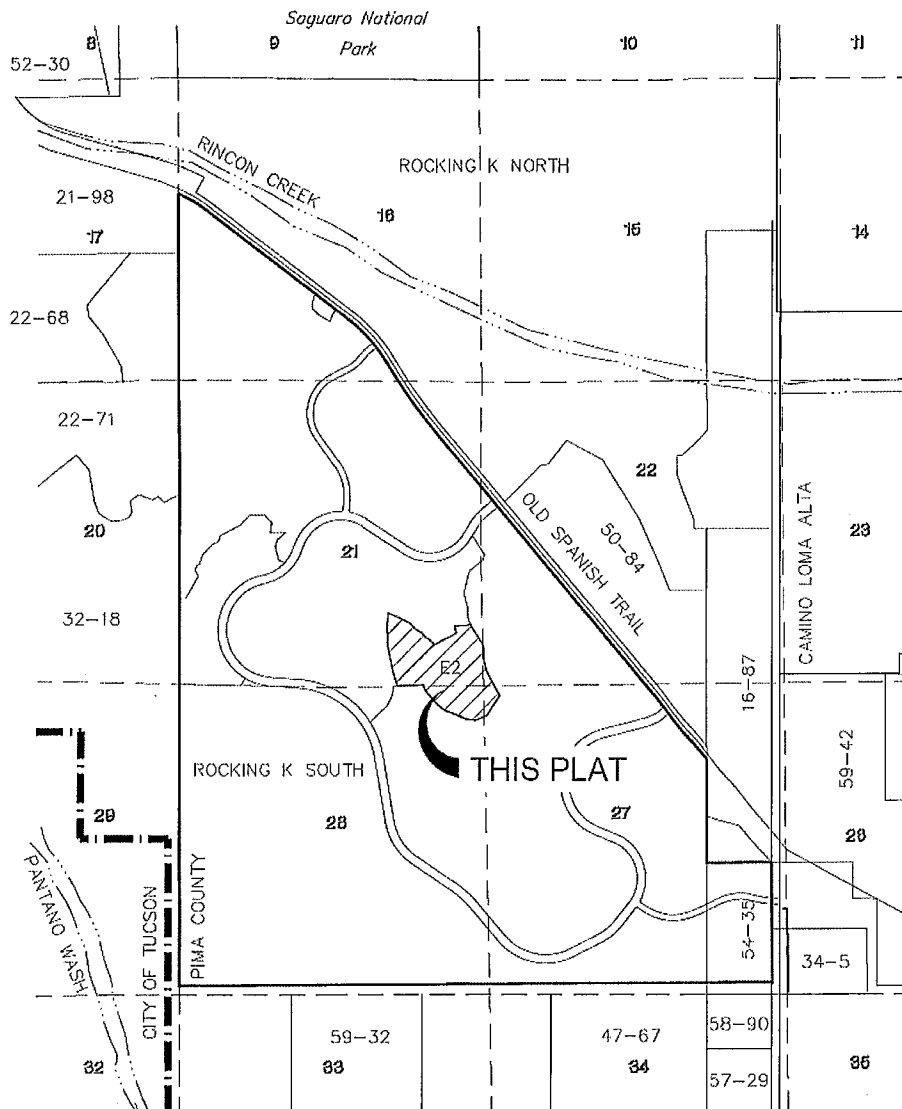
Contact: Angie Rangel Telephone: 520-724-6976

Department Director Signature/Date: Lauren A. Ortega 6/6/19

Deputy County Administrator Signature/Date: [Signature] 6/13/19

County Administrator Signature/Date: C. R. DeBrey 6/13/19

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#### LOCATION MAP

LOCATED IN PORTIONS OF SECTIONS 21, 22, 27 AND 28  
TOWNSHIP 15 SOUTH, RANGE 16 EAST, G&SRM  
PIMA COUNTY, ARIZONA  
SCALE: 3" = 1 MILE



P18FP00009

Rocking K South Neighborhood 1 Parcel E-2

Lots 1-159, Common Areas "A" & "B"

**ASSURANCE AGREEMENT FOR CONSTRUCTION OF  
SUBDIVISION IMPROVEMENTS** (Third Party Trust)  
[P18FP00009]

THIS AGREEMENT is made and entered into by and between SEE ATTACHED LIST OF SUBDIVIDERS or successors in interest ("Subdivider"), FIDELITY NATIONAL TITLE AGENCY, INC., an Arizona corporation ("Trustee"), as trustee under Trust No. 60,380; and Pima County, Arizona ("County").

