DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
THE OAKS

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS is made on the ___ day of ___ , 2007, by CASTLE & COOKE ARIZONA, INC., an Arizona corporation (hereinafter referred to as the "Declarant").

RECITALS

A. The Declarant is the Owner of the real property ("Property") located in Cochise County, Arizona, which is intended to be developed under the name "The Oaks" and is more particularly described on Exhibit A hereto.

B. Declarant intends by the recordation of this Declaration to create a general plan of development for the community known as "The Oaks." Declarant further intends that the Property shall be held, sold and conveyed subject to the easements, restrictions, covenants and conditions contained herein, which: (i) are for the purpose of protecting the value and attractiveness of the property; (ii) shall run with all of the real property comprising the Property; (iii) shall be binding on all parties having any right, or interest in the Property, or any part thereof; and (iv) shall inure to the benefit of the above-mentioned parties and their successors and assigns.

C. An Arizona nonprofit corporation known as "The Oaks Homeowners Association, Inc." shall be formed which shall be the "Association" for the purposes of, among other things: (i) managing all Areas of Association Responsibility; (ii) the efficient preservation of values and amenities of the Property; (iii) establishing, collecting, disbursing and enforcing the Assessments created herein; and (iv) entering into agreements, covenants, and contracts with adjacent owners of real property to address issues of a common concern and for use and other restrictions imposed on various individuals and portions of The Oaks.

NOW, THEREFORE, Declarant hereby declares, covenants and agrees as follows:

ARTICLE 1
DEFINITIONS

The terms used in this Declaration and the Governing Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as set forth below:

1.1 "Adjustment Date" shall mean January 1 of each year during the period in which this Declaration remains in effect.

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1.2 "Agency" or "Agencies" shall mean the Veterans Administration ("VA") and any other governmental agency which may have jurisdiction over the financing established by the Declarant or Developer Owners associated with the Property.

1.3 "Annual Assessments" shall mean the annual assessments levied by the Board pursuant to paragraph 8.2 of this Declaration.

1.4 "Architectural Review Committee" or "ARC" means the committee established pursuant to paragraph 5.3 of this Declaration.

1.5 "Architectural Design Guidelines" or "Guidelines" means the rules and regulations adopted by the Architectural Review Committee, as such rules may be amended and supplemented from time to time.

1.6 "Areas of Association Responsibility" shall mean all land or improvements situated within the boundaries of the Property which the Association acknowledges in a recorded document (including this Declaration) is land or an improvement which may or may not be owned by the Association and which is to be improved, maintained, repaired, and/or replaced by the Association.

1.7 "Articles" means the Articles of Incorporation of the Association which have been or shall be filed in the Office of the Arizona Corporation Commission, as such Articles may be amended from time to time.

1.8 "Assessments" shall mean all Annual Assessments, Capital Improvement Assessments, Maintenance Assessments, and Special Assessments payable to the Association.

1.9 "Association" means The Oaks Homeowners Association, Inc., an Arizona nonprofit corporation, its successors and assigns.

1.10 "Board" means the Board of Directors of the Association.

1.11 "Bylaws" means the Bylaws of the Association, as such Bylaws may be amended or restated from time to time.

1.12 "Capital Improvement Assessment" shall mean the assessments levied by the Board pursuant to the provisions of paragraph 8.6 hereof.

1.13 "Common Area" or "Common Areas" shall mean all real property and the Improvements or amenities thereon, all personal property, all easements, licenses, and facilities, which shall from time to time be constructed, owned, controlled, or operated by the Association in and for the common use and enjoyment of the Owners, including, but not limited to the Common Areas shown on the Plat, any additional Common Areas as shown on a plat for any other part of the Property, or described on Exhibit B hereto.

1.14 "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Property. Such standard shall be that which has been established by the Declarant, and/or the Architectural Review Committee, and may be more specifically determined by the Board.

1.15 "Declarant" means Castle & Cooke Arizona, Inc., an Arizona corporation, its successors and any person or entity to whom it may expressly, in writing, assign its rights, in whole or in part, under this Declaration.
1.16 “Declaration” means the covenants, conditions, restrictions, and easements herein set forth in this entire document, as such Declaration may be amended or restated from time to time.

1.17 “Developer Owner” shall mean a Person in the business of developing and/or selling real property, who has acquired one or more Lots in connection with and in the course of business, for the purpose of developing or selling such Lots and who has been designated as such in writing by the Declarant.

1.18 “Dwelling Unit” shall mean any building, or part thereof, situated upon a Lot and intended for use and occupancy as a residence by a Single Family.

1.19 “Event of Foreclosure” shall mean the foreclosure or the transfer of title by trustee’s deed at a trustee’s sale in regard to a mortgage, deed of trust, or other encumbrance superior in priority to an Assessment Lien under paragraph 8.16 hereof.

1.20 “Fair Housing Act” shall mean 42 U.S.C. § 3601 et seq., as may be amended from time to time, and is further interpreted by Rules and Regulations of the Department of Housing and Urban Development, which laws and regulations have been adopted in substantial conformity by A.R.S. § 41-1491.04 as may be amended from time to time.

1.21 “First Mortgage” shall mean the holder of any mortgage under which the interests of any Owner of a Lot is encumbered and which mortgage has first and paramount priority, subject only to the lien or general or ad valorem taxes and assessments and such other matters as are recognized in such First Mortgage as permitted title exceptions. “First Mortgagee” shall mean the holder of a First Mortgage.

1.22 “Governing Documents” shall mean this Declaration, the Bylaws, the Articles, the Architectural Design Guidelines, and the Association Rules that may be adopted by the Board, as they may be amended from time to time.

1.23 “Improvement” or “Improvements” shall mean any and all alterations of the Property, other than interior modifications or existing structures, including, but not limited to, a Dwelling Unit, structures, buildings, outbuildings, patios, verandas, garages, guesthouses, storage sheds, play houses, swimming pools, walls, fences, paving, landscaping, driveways, private roads whether intended to be temporary or permanent. It shall also include all acts done to exteriors, including changes in color whether for maintenance, repair or alteration.

1.24 “Lot” shall mean any area of real property designated as a “Lot” as shown on the Plat or any subsequent plats.

1.25 “Maintenance Assessment” shall mean the assessments, if any, levied by the Board pursuant to the provisions of paragraph 8.8 of this Declaration.

1.26 “Maximum Annual Assessment” shall mean the amount established in accordance with paragraph 8.5 of this Declaration.

1.27 “Member” shall mean any Owner, including the Declarant, for so long as Declarant is a Class A or a Class B Member.

1.28 “Membership Fee” will mean a non-refundable fee in the amount of twenty-five percent (25%) of the then applicable Annual Assessment to establish an operating fund and reserve account for the benefit of the Association payable by each Owner to the Association one (1) time at the close of escrow, for each new Lot purchased from Declarant.
and all subsequent resales of Lots. The Membership Fee will be payable in addition to the Annual Assessment amount to be paid by such Owner as provided in paragraph 8.2.

1.29 "Non-Developer Owner" shall mean any Owner who is not a Developer Owner.

1.30 "Occupant" shall mean any Person, other than an Owner, Occupying a Lot, or any portion thereof, or building or structure thereon, as a Resident, tenant, licensee, or otherwise, other than on a merely transient basis.

1.31 "Owner" shall mean the Record holder of legal title to the fee simple interest in any Lot or in the case of a Recorded "contract" (as that term is defined in A.R.S. § 33-741(2)), the holder of Record of the purchaser's or vendee's interest under said contract, but excluding others who sold such title merely as security. If fee simple title to a Lot is vested of Record in a trustee pursuant to A.R.S. § 33-801 et seq. for purposes of this Declaration, legal title shall be deemed to be held by trustor (or the trustor's successor of Record), and not by the trustee. An Owner shall include any Person who holds Record title to a Lot in joint ownership or as an undivided fee interest.

1.32 "Person" shall mean a natural person, a corporation, a partnership, a trustee or any other legal entity.