**1. RECITALS**

1.1. Subdivider is the beneficiary and Trustee is the trustee of a trust which owns land ("the Land") located in Pima County, Arizona and described in paragraph 2.1 of this agreement.

1.2. County, Subdivider and Trustee wish to establish specific terms, conditions, and guidelines relating to the subdivision of the Land and construction of related improvements to comply with A.R.S. § 11-821.

**2. AGREEMENT**

Based on the foregoing recitals, which are incorporated here as the intent of the parties, and in consideration of County's approval of a final plat for the Land, County, Subdivider and Trustee agree as follows:

2.1. *Property Description.* The Land is all of the real property which is the subject of the subdivision plat ("the Subdivision Plat") identified as ROCKING K SOUTH NEIGHBORHOOD 1 PARCEL E-2 Lots 1-159, Common Area "A" (Drainage and Open Space), & Common Area "B" (Natural Open Space and Riparian Mitigation) recorded in Sequence number \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in the Office of the Pima County Recorder.

2.2. *Construction of Subdivision Improvements.* As a condition of subdivision approval, Subdivider hereby agrees to construct all subdivision improvements ("the Subdivision Improvements") contemplated by the Subdivision Plat, rezoning conditions, and any associated site construction permits, including but not limited to onsite and offsite streets, sanitary sewers (if necessary), water and electric utilities, drainage and flood control improvements, parks, trails or other recreational facilities, other required infrastructure, and riparian habitat mitigation or payment of the riparian habitat mitigation in-lieu fee.

2.3. *Existing Utilities.* Any relocation or modification of existing utilities or public improvements required in order to construct the Subdivision Improvements shall be done at no expense to the public. Subdividers performance of this requirement shall be considered in determining whether to release assurances under paragraphs 2.5 and 2.6.

2.4. *Assurance of Construction.* This agreement is submitted as an assurance that Subdivider will construct the Subdivision Improvements, as required by A.R.S. § 11-821 and Pima County Zoning Code Chapter 18.69.

2.5. *Limitation on Transfer of Title.* Trustee shall not convey title to any of the Land without obtaining prior written approval from County in the form of a Release of Assurance. A Release of Assurance shall not be provided by County until the Subdivision Improvements are completed in accordance with paragraph 2.12.

2.6. *Partial Release of Assurances.* County shall issue a Release of Assurance for some of the lots depicted on the Subdivision Plat if all of the following have occurred:

A. All of the Subdivision Improvements required in connection with the released lots have been completed in accordance with paragraph 2.12, and

B. County finds that the released lots and the Subdivision Improvements required in connection with them can be used and maintained separately from the Subdivision Improvements not yet completed in accordance with paragraph 2.12, and

C. Recreation area in-lieu fee, if applicable, has been paid to the county for the entire subdivision, prior to a release of greater than 75% of total subdivision lots.

2.7. *Deposit Receipt Agreements.* Notwithstanding paragraph 2.5, Trustee may enter into a deposit receipt agreement for the sale of the Land or any portion of it if the agreement clearly states that no portion of the Land shall be conveyed until Subdivider performs its obligations under this agreement.

2.8. *Bulk Sales.* Notwithstanding paragraph 2.5, Trustee may sell and convey all of the Land in one transaction to a single purchaser who has entered into a satisfactory assurance agreement with County, assuring completion of the Subdivision Improvements.

2.9. *Conveyance Out of Trust for the Purpose of Encumbrance.* Notwithstanding paragraph 2.5, Trustee may convey all or part of the Land to the Subdivider for the sole purpose of encumbering the Land by the recording of mortgages or deeds of trust, provided that the Land is thereafter immediately reconveyed into the trust.

2.10. *Real Property Taxes.* All real property taxes on the Land shall be paid before the taxes are delinquent as defined by A.R.S. 42-18052(B). If the real property taxes on the Land, including any lot or portion of common area, become delinquent, this agreement will be in default.

2.11. *Substitution of Assurances.* Subdivider may submit substitute assurances in a form and amount acceptable to County at any time during which this agreement is not in default.

2.12. *Completion of the Subdivision Improvements.* The Subdivision Improvements shall be completed by Subdivider not more than four years after the date of this agreement. The Subdivision Improvements shall not be considered completed until after they have been constructed in accordance with the Subdivision Plat, rezoning conditions, associated site construction permits, and after County has inspected them and finds them to be in compliance with the plans.