1.33 "Plat" shall mean any plat or survey affecting the Property filed in the office of the Recorder for Cochise County, Arizona, or any preliminary plat so filed, as such plats or surveys may be amended from time to time.

1.34 "Private Drainage Easement" shall mean easement as defined in paragraph 4.5 below.

1.35 "Property" shall mean the real property referenced in Recital "A," above, and any land annexed into the Property pursuant to Section 16.13.

1.36 "Record," "Recording," and "Recorded" shall mean placing or having placed a document of public record in the Official Records of Cochise County, Arizona.

1.37 "Resident" shall mean:

1.37.1 Each Tenant or Lessee who resides on the Property and the members of the immediate family of each Tenant who resides on the Property;

1.37.2 Each Owner who resides on the Property and the members of the immediate family of each Owner who resides on the Property; and

1.37.3 Such persons as the Board, in its absolute discretion, may authorize, including, without limitation, guests of an Owner or a Tenant.

1.38 "Single Family" shall mean a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) unrelated persons which maintain a common household as a single housekeeping unit provided, however, such definition shall be amended from time to time if required in order to comply with the Fair Housing Act.

1.39 "Special Assessments" shall mean the assessments, if any, levied by the Board pursuant to paragraph 8.10 hereof.
1.40 “Tenant” shall mean any person who occupies property located within the Property under any type of leasing arrangement but is not included within the definition of a Lessee.

1.41 “Visible from Neighboring Property” shall mean, with respect to any given object, that such object would be visible to an individual whose eyes are up to six (6) feet above the ground and who is standing at grade level on property adjoining the subject property at a location anywhere up to twenty-five (25) feet from the property line between the subject property and the neighboring property.

ARTICLE 2
PROPERTY AND PERSONS BOUND BY THIS DECLARATION/AMENDMENT AND RESTATEMENT

2.1 General Declaration. Declarant hereby declares that all of the Property is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon, or otherwise used, improved or transferred, in whole or in part, subject to this Declaration, as amended or modified from time to time.

This Declaration is declared and agreed to be in furtherance of a general plan for the development and sale of the Property and is established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property. This Declaration shall run with the Property for all purposes and shall be binding upon and inure to the benefit of Declarant and all Owners and Occupants of the Property and their successors in interest, whether or not stated in any document or deed transferring any interest in any Lot to or from such Owners or Occupants.

2.2 Association Bound. This Declaration shall be binding upon and benefit the Association, and its successors and assigns. If there is any conflict between the terms of and provisions of this Declaration and any other Governing Documents, the terms and provisions of this Declaration shall control.

ARTICLE 3
INTENTIONALLY DELETED

ARTICLE 4
EASEMENTS AND RIGHTS OF ENJOYMENT

4.1 Easements and Rights of Enjoyment. Each Owner shall have a nonexclusive easement for the use and enjoyment in and to the Common Areas, which nonexclusive easement shall be appurtenant to and shall pass with the title to each Owner’s Lot. All Occupants shall have a nonexclusive, nontransferable temporary license to use and enjoy the Common Areas so long as they remain Occupants. The foregoing grants and rights are subject, among other things, to the following limitations:

4.1.1 The contents of the Governing Documents.
4.1.2 The right of the Association to suspend the voting rights and the rights to use and enjoyment of the Common Areas of any Owner or Occupant, as the case may be:

i. for any period during which an Assessment remains delinquent;

ii. for a period not to exceed sixty (60) days for any infraction of the Governing Documents or any rules and regulations adopted by the Association thereunder; or

iii. for successive sixty (60) day periods if any such delinquency or infraction is not corrected during any preceding suspension period.

4.1.3 Any Owner or Occupant, in accordance with the rules and regulations of the Association, may delegate his or her rights of use and enjoyment in the Common Areas to the members of his or her family or his or her Occupants or guests, subject to the limitations set forth in this Declaration and the rules and regulations of the Association.

4.1.4 The right of the Association to limit the number of guests of an Owner or Occupant who may use the Common Areas.

4.1.5 The right of the Association to regulate the use and operation of the Common Areas and to convey, transfer or assign any Association-owned and/or operated facility on the Common Area in accordance with this Declaration.

4.1.6 The right of the Declarant and/or the Association to provide vehicular access control gates limiting the access to the private streets and roads within the Property.

4.2 Recorded Easements. The Property, and all portions thereof, shall be subject to all easements shown on any Recorded Plat affecting the Property, or any portion thereof, and to any other easements of record or of use as of the date of Recordation of the Declaration.

4.3 Easements for Encroachments. The Property, and all portions thereof, shall be subject to an easement of up to ten (10) feet from the Lot lines or Property boundaries for the actual extent of encroachments created by construction as designed or constructed by the Declarant or any Owner and for settling, shifting and movement of any portion of the Property, except that no such easement is created for an encroachment, which is the result of willful conduct on the part of Declarant, an Owner, a Tenant, the Association, or any other Person or entity. Such encroachments shall not be considered to be encumbrances upon any part of the Property Encroachments referred to include, but are not limited to, encroachments caused by error in the original construction of Improvements on any Lot, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of any Improvements on the Property.

4.4 Emergency Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon all streets and upon the Property in the proper performance of their duties.

4.5 Maintenance Easement. An easement is hereby reserved to the Declarant, and granted to the Association, and any member of the Board and their respective officers, agents, employees, and assigns upon, across, over, in, and under the Lots and a right to make such use
of the Lots as may be necessary or appropriate to make emergency repairs or to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Governing Documents, included within the foregoing grant of easement is the right to enter upon any Lot for the purpose of performing maintenance to the landscaping or the exterior of Improvements to such Lot as required by the Governing Documents and by such entry shall not be guilty of trespass. Such easement shall include the right of access to any Areas of Association Responsibility for the repair and maintenance of the same, including any Improvements to such Areas of Association Responsibility.

4.6 Drainage Easements. An easement is hereby reserved to Declarant and granted to the Association, its officers, agents, employees, successors, and assigns to enter upon, across, over, in, and under any portion of the Property for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of the Property so as to improve the drainage of water. The Association and the Declarant, as applicable, to the extent possible, prosecute such drainage work promptly and expeditiously, and restore any areas affected by such work to a sightly and usable condition as soon as reasonably possible following such work, Declarant, or its officers, agents, employees, successors, and assigns must inform and obtain the approval of the Board prior to undertaking such drainage work, which approval shall not be unreasonably withheld. The Declarant may in a Recorded written document, including the Plat, establish a Private Drainage Easement. Lots containing a Private Drainage Easement shall be maintained by the Owner over whose Lot the easement is located. No improvement shall be placed or permitted to remain which may change the direction of flow or obstruct or retard the flow of water through the drainage pipes or channels within the Private Drainage Easement.

4.7 Easements for Utilities.

4.7.1 The Declarant reserves for itself, for so long as the Declarant owns any Property, and grants to the Association and all utility providers, perpetual nonexclusive easements throughout all of the Property (but not through a structure) to the extent reasonably necessary for the purpose of:

i. installing utilities and infrastructure to serve the Property or property which the Declarant owns or within public rights-of-way or easements reserved for such purpose on recorded plats;

ii. inspecting, maintaining, repairing, and replacing utilities and infrastructure to serve the Property or property which Declarant owns, including cable and other systems for sending and receiving data and/or other electronic signals, vehicular access and similar systems, walkways, pathways and trails, drainage systems and/or streetlights, and signage; and

iii. access to read utility meters.

4.7.2 Declarant also reserves for itself for so long as the Declarant owns Property or holds the right to own any Property, the nonexclusive right and power to grant and Record such specific easements as may be necessary, in the sole discretion of the Declarant, in connection with the orderly development of the Property. The Owner of any property to be burdened by any easement granted pursuant to this subparagraph 4.7.2 shall be given written notice in advance of the grant. The location
of the easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed or conditioned.

4.7.3 All work associated with the exercise of the easements described in subparagraphs 4.7.1 and 4.7.2 shall be performed in such a manner as to reasonably minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the Dwelling Units, nor shall it unreasonably interfere with the use of any Dwelling Units and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or Occupant.

4.8 Reservation of Easements, Exceptions, and Exclusions. Declarant reserves to itself and hereby grants to the Association the concurrent right to establish from time to time, by declaration or otherwise, utility and other easements, permits, or licenses over the Common Area for purposes including, but not limited to, streets, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions for the best interest of all the Owners and the Association, in order to serve all the Owners within the Property as initially built and expanded. Declarant further reserves the right to establish from time to time, by dedication or otherwise, utility and other easements, and to create other reservations, exceptions and exclusions over or under the Common Area convenient or necessary for the use and operation of any other property of the Declarant.

4.9 Reservation of Easement for Common or Perimeter Wall(s) and/or Gates. Declarant hereby reserves unto itself and the Association the right to construct a perimeter wall around the Property, or any portion of the Property, and any vehicular access control gates and/or gate houses as the Declarant and/or the Association deems, in their sole discretion, to be in the best interest of the Owners: subject, however, to the provisions of paragraph 10.5 below. If any such perimeter walls, vehicular access control gates and/or gate houses are constructed, such areas shall become Areas of Association Responsibility. In addition, the Declarant reserves unto itself and/or the Association the right to access any portion of the Property to maintain said walls, vehicular access control gates and/or gate houses, including the reasonable landscaping of such Improvements.

ARTICLE 5
ARCHITECTURAL REVIEW
AND LANDSCAPING RESTRICTIONS AND CONTROL

5.1 General and Obligation to Obtain Approval. Except as otherwise provided in this Declaration or the Architectural Design Guidelines, without the prior written approval of the Architectural Review Committee (hereinafter the “ARC”) of plans and specifications (including sample of building materials, colors, reflectivity of colors, architectural detailing and elevations of each side of a Dwelling Unit, and other items as may be set forth in the Architectural Design Guidelines) prepared and submitted to the ARC in accordance with the provisions of this Declaration and the Architectural Design Guidelines:

5.1.1 No Improvement, structure or thing shall be placed, erected, installed, or posted on the Property and no Improvement or other work (including staking,
clearing, excavation, grading, and other site work, exterior alterations of existing improvements or planting or removal of landscaping) shall take place within the Property;

5.1.2 No building, fence, exterior wall, pool, roadway, driveway, or other structure, improvement or thing shall be commenced, erected, maintained, altered, changed, or made on any Lot at any time;

5.1.3 No exterior trees, bushes, shrubs, plants, or other landscaping shall be planted or placed upon the Property; and

5.1.4 No material changes or deviations in or from the plans and specifications for any work to be done on the Property, once approved by the ARC, shall be permitted without the prior written consent of the ARC to such change or deviation.

No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint or redecorate the interior of the Improvements constructed on their Lot without the approval of the ARC, however, modifications to the interior of screened porches, patios and similar portions of Improvements Visible from Neighboring Property shall be subject to the prior approval of the ARC.

This Article shall not apply to the activities of the Declarant nor to the activities of the Association so long as the Declarant is a Member.

5.2 Architectural Review. Responsibility for the administration of the Architectural Design Guidelines and review of all applications for construction and modifications under this Article shall be handled by the ARC. The members of the ARC need not be Members of the Association or representatives of Members. The ARC may establish fees that are to be paid in full prior to review of any applications and plans and specifications.

5.3 Architectural Review Committee. The ARC shall consist of at least three (3), but not more than five (5), persons and shall have exclusive jurisdiction over all original construction on the Property and all modifications, additions or alterations made on or to existing structures located on the Property. While the Declarant is a Member, the Declarant retains the right to appoint all members of the ARC who shall serve at the Declarant’s discretion. There shall be no surrender of the right of the Declarant to appoint all members of the ARC prior to the foregoing time except in a written instrument in recordable form executed by Declarant. Upon termination of such right, the Board shall appoint the members of the ARC who shall thereafter serve and may be removed in the Board’s discretion. The ARC shall keep and maintain a written record of all actions taken by it. Consultants hired by the ARC may be entitled to compensation from any trees collected by the ARC.

5.4 Architectural Design Guidelines. The Declarant has prepared the Architectural Design Guidelines for the Property (the “Guidelines”). The Guidelines contain general provisions applicable to all of the Property, and specific provisions which vary according to land use and from one portion of the Property to another, depending upon the location, unique characteristic, and intended use of the Property. The Guidelines are intended to provide guidance to Owners and Developer Owners regarding matters of particular concern to the ARC in considering applications thereunder. The Guidelines are not the exclusive basis for decisions of the ARC and compliance with the Guidelines does not guarantee approval of any application. The Guidelines shall have the same force and effect as this Declaration.
The ARC shall adopt the Guidelines and thereafter shall have sole and full authority to amend them. Any amendments to the Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Guidelines. The ARC is expressly authorized to amend the Guidelines to remove requirements previously imposed or otherwise to make the Guidelines less restrictive. Such amendments may apply differently to different Lots or other property within the Property.

The ARC shall make the Guidelines available to the Owner and Developer Owners who seek to engage in development or construction or modifications within the Property. In Declarant's discretion, such Guidelines may be Recorded, in which event the Recorded version of the Guidelines, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Guidelines was in effect at any particular time.

The Guidelines may specifically provide for particular fencing materials, square footage requirements of Dwelling Units, limitation on number of stories of Dwelling Units, and provide certain rules and regulations with regard to construction time associated with such Improvements after such designs are approved as set forth in paragraph 5.5 below.

5.5 Procedures. In addition to the submission to the ARC of the fee established by the ARC for the review of plans and specifications, the Owner shall submit plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and Improvements to the ARC for review and approval (or disapproval). For a new Dwelling Unit, the ARC review fee will be $250.00 or other amount as may be set forth in the Architectural Design Guidelines. In addition, information concerning irrigation systems, drainage, lighting, landscaping, and other features of proposed construction shall be submitted to the ARC as applicable. In reviewing each submission, the ARC may consider the quality of workmanship and design, harmony of exterior design with existing structures, and location in relation to surrounding topography and finish grade elevation, among other things. Decisions of the ARC may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as members of the ARC change over time. Such information shall be submitted to the ARC at an address designated from time to time by the Association in writing. The Owner shall also submit with such documentation and fees written direction as to where approvals or disapprovals are to be sent by the ARC.

In the event that the ARC fails to approve or disapprove any application within thirty (30) days after submission of all fees and information and materials reasonably requested, the application shall be deemed denied. However, no approval shall be inconsistent with the Guidelines, unless a variance has been granted in writing by the ARC pursuant to paragraph 5.7 hereof.

5.6 No Waiver of Future Approvals. Approval by the ARC of proposals, plans, specifications, or drawings for any work done or proposed or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans, specifications, drawings, or other matters subsequently or additionally submitted to the ARC for approval.
5.7 Variance. The ARC may authorize variances from compliance with the Guidelines or any procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but such variances shall be made only in accordance with duly adopted rules and regulations of the ARC. Such variances may only be granted when the ARC determines that unique circumstances dictate and no variance shall: (i) be effective unless in writing; (ii) be contrary to this Declaration; or (iii) estop the ARC from denying a variance in other circumstances. For purposes of this paragraph, the inability to obtain approval of any governmental agency, the issuance of any permit or the terms of any financing shall not be considered a hardship warranting a variance from the Guidelines.

5.8 Limitation of Liability. Review and approval of any application and plans and specifications pursuant to this Article is made on the basis of aesthetic considerations only and the ARC shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, Developer Owner, the Association, the Board, the ARC, nor any member, director, or officer of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Lot; provided, however, that if said Improvements are constructed by any such individuals for use for Owners, such individuals shall be liable under their normal contractual, common law and/or statutory warranty obligations to such Owners. In all matters, the ARC and its members shall be defended and indemnified by the Association to the fullest extent permitted by law.

5.9 Enforcement. Any structure, Improvement or other thing placed on the Property or made in violation of this Article shall be deemed to be “nonconforming work.” Upon written request from the Board or the Declarant, and after notice and hearing on the same as provided under Arizona statutes, Owners shall, at their own cost and expense, remove such structure or Improvement and restore the Property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore the Property to substantially the same condition as existed prior to the nonconforming work, the Board or its designees shall have the right to enter the Property, remove the violation and restore the Property to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate allowed by law, may be assessed against the benefitted Lot and collected as provided in Article 8 hereof.

Unless otherwise specified in writing by the ARC, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, but not obligated to, after notice to Owner of the Lot, enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and Owner thereof.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and conditions of this Article and the Guidelines may be excluded by the Board from the Property. In such event, neither the Association, the ARC, the Board nor their officers or directors shall be held liable to any Person for exercising the rights granted by this paragraph.
In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ARC.

ARTICLE 6
ASSOCIATION AND ASSOCIATION OBLIGATIONS

6.1 Association Formed. The Association shall be a nonprofit Arizona corporation charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents. Neither the Articles nor the Bylaws shall be amended or interpreted so as to conflict with this Declaration.

6.2 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and Bylaws. The Board shall appoint officers of the Association who may appoint or engage a manager to be responsible for the day-to-day operations of the Association. The Board shall determine the compensation to be paid to such manager.

The Declarant, as the Class B Member and for so long as there is a Class B Member, shall have the sole right to appoint all members of the initial Board and each Board thereafter for so long as there is a Class B Member of the Association. The initial Board and each Board thereafter for so long as there is a Class B Member of the Association, shall consist of three (3) Members or other persons (who need not be Members of the Association) appointed by the Declarant. Commencing with the first annual meeting of the Members when there is no longer a Class B Member, the Board shall consist of, and the voting Member shall elect, five (5) directors, all of whom must be Members or an individual designated by a corporate, partnership, or other non-individual member). The foregoing reference to five (5) directors may be subject to increase or decrease in the number of directors as provided in the Bylaws or by a majority vote of the Members present at the annual meeting, except that at no time may the number of directors be fewer than three (3) nor more than seven (7). The term of each of the directors shall be for a one (1) year term until there is no longer a Class B Member. Thereafter, the initial terms of members of the Directors shall be one (1) year terms for three (3) of the directors and two (2) year terms for two (2) of the directors, resulting in staggered terms for members of the Board. In succeeding years (after the initial election of members of the Board), all directors shall be elected for a two (2) year term.

6.3 Association Responsibility for Certain Areas. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the management and control of all Areas of Association Responsibility as determined by the Association from time to time in its sole discretion.

6.4 Association Rules and Regulations. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal the rules and regulations of the Association (the “Association Rules”). The Association Rules shall not discriminate among Owners and Occupants except to reflect their different rights and obligations as provided herein, and shall not be inconsistent with the Governing Documents. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth herein. A copy of the Association Rules, as adopted or amended, shall be available for inspection at the office of the Association.
6.6 **Personal Liability.** Neither the Declarant, nor any director, officer, committee member, employee, agent and/or agent’s personnel, representative of the Association, or Association, shall be personally liable for any costs, fees (including attorneys’ fees) or prejudice suffered or claimed on account of any of their acts, omissions, errors, or negligence; provided, however, that the limitations set forth in this paragraph shall not apply to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct. Notwithstanding the above, if the Articles or Bylaws provide broader protection to any director, officer, committee member, agent and/or agent’s personnel, such provisions in the Articles and Bylaw’s will control over the above terms and conditions.

6.7 **Implied Rights: Board Authority.** The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents or Bylaws, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

6.8 **Indemnification of Officers, Directors and Others.** The Association shall indemnify every officer, director, committee member, agent, and/or agent’s personnel against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then-Board) to which he or she may be a party by reason of being or having been an officer, director or committee member, except that such obligation to indemnify shall be limited to those actions for which indemnity is allowed under the Articles and Arizona law. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director or committee member may be entitled. The Association shall maintain adequate general liability and officers and directors’ liability insurance to fund this obligation, if such insurance is reasonably available. Notwithstanding the above, if the Articles or Bylaws provide broader protection to any director, officer, committee member, agent, and/or agent’s personnel, such provisions in the Articles and Bylaws will control over the above terms and conditions.

6.9 **Enforcement of Declaration.** In the event of a violation of any of the provisions of this Declaration or any other Governing Documents, in addition to any other rights and remedies contained herein, the Board may:

6.9.1 With regard to any violations of this Declaration or any other Governing Documents, the Board shall have the authority to bring an action at law or in equity to enforce such provisions. Expenses of such enforcement, in the event that the Association is a prevailing party, shall be paid to the Association by the Owner against whom enforcement was commenced; or

6.9.2 The Board and Association shall have the right to enter, without being guilty of a trespass, upon the Lot of an Owner for the purpose of repairing, modifying or demolishing Improvements which are not in conformance with the provisions of the Declaration or the Guidelines and all expenses thereof shall be paid by the Owner in violation to the Association.

Notwithstanding the above, the Association shall provide such Owner who has violated the terms and provisions of this Declaration with a notice of hearing and an
opportunity to be heard pursuant to the provisions of A.R.S. § 33-1803 et seq. as may be amended from time to time.

6.10 Mergers and Consolidations. The Association shall have the right, power and authority to participate in mergers or consolidations with any other nonprofit corporation whose objectives, methods and taxable status and format of operation are similar to those of the Association ("Merger Candidate"). A merger or consolidation of the Association with a Merger Candidate must be approved in advance by Members holding fifty-one percent (51%) of the votes in each class of Members of the Association, whether in person or by proxy, at a meeting duly called for such purpose. The Association’s properties, rights and obligations shall be transferred to and assumed by the surviving or consolidated corporation by operation of law or alternatively, the properties, rights and obligations of the Merger Candidate shall be transferred by operation of law to the Association as the surviving corporation. The surviving or consolidated corporation, at a minimum, shall have the same administrative responsibilities and enforcement rights established by this Declaration in regard to the Property. In addition, for so long as the Declarant is a Class B Member and to the extent Declarant has theretofore sought the approval of an Agency, any such merger or consolidation will be subject to the approval by such Agency if so required by the rules and regulations of the Agency.

6.11 Records and Accounting. The Association shall keep, or cause to be kept, true and correct records of account and other documents as required under A.R.S. § 33-1805, as may be amended from time to time, at the sole cost and expense of the Association. Such books and records, together with current copies of the Governing Documents, shall be available for inspection by all Owners and First Mortgagees of record at reasonable times, by appointment only, during regular business hours.

ARTICLE 7

MEMBERSHIPS AND VOTING

7.1 Votes of Owners of Lots and Parcels. Other than the Declarant when the Declarant is a Class B Member, every Owner of a Lot which is subject to assessment shall automatically be a Class A Member of the Association and shall remain a Member for so long as such ownership continues. Each Owner (other than Declarant while the Declarant is a Class B Member) shall have one (1) vote for each Lot by the Member. Each membership shall be appurtenant to and may not be separated from ownership of the Lot to which the membership is attributable. There shall be only one (1) membership for each Lot, which memberships shall be shared by joint Owners of, or Owners of undivided interests.

7.2 Declarant. Declarant shall be a Member of the Association so long as it holds a Class A or a Class B Membership.

7.3 Voting Classes. The Association shall have two (2) classes of voting memberships:

7.3.1 Class A. Class A Membership shall be all memberships except Declarant (until conversion of the Declarants Class B Membership to a Class A Membership under this Declaration). Subject to the authority of the Board to suspend a Member’s voting rights in accordance with the provisions hereof, a Class A Membership shall have the number of votes provided for in paragraph 7.1 hereof.
7.3.2 Class B. The Class B Membership shall be held by the Declarant. The Class B Member shall be deemed, with respect to Lots owned by the Declarant to be entitled to the number of votes equal to three (3) times the number of votes which would be attributable to the Lots if issued to a Class A Member, as determined pursuant to paragraph 7.1 hereof. The Class B Membership shall automatically cease and be converted to a Class A Membership upon the happening of the first of the following:

i. the date which is one hundred twenty (120) days after the date upon which seventy-five percent (75%) of the total number of potential Dwelling Units located within the Property as set forth in certain specific plan(s) within the development files of Cochise County as of the date of the Recording of this Declaration have been sold by Declarant (note that such development plan currently sets forth the potential of 113 Lots within the Property);

ii. January 1, 2020; or,

iii. the date on which the Declarant Records a written notice electing to convert the Class B Membership to a Class A Membership.