2.13. *Acceptance of the Subdivision Improvements.* County shall not accept maintenance responsibility for any of the Subdivision Improvements unless and until all of the following have occurred:

- A. They have been completed in accordance with paragraph 2.12.
- B. They have been dedicated to County by the Subdivision Plat or by some other instrument of record.
- C. The dedication has been accepted by the Pima County Board of Supervisors as evidenced by approval of the dedication on the Subdivision Plat or by some other formal action.

2.14. *Default, Non-Compliance; County's Options.* This agreement is in default if either the Subdivider or Trustee fails to comply with obligations under this agreement. If this agreement is in default, the County may exercise any or all options below at its sole discretion:

A. The County may re-plat all or a portion of the Land for the purpose of returning the portions of Land which are the subject of the re-plat to approximately the same boundary configurations of record which existed before the recording of the Subdivision Plat. The Subdivider authorizes the County to execute, on behalf of Subdivider, the re-plat described in this section. The re-plat may exclude any dedications to the public which were made on the Subdivision Plat which are necessary to serve either portions of the Land which are not re-platted, or to serve the public. Subdivider shall pay the reasonable costs incurred in re-plating. Notice of default and intent to re-plat will be sent to the last known address of Subdivider and Trustee by certified mail not less than thirty days before County exercises its option to re-plat under this paragraph.

B. If site conditions change after the Subdivider fails to comply with this agreement, the County may require that Subdivider submit evidence that the Tentative and Final Plat comply with current regulations, under current site conditions. If the County determines that the Tentative Plat or Final Plat does not comply, Subdivider shall submit revisions to the plat, to the County with applicable fees. If the revisions are approved by the Board of Supervisors, the date specified in Section 2.12 of this agreement may be extended by up to four years from the approval date. This subsection is not applicable to Block Plats for master planned communities.

C. The County may withhold the issuance of permits for building regulated by Title 15 of the Pima County Code or work regulated by Title 18 of the Pima County Code.

2.15. *Incorporation and Annexation.* If the Land is incorporated as or annexed by a city or town, the city or town shall automatically succeed to all benefits and duties of County under this agreement.

2.16. *Termination.* This agreement shall remain in full force and effect until one of the following has occurred:

A. The Subdivision Improvements have been completed and approved by County in accordance with paragraph 2.11 and a Release of Assurances with respect to all the Land has been recorded in the Office of the Pima County Recorder in accordance with paragraph 2.5; or

B. A new subdivision plat has been recorded for the Land in compliance with any and all applicable laws and regulations; or

C. A substitute assurance agreement has been executed by and between Subdivider and County in accordance with paragraph 2.11.

2.17. *Effective Date.* This Agreement is effective on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, which is the date of approval of this agreement by the Pima County Board of Supervisors.

PIMA COUNTY, ARIZONA

SUBDIVIDER:SEE ATTACHED SIGNATURE PAGES

\_\_\_\_\_  
CHAIRMAN, Board of Supervisors

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

Its: VICE PRESIDENT

ATTEST:

TRUSTEE: FIDELITY NATIONAL TITLE AGENCY, INC., an Arizona corporation, as Trustee under Trust No 60,380, and not in its corporate capacity

\_\_\_\_\_  
Clerk of the Board

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

Its: TRUST OFFICER

STATE OF ARIZONA           )  
County of Pima            )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ of \_\_\_\_\_  
SEE ATTACHED NOTARY PAGES ("Subdivider"),  
an Arizona corporation, on behalf of the corporation.

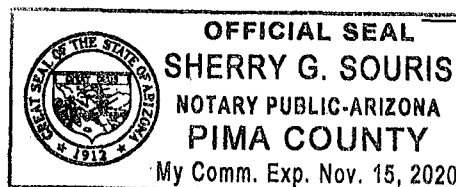
\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

STATE OF ARIZONA           )  
County of Pima            )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of JULY, 2018, by MARTHA L. HILL, TRUST OFFICER of FIDELITY NATIONAL TITLE AGENCY, INC. ("Trustee"), an Arizona corporation, on behalf of the corporation, as trustee under trust number 60,380.

My Commission Expires:  
\_\_\_\_\_



\_\_\_\_\_  
Notary Public

EXHIBIT "A"

SIGNATURES FOR PAGES FOR ASSURANCE AGREEMENT

FIDELITY NATIONAL TITLE AGENCY, INC.,  
AN ARIZONA CORPORATION AS TRUSTEE  
UNDER TRUST NUMBER 10,730, AND NOT  
IN ITS CORPORATE CAPACITY

BY: *Martha L Hill*  
ITS: TRUST OFFICER

FIDELITY NATIONAL TITLE AGENCY, INC.,  
AN ARIZONA CORPORATION AS TRUSTEE  
UNDER TRUST NUMBER 10,773, AND NOT  
IN ITS CORPORATE CAPACITY

BY: *Martha L Hill*  
ITS: TRUST OFFICER

FIDELITY NATIONAL TITLE AGENCY, INC.,  
AN ARIZONA CORPORATION AS TRUSTEE  
UNDER TRUST NUMBER 10,871, AND NOT  
IN ITS CORPORATE CAPACITY

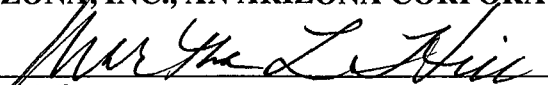
BY: *Martha L Hill*  
ITS: TRUST OFFICER

FIDELITY NATIONAL TITLE AGENCY, INC.,  
AN ARIZONA CORPORATION AS TRUSTEE  
UNDER TRUST NUMBER 30,096, AND NOT  
IN ITS CORPORATE CAPACITY


BY: *Martha L Hill*  
ITS: TRUST OFFICER

CONTINUED SIGNATURE PAGES FOR ASSURANCE AGREEMENT

**FIDELITY NATIONAL TITLE AGENCY, INC.,  
SUCCESSOR TO TICOR TITLE AGENCY OF  
ARIZONA, INC. CHICAGO TITLE INSURANCE  
COMPANY, A MISSOURI CORPORATION AS TRUSTEE  
UNDER TRUST NUMBER 12099, AND NOT  
IN ITS CORPORATE CAPACITY SUCCESSOR  
BY MERGER BY TICOR TITLE AGENCY OF  
ARIZONA, INC., AN ARIZONA CORPORATION**


BY:   
ITS: TRUST OFFICER

**AURIGA PROPERTIES, INC., AN ARIZONA CORPORATION**

BY:   
ITS: VICE PRESIDENT

**TUCSON MOUNTAIN INVESTORS L.L.C., AN  
ARIZONA LIMITED LIABILITY COMPANY**

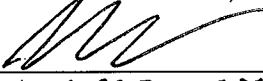
By: Diamond Ventures, Inc., an Arizona corporation as Manager

By:   
Its: VICE PRESIDENT

CONTINUED SIGNATURE PAGES FOR ASSURANCE AGREEMENT

**ROCKING K HOLDINGS LIMITED PARTNERSHIP, AN  
ARIZONA LIMITED PARTNERSHIP**

By Diamond Ventures Inc., an Arizona corporation as General Partner

By:   
Its: VICE PRESIDENT



CONTINUED SIGNATURE PAGES FOR ASSURANCE AGREEMENT

**RINCON VALLEY HOLDINGS LIMITED PARTNERSHIP  
AN ARIZONA LIMITED PARTNERSHIP**

By Rincon Valley Properties, Inc. an Arizona corporation as General Partner

By: [Signature]  
Its: VICE PRESIDENT

**ROCKING K DEVELOPMENT COMPANY, INC.,  
AN ARIZONA CORPORATION**

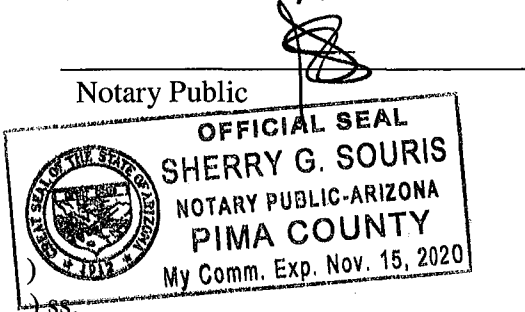
BY: [Signature]  
ITS: VICE PRESIDENT

STATE OF ARIZONA     )  
  ) ss.  
COUNTY OF Pima     )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of JULY 2018 by MARTHA L. HILL as TRUST OFFICER FOR FIDELITY NATIONAL TITLE AGENCY.