7.4 Right to Vote. No change in the ownership of a membership shall be effective for voting purposes until the Board receives written notice of such change together with satisfactory notice thereof. The vote for each membership must be cast as a single vote. Fractional votes shall not be allowed. In the event that a membership is owned by more than one (1) Person and such Owners are unable to agree as to how their vote or votes shall be cast, they shall not be entitled to vote on the matter in question. If any Member cast a vote or votes representing a certain Lot, the Member thereafter will be conclusively presumed to be acting with the authority and consent of all other Owners of the same membership unless objection thereto is made to the Board, in writing, at or prior to the time the vote or votes are cast. In the event that more than one (1) Person casts or attempts to cast a vote for a particular membership, all such vote shall be deemed void.

7.5 Cumulative Voting for Members. In any election of the Members of the Board, every Owner of a membership entitled to vote at such 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 be the number of votes designated in subparagraph 7.3.2, above, multiplied by the number of directors to be elected. Each Member shall have the right to cumulate his or her votes for one (1) candidate or to divide such votes among any number of candidates. The candidates receiving the highest number of votes, up to the number of Board members to be elected, shall be deemed elected.

7.6 Transfer of Membership. Except as otherwise provided in this Declaration, the rights, duties and obligations of a Class A Membership in the Association cannot and shall not be assigned, transferred, pledged, conveyed, or alienated in any way, except upon transfer or ownership of such Class A Member’s Lot. Such transfer may be affected by deed, intestate succession, testamentary disposition, foreclosure, or other legal process authorized under Arizona law. Any attempt to make a non-approved form of transfer shall be void. Any transfer of ownership in a Lot shall operate to transfer the membership(s) appurtenant thereto to the new Owner.

7.7 Use of Association Membership: Designees. Subject to the Association Rules, all of the Owners of a membership may designate a non-Member who is leasing or renting the
Owner's Lot for a period of not less than thirty (30) days (herein referred to as a “Designee”) to exercise all of the rights of the Member under this Declaration (except the Members voting rights); provided, however, that as a result of such designation: (i) the designation may only be made by the Owner to a maximum of two (2) persons at one time; (ii) such designation shall not relieve the Member of any liabilities or obligations as an Owner or with respect to the membership; and (iii) the Designee or the Owner pays to the Association a service fee in an amount established by the Board for such designation. So long as such designation is in effect, the Member shall be permitted to exercise only his 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 further limit the number of persons who may be so designated by any Member at any one time. The Designee must be an Occupant, Lessee or Tenant of a Lot. The Owner of a Lot upon which no Dwelling Units have been constructed shall not have the right to designate a Designee.

ARTICLE 8

ASSESSMENTS AND ESTABLISHMENT OF LIEN

8.1 Creation of Assessment Lien: Personal Obligation of Lot Owner. The Class A Owner of any Lot within the Property, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed, is deemed to covenant and agree, and hereby covenants and agrees, to pay to the Association the Annual Assessments or charges, Membership Fee, Special Assessments, Maintenance Assessments and/or Capital Improvement Assessment (collectively the “Assessments”) to be established and collected, if applicable, as hereafter provided in this Article 8.

The amount and time for payment of the Assessments shall be determined by the Board, pursuant to the Governing Documents, subject to the provisions of A.R.S. § 33-1803, as Amended from time to time. The Assessments, together with interest thereon, and the costs and reasonable attorneys’ fees, if any, incurred by the Association in connection with the enforcement and collection thereof or in otherwise enforcing this Declaration, shall be a charge and continuing servitude and lien upon the Lot against which such Assessments are made and, in addition, shall be the personal obligation of the Owner of such Lot at the time when such Assessments become due and payable. The personal obligation for delinquent assessments shall not pass to the Owners’ successors in title unless expressly assumed by them. The Assessment lien is imposed and created by this Declaration and the Recording of a notice specifying the amount of a delinquent Assessment lien shall not be necessary to create or enforce the Assessment lien; however, the Association has the right to Record the lien.

8.2 Annual Assessments and Membership Fee. The Association by and through the Board shall levy the Annual Assessments for the purposes set forth herein below. The Annual Assessments levied by the Association shall be used to promote the recreation, health, safety, and welfare of the Owners and Occupants, to enhance the quality of life within the Property, to preserve the value of the Property, to pay the costs of administration of the Association, to improve and maintain the Areas of Association Responsibility, and to otherwise further the interests of the Association as the Board deems appropriate. Subject to the provisions of paragraph 8.5, the Board may, during an Assessment period, revise the amount of the Annual Assessment in order to meet expenses which exceed the amounts
previously budgeted by the Association and collect such increased Annual Assessment in accordance with paragraph 8.13 below.

8.2.1 If the estimated total Annual Assessments for the current year proves to be excessive in light of the actual expenses, the Association may, at the discretion of the Board, retain such excess as additional working capital or reserves, reduce the amount of the Annual Assessments for the succeeding year or abate collection of Annual Assessments for such period as it deems appropriate. No reduction or abatement of Annual Assessments because of any such anticipated surplus may diminish the quantity or quality of services.

8.2.2 The reserves included in the expenses which are collected as part of the Annual Assessments shall be deposited by the Association in a separate bank account to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association, except to the extent that the Associations regularly employed accountant deems it desirable to do otherwise on the basis of standard accounting principles in similar contexts or the laws, tax or otherwise, of the State of Arizona or the United States relating to nonprofit corporations or homeowners associations. Such reserves shall be deemed a contribution to the capital account of the Association by the Members. The responsibility of the Board (whether while controlled by the Declarant or the Members) shall be only to provide for such reserves as the Board in good faith deems reasonable, and neither the Declarant, the Board nor any Member thereof shall have any liability to any Owner or Member, or to the Association, if such reserves prove to be inadequate.

8.2.3 At the close of escrow of each purchase of a Lot, the Owners will pay to the Association the Annual Assessment (prorated for the balance of the then current Assessment Period at such closing and in full for the next Assessment Period in advance) plus the Membership Fee.

8.3 Uniform Rate of Assessment. The amount any Assessment against each Lot shall be fixed at a uniform rate per memberships appurtenant to the Lot, subject to paragraph 8.17 hereof.

8.4 Rate of Assessment. Subject to paragraphs 8.5 and 8.6 hereof, the amount of the Assessments shall be fixed by the Board, in its sole discretion, but, subject to this paragraph, always in the ratios, as among Owners of Lots as set forth above in paragraph 8.3.

8.5 Increases to Annual Assessment. Subject to the provisions of this paragraph 8.5, the Board, in its sole and absolute discretion, shall each year estimate the total expenses anticipated for the coming year and shall determine the necessary level of reserve balances for ordinary and unexpected expenses, and shall determine the Annual Assessment necessary to generate the required revenues for expenses and reserves. Beginning with the second year of Annual Assessments, the Annual Assessment determined to be necessary in any given year may be set at any amount less than or up to the Maximum Annual Assessment permitted for such year. The foregoing restriction does not apply to the first year's Annual Assessment. Beginning with the second year of Annual Assessments, the Maximum Annual Assessment for each year shall be no more than One Hundred Ten Percent (110%) of the annual assessment for the preceding year unless such amount is approved by sixty-seven percent
(67%) of the votes of each class of Members represented in person or by absentee ballot at a
meeting of the Members of the Association duly called for such purpose.

8.6 Capital Improvement Assessments. In addition to the Annual Assessment, the
Association may levy a Capital Improvement Assessment for the purpose of defraying, in
whole or in part, the cost of any construction, reconstruction, repair, or replacement of a
capital improvement owned by the Association or for which the Association is responsible, or
for defraying other extraordinary expenses: provided however, that such Capital
Improvement Assessment shall have the prior assent of sixty-seven percent (67%) of the votes
of each class of Members voting in person or by absentee ballot at a meeting of the
Association duly called for such purpose. Capital Improvement Assessments shall be
assessed uniformly among the Members, as authorized in paragraph 8.3 hereof.

All amounts collected as Capital Improvement Assessments may only be used for
capital improvements or other extraordinary expenses and shall be deposited by the
Association in a separate bank account to be held for such purposes. Said funds shall not be
commingled with any other funds of the Association and shall be deemed a contribution to the
capital account of the Association by the Members.

8.7 Notice and Quorum for Any Action Authorized Under Paragraphs 8.5 and 8.6.
Written notice of any meeting of the Members of the Association called for the purpose of
conducting a vote required under paragraphs 8.5 or 8.6 shall be sent to all Members not less
than thirty (30) days nor more than sixty (60) days in advance of such meeting. At such
meeting, the presence of Members or absentee ballots entitled to cast fifty-one percent (51 %)
of all the votes (exclusive of suspended voting rights) of each class of Members shall
constitute a quorum. If the required quorum is not present, another meeting shall be called for
such purpose, subject to the foregoing notice requirements, and the required quorum at the
subsequent meeting shall be fifty-one percent (51%) of the quorum required at the initially
scheduled meeting. The subsequent meeting shall be held within sixty (60) days following the
date of the initially scheduled meeting.

8.8 Assessment of Certain Maintenance Costs. In the event the need for
maintenance or repair of areas maintained by the Association is caused through the willful or
negligent act or omission of any Owner, Occupant, or Lessee (or of any other Person for
whom such Owner or Lessee is legally responsible under applicable state law) as provided in
paragraph 8.9, the cost of such maintenance or repair shall be added to and become a part of
the Assessments to which such Owner and such Owner’s Lot is subject and shall be secured
by an Assessment lien as set forth in paragraph 8.1.

8.9 Improper Maintenance and Use of Lots. In the event any portion of any Lot is
maintained so as to present a nuisance, or substantially detracts from or affects the appearance
or quality of any neighboring Lot or other area, or is used in a manner which violates this
Declaration, or in the event the Owner, Occupant, or Lessee of any Lot fails to perform such
Owner’s obligations under this Declaration, the Association Rules, or the Architectural
Design Guidelines, the Association, by Board resolution, may make a finding to such effect,
specifying the particular condition(s) that exist, and thereafter give notice to the Owner of
such Lot that unless specified corrective action is taken within a specified time period, the
Association, at such Owner’s cost, may take whatever action is appropriate to compel
compliance, including, without limitations, appropriate legal action. If, at the expiration of the
specified time period the requisite correction action has not been taken by the Owner, and
after any required notice and hearing as set forth in A.R.S. § 33-1803 as may be amended
from time to time, the Association is hereby authorized and empowered, at its sole discretion, to impose a daily fine, to cause correction action to be taken (including, but not limited to, the right to enter upon the Lot without being guilty of trespass and maintain landscaping, remove any weeds, rubbish, or debris) and/or to commence appropriate legal action, and the cost thereof, including court costs and attorneys' fees, shall be added to and become a part of the Assessments to which the offending Owner and the Owner's Lot are subject and shall be secured by the Assessment lien as set forth in paragraph 8.1.

8.10 Special Assessments. After notice of hearing as provided in A.R.S. § 33-1803, or subject to the limitations of A.R.S. § 33-1805, Special Assessments shall be levied by the Association against a Member and/or an Owner and his Lot to reimburse the Association for:

8.10.1 Costs incurred in bringing an Owner and his Lot into compliance with the provisions of the Governing Documents;

8.10.2 Fines levied or fixed by the Board, as otherwise provided herein, or by law;

8.10.3 Document fees, purchase fees and transfer fees, as established by the Board, in the Board's sole discretion, which shall include, but not be limited to:

i. costs incurred for the reproduction and distribution of The Oaks Documents; and

ii. a transfer fee charged upon every Lot for the transfer, sale or conveyance from an Owner to a new owner;

8.10.4 Any other charge designated as a Special Assessment in this Declaration, the Articles, Bylaws, Association Rules, or Architectural Design Guidelines;

8.10.5 Attorneys' fees, late fees, interest, and other costs or charges provided to be paid as, or which are incurred in connection with, a Special Assessment in accordance with this Declaration, the Articles, Bylaws, Association Rules, or Architectural Design Guidelines.

8.11 Annual Assessment Period. Except as otherwise provided herein below, the Assessment Period shall be the fiscal year commencing on January 1 of each year and terminating on December 31 next following. The Board may, in its sole discretion, from time to time, change the Assessment Period. The initial Assessment Period shall commence on the date of Recording of this Declaration and terminate on December 31 following the date of Recording. The Assessments provided for hereinabove shall be prorated for the initial Assessment Period.

8.12 Billing and Collection Procedures. The Board shall have the right to adopt procedures for the purpose of making, billing, and collecting the Assessments, which procedures may include delegating to a sub-association or one or more subsidiary association the authority and obligation of billing and collecting some or all of the Assessments. The failure of the Association to send a bill to an Owner shall not relieve such Owner of the Owner's liability for Assessments. No Assessment Lien shall be foreclosed or otherwise enforced until the Owner has been given not less than thirty (30) days written notice thereof prior to the commencement of such foreclosure or enforcement. The notice shall be addressed to the Owner at the address of the Owner on the records of the Association. It shall be the
responsibility of the Owner to inform the Association in writing of a change of address. The Association shall be under no duty to refund any payments received by the Association even if the ownership of a Lot changes during an Assessment Period. Any successor Owner shall be given credit for any unrefunded prepayments made by a prior Owner. In case the Owner of a Lot having a right to pay a reduced payment amount as provided herein fails to notify the Board at such time as the payment amount should be increased, such Owner shall nonetheless be liable for the full amount of the Assessment and such Owner’s failure to notify the Board shall not relieve such Owner of the liability for such full Assessment. No Owner shall be entitled to claim any offsets against Assessments for any reason, including, without limitation, a claim that the Association is not properly exercising its duties or responsibilities under this Declaration.

8.13 Collection Costs and Interest on Delinquent Amounts & Liens. If any Member fails to pay any Assessment within thirty days after the due date, there shall be an automatic late charge of the greater of $15.00 or 10% of the amount of the unpaid Assessment from the date of the due date until paid. As the Member pays said unpaid Assessments, such payment shall first be applied to the principal portion of the Assessment and then to this accruing interest rate and/or late fee. The Owner shall be liable for late fees, interest, costs including, but not limited to attorneys’ fees and costs, and collection agency fees which may be incurred by the Association in collecting any Delinquent Amount. Pursuant to paragraph 8.1, and subject to the provisions of A.R.S. §33-1807, as may be amended from time to time, this Declaration shall automatically create a lien against a Lot and/or Dwelling Unit of a Member for delinquent payments. That lien will be foreclosed pursuant to Arizona law.

8.14 Statement of Payment. Upon receipt of a written request therefore from any Owner of Resident, the Board, within a reasonable time thereafter, shall issue to the requesting party a written statement stating that as of the date of such statement:

8.14.1 All Assessments (including collection fees, if any, in regard thereto) have been paid with respect to such Owners Lot; or

8.14.2 If such Assessments have not been paid, the amount(s) then due and payable.

The Association may make a reasonable charge for the issuance of such statement. Any such statement shall be conclusive and binding with respect to any matter set forth therein.

8.15 Waiver of Use. No Owner may exempt himself or herself from personal liability for Assessments, or release the Lot owned by him or her from the liens or charges arising under this Declaration or by any other Recorded instrument by a waiver of rights.

8.16 Subordination of the Lien to First Mortgage; Sale or Transfer of Lots; and First Mortgagee’s Rights. The lien of the Assessments provided for herein, including without limitation any fees, costs, late fees, or interest which may be levied by the Association in connection with unpaid Assessments, shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Lot pursuant to foreclosure of any such First Mortgage or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of such executory land sales contract, shall extinguish the lien of Assessments or charges which became due prior to any such sale or transfer, or foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract; provided, however that any such delinquent Assessments or
charges, including interest, late fees, costs and reasonable attorneys' fees, which are extinguished as provided herein, may be reallocated and assessed to all Lots as a common expense. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation of forfeiture of such executory land sales contract, shall relieve any Owner of any Lot from liability for any Assessments or charges thereafter becoming due, nor from any lien thereof.

In the event of foreclosure of a First Mortgage or the taking of a deed in lieu thereof, such First Mortgagor shall not be liable for unpaid Assessments or other charges which accrued prior to the acquisition of title to the Lot in question by such First Mortgagor. At such time as the First Mortgagor shall become record Owner of a Lot, said First Mortgagor shall be subject to all of the terms, conditions, and restrictions of this Declaration, including, but not limited to, the obligation to pay for all Assessments and charges accruing thereafter, in the same manner as any Owner. During the pendency of any proceeding to foreclose the First Mortgage, including any period of redemption, the First Mortgagor (or receiver appointed in such action) may, but need not, exercise any or all of the rights and privileges of the Owner of the mortgaged Lot, including, but not limited to, the right to vote as a Member of the Association to the exclusion of the Owners exercise of such rights and privileges. First Mortgagors are hereby granted the right to jointly, or singly, pay taxes or other charges which are in default, and such First Mortgagors may, jointly or singly, pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy and any First Mortgagors making such payments shall be owed immediate reimbursement therefore from the Association. Each First Mortgagor shall, upon written notice to the Association identifying the name and address of the holder, and the Lot number or address of the Lot encumbered by its mortgage, be entitled to:

8.16.1 Receive written notification from the Association of any default in the performance by the Owner of a Lot encumbered by the Mortgage in favor of such First Mortgagor of any obligation under this Declaration or under the Governing Documents of the Association which is not cured with sixty (60) days;

8.16.2 Inspect the books and records of the Association, by appointment, during normal business hours;

8.16.3 Receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association;

8.16.4 Receive written notice of all meetings of Members of the Association;

8.16.5 Receive written notice of any condemnation loss or casualty loss affecting a material portion of the Property; and

8.16.6 Receive written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond.

8.17 Declarant's Option to Fund Budget Deficits. So long as there is a Class B Member, Declarant may satisfy its obligations for Assessments on Lots it owns either by paying (a) twenty-five percent (25%) of the Assessments for all Lots on which no Dwelling Unit has been built or for Lots on which Dwelling Units have been built but are not occupied by Non-Developer Owners or their Occupants or (b) the difference between the amount of Assessments levied on other Lots subject to assessments and the amount of actual expenditures of the Association during the fiscal year. Unless the Declarant otherwise notifies the Board in writing at least thirty (30) days before the beginning of each fiscal year,
the Declarant shall be deemed to have elected to continue paying on the same basis as during
the immediately preceding fiscal year. Regardless of the Declarant’s election, the Declarant’s
obligations hereunder may be satisfied in the form of cash or by “in kind” contributions or
services or materials, or by a combination of these. At such time as there is no longer a Class
B Member, the Declarant shall pay Assessments on the unsold Lots in the same manner as
any other Owner and shall be under no obligation to fund any budget deficits.

ARTICLE 9
USE OF ASSOCIATION FUNDS

9.1 Use of Association Funds. The Association shall apply all funds and property
collected and received by it (including the Annual Assessments, Capital Improvement
Assessments, Special Assessments, fees, Maintenance Assessments, loan proceeds, surplus
funds and all funds and property received by it from any other source) for the common good
and benefit of the Association and its Members by devoting said funds and property, among
other things, to the construction, alteration, maintenance, provision and operation, by any
manner or method whatsoever, of the monument sign improvements for the Property and
entry way features and landscaping, drainage easements, pedestrian easements (if applicable),
and slope easements (if applicable) within or without the Property, which may be necessary,
desirable or beneficial to the general interest of the Property and the Members.

The Association may also expend its funds for any purpose which any municipality
may expend its funds under the laws of the State of Arizona or such municipality’s charter.

9.2 Borrowing Power. The Association may borrow money in such amounts, at
such rates, upon such terms and security, and for such periods of time, as the Board deems
necessary or appropriate.

9.3 Association’s Right in Spending Funds from Year to Year. The Association
shall not be obligated to spend in any year all Funds received by it in such year, and the Board
may carry forward as surplus and balances remaining. The Association shall not be obligated
to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from
a prior year.

ARTICLE 10
RIGHTS AND POWERS OF ASSOCIATION

10.1 Rights, Powers and Duties of the Association. In addition to the rights and
powers of the Association set forth in this Declaration, the Association shall have such rights,
powers and duties as are set forth in the Articles and Bylaws, together with such rights and
powers as may be reasonably necessary in order to effect all the objectives and purposes of
the Association as set forth herein. A copy of the Articles and Bylaws shall be available for
inspection by Owners or their agents at the office of the Association during reasonable
business hours. Some, but not all, duties of the Association shall include:

10.1.1 The maintenance of the entrance monument signs, gates and entry way
features and landscaping, drainage easements, pedestrian easements (if applicable),
10.1.4 The payment of any _ad valorem_ real estate taxes, assessments and other charges on the Areas of Association Responsibility.

10.2 Rules and Regulations. In addition to the right to adopt, amend and repeal rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association, acting through the Board, shall have the right to adopt, amend and repeal rules and regulations with respect to all other aspects of the Members’ rights and the Association’s rights, activities and duties, provided such rules and regulations are not inconsistent with the provisions of this Declaration, the Articles and Bylaws. Upon adoption, the additional Association Rules shall be enforceable in the same manner as this Declaration and shall have the same force and effect as if they were set forth in and were a part of this Declaration.

10.3 Associations Rights of Enforcement. The Association, as the agent and representative of the Owners, shall have the right, but not the obligation, to enforce the provisions of this Declaration and the Governing Documents.

10.4 Contracts with Others. Subject to the restrictions and limitations contained herein, the Articles, the Bylaws and the laws of the State of Arizona, the Association may enter into contracts with others, including Declarant and Declarant’s affiliated companies for services which may include, but are not limited to, operation and maintenance of the Areas of Association Responsibility for the benefit of the Members of the Association and such contracts shall not be invalidated by the fact that one or more directors or officers of the Association are employed by or otherwise affiliated with Declarant or Declarants affiliates; provided, however, that the fact of such interest shall be previously disclosed or made known to the other Members of the Board acting upon such contract or transaction and, provided further that the transaction or contract is fair and reasonable. Notwithstanding the foregoing, any management contract entered into by the Association must be terminable, without penalty, by the Association for cause at any time and without cause upon reasonable notice. Any contract between the Association and Declarant or Declarants affiliates must be terminable by the Association without penalty upon no more than thirty (30) days notice.

10.5 Vehicular Access Control Gates. The Declarant may construct vehicular access control gates with (or without) gate houses at the entry points to the Property. Such access gates may be located on Common Areas and/or within the Encroachment Basement located on a Lot or Lots within the Property. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer than it might otherwise be, including the staffing and maintenance of gate houses and or control mechanisms. Neither the Association nor the Declarant shall in any way be considered insurers or guarantors of security within the Property, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of vehicular access control measures undertaken. No representation or warranty is made that any fire protection system, burglar system or other vehicular access control system or measures, including any mechanism or system for limiting access to the Property, cannot be compromised or circumvented, nor that any such systems or vehicular
access control measures undertaken will in all cases prevent loss or provide the detection of protection for which the system is designed or intended.

ARTICLE 11
MAINTENANCE OBLIGATIONS
OF OWNERS / COMMUNITY WIDE STANDARDS

11.1 Owners Maintenance Responsibilities. Each Owner shall maintain his or her Lot and all structures, parking areas, and other improvements comprising the Lot, constructed to under construction in a manner consistent with the applicable Community-Wide Standard and applicable covenants unless maintenance responsibility is otherwise assumed by or assigned to the Association. In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance responsibilities, after any required notice and hearing as provided by Arizona statutes, the Association may, but shall not be obligated to, perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner in accordance with paragraphs 8.8 and 8.9 hereof. The Association shall afford the Owner notice of thirty (30) days to cure the problem prior to entry, except when entry is required due to an emergency situation.

11.2 Standard of Performance. Unless otherwise specifically provided herein, maintenance responsibility shall include responsibility for repair and replacement, as necessary. All maintenance and construction activities shall be performed in a manner consistent with the Community-Wide Standard and the Governing Documents.

11.3 Shared Structures. A “Shared Structure” means each wall, fence, driveway or similar structure built as a part of the original construction of improvements to contiguous Lots, which serves and/or separates any two (2) Lots. To the extent not inconsistent with the provisions of this paragraph the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omission shall apply to a Shared Structure. The cost of reasonable repair and maintenance of a Shared Structure shall be shared equally by the Owners who make use of the Shared Structure. If a Shared Structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the Shared Structure may restore it. If other Owners thereafter use the Shared Structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omission. The right of any Owner to contribution from the Owner any other Owner under this paragraph 11.3 shall be appurtenant to the land and shall pass to such Owners successors-in-title. All disputes regarding a Shared Structure shall be submitted to the ARC, whose decision on the matter shall be final, and binding.

11.4 Grading Limitations and Oak Tree Preservation. Due to the unique character the property and in an effort to protect the natural beauty of the oak trees, clearing vegetation and grading on individual lots will be limited to 20,000 square feet. Grading plans must be submitted to the ARC for final approval. There may be variances give as outlined in Section 5.7 of this document.
ARTICLE 12
ADDITIONAL RIGHTS RESERVED TO DECLARANT

12.1 Withdrawal of Property. The Declarant reserves the right to amend this Declaration, so long as it is a Member, for the purpose of removing any portion of the Property from the coverage of this Declaration, provided such withdrawal is not unequivocally contrary to the overall uniform scheme of development for the Property. Such amendment shall not require the consent of any Person other than the Owner of the Property to be withdrawn, if not the Declarant.

12.2 Right to Transfer or Assign Declarant Rights. Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the Bylaws may be transferred in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration of the Bylaws, No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and Recorded in the Official Records of Cochise County, Arizona.

12.3 Exclusive Rights to Use Name of Development. No Person shall use the name “The Oaks” or any derivative of such name in any printed or promotional material without the Declarant’s prior written consent. However, Owners may use the name The Oaks in printed or promotional matter where such term is used solely to specify that particular property is located within The Oaks and the Association shall be entitled to use the word The Oaks in its name.

12.4 Termination of Rights. The rights contained in this Article shall terminate upon the earlier of (i) January 1, 2020; or (ii) upon recording by Declarant of a written statement that all sales activity in the Property has ceased.

ARTICLE 13
TERM, AMENDMENTS AND TERMINATION

13.1 Term Method of Termination. This Declaration shall be effective upon its Recordation and, as amended or restated from time to time, shall remain in full force and effect for perpetuity. In addition, this Declaration may be terminated at any time if Members representing seventy percent (70%) of the Class A Members and the Class B Member, if one exists, vote in favor of termination at an election held for such purpose. If the necessary votes and consents are obtained, the Board shall Record a certificate of termination, duly executed by the President or Vice President of the Association and attested to by the secretary of the Association. Upon the Recording of the termination certificate, this Declaration shall be of no further force and effect and the Association thereupon shall be dissolved in accordance with its Articles and Bylaws and the laws of the State of Arizona.

13.2 Amendments. Until the first sale of a Lot within the Property to a Non-Developer Owner for use and occupancy as a Dwelling Unit, the Declaration may be amended by a Recorded document duly executed by Declarant without the necessity of calling a meeting of Owner or obtaining consent of Owners. Thereafter, this Declaration may be amended by recording a certificate of amendment, duly-executed by the President or Vice President of the Association and attested to by the secretary of the Association, which certificate shall set forth the full text of the amendment and shall certify that at a meeting duly called in accordance with the Bylaws, the Owners casting not less than seventy-five percent
(75%) of the votes present in person or by absentee ballot and then entitled to be cast at the meeting voted affirmatively for the adoption of the amendment. Such amendment shall become effective upon its Recordation. If Class B Membership is still outstanding, written consent will be required from the Agency. Such amendment may apply differently to different Lots within the Property. Such an amendment may exempt certain Lots from the terms and provisions of this Declaration.

13.3 Right of Amendment if Requested by Governmental Agency or Federally-Chartered Lending Institution. Anything in this Article to the contrary notwithstanding, Declarant reserves the right to amend this Declaration as may be requested or required by Agency with whom Declarant elects to do business as a condition precedent to such Agency’s approval of this Declaration, or by any federally-chartered lending institution as a condition precedent to lending funds upon the security of any Lot or purchasing loans secured thereby. Any such amendment shall be effected by Declarant Recording a certificate of amendment duly executed and acknowledged by Declarant specifying the Agency or the lending institution requesting the amendment and setting forth the requested amendment(s). Recordation of such a certificate shall be deemed conclusive proof of the Agency’s or institution’s request or requirement of such certificate and, when Recorded, shall be binding upon all of the Property and all persons having an interest therein. It is the desire of the Declarant to retain Control of the Association and the Association’s activities during the period of planning and development of the Property.

If any amendment requested or required pursuant to the provisions of this paragraph deletes, diminishes, or alters such control, Declarant shall have the right to prepare, provide for and adopt as an amendment hereto, other and different control provisions which shall be binding upon the Property and the Owners without a vote of the Owners. Except as provided in this paragraph, Declarant shall not have any right to amend this Declaration otherwise than in accordance with and pursuant to the provisions of paragraphs 12.1 or 13.2 hereof.

ARTICLE 14
USE AND OCCUPANCY RESTRICTIONS

14.1 Residential Use. No trade or business may be conducted in or from any Lot except that an Owner or Occupant residing on a Lot may conduct business activities within the Lot so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (ii) the business activity conforms to all zoning requirements for the Property; (iii) the business activity does not involve persons coming onto the Property who do not reside in the Property or door-to-door solicitation of residents of the Property; and (iv) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, a hazardous or offensive use, or threaten the security or safety of other residents of the Property as may be determined in the sole discretion of the Association. No garage sales shall be permitted. The terms “business” and “trade,” as used in this paragraph shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider’s family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required.
therefore. Notwithstanding the above, the leasing of a Dwelling Unit shall not be considered a trade or business within the meaning of this paragraph. This paragraph does not apply to operation of the Association nor to any activity conducted by the Declarant with respect to its development and sale of the Property or its use of any Dwelling Unit which it owns within the Property nor to the Property designated by the Declarant on any Plat as its sales office/model center location. As to this latter area, the Declarant or any purchaser of such Property shall have the right, subject to applicable governmental ordinances, to utilize the same for office/professional business uses.

14.2 Restricted Activities. The following activities are prohibited within the Property unless expressly authorized by, and then subject to such conditions as may be imposed by the Board:

14.2.1 Parking in the Property shall be restricted to private automobiles and passenger vans, and only within the parking areas designed and/or designated for that purpose. No Owner shall conduct repairs (except in an emergency) or restorations of any motor vehicle or other vehicle upon any portion of the Property, except in an enclosed area with the doors to that area closed at all times. No commercial vehicles or campers, mobile homes, motor homes, house trailers or trailers of any type, recreational vehicles, motorcycles