My Commission Expires \_\_\_\_\_

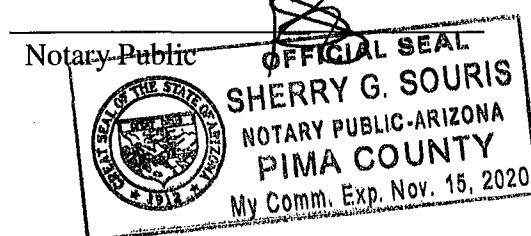
STATE OF ARIZONA     )  
  ) ss.  
COUNTY OF Pima     )



The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of JULY, 2018 by MARTHA L. HILL as TRUST OFFICER FOR FIDELITY NATIONAL TITLE AGENCY.

My Commission Expires \_\_\_\_\_

STATE OF ARIZONA     )  
  ) ss.  
COUNTY OF Pima     )

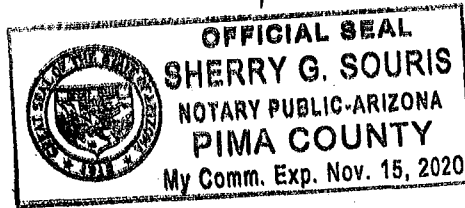


STATE OF ARIZONA )  
 )  
COUNTY OF Pima )

The foregoing instrument was acknowledged before me this 20th day of July, 2018 by Martha L. Hill as Trust Officer  
For Fidelity National Title Agency, Inc., an Arizona corporation.

Notary Public

## My Commission Expires



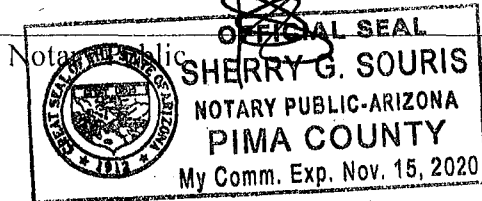
STATE OF ARIZONA

COUNTY OF Pima

The foregoing instrument was acknowledged before me this 20th day of July, 2018 by Martha L. Hill as Trust Officer for Fidelity National Title Agency, Inc., an Arizona corporation.

Notary Public

## My Commission Expires



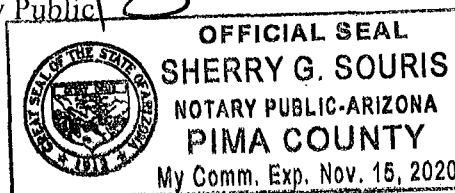
STATE OF ARIZONA

COUNTY OF Pima

The foregoing instrument was acknowledged before me this 20th day of July, 2018 by Martha L. Hill as Trust Officer for Fidelity National Title Agency, Inc., an Arizona corporation.

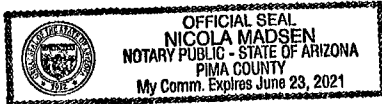
Notary Public

## My Commission Expires



STATE OF ARIZONA     )  
  ) ss.  
COUNTY OF Pima     )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of  
July, 2018 by CHAD KOLODISNER as VICE PRESIDENT

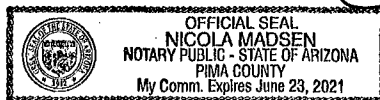


Nicola Madsen  
Notary Public

My Commission Expires  
6/23/2021

STATE OF ARIZONA     )  
  ) ss.  
COUNTY OF Pima     )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of  
July, 2018 by CHAD KOLODISNER as VICE PRESIDENT

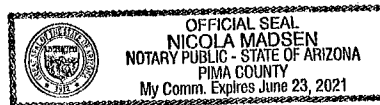


Nicola Madsen  
Notary Public

My Commission Expires  
6/23/2021

STATE OF ARIZONA     )  
  ) ss.  
COUNTY OF Pima     )

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July, 2018 by CHAD KOLODISNER as VICE PRESIDENT

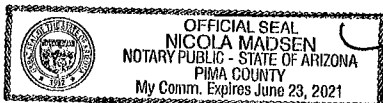


Nicola Madsen  
Notary Public

My Commission Expires 6/23/2021

STATE OF ARIZONA     )  
  ) ss.  
COUNTY OF Pima     )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of  
JULY, 2018 by CHAD KOLODISNER as VICE PRESIDENT



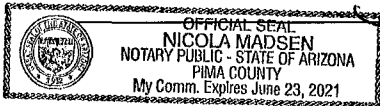
Nicola Madsen  
Notary Public

My Commission Expires

6/23/2021

STATE OF ARIZONA     )  
  ) ss.  
COUNTY OF Pima     )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of  
JULY, 2018 by CHAD KOLODISNER as VICE PRESIDENT



Nicola Madsen  
Notary Public

My Commission Expires

6/23/2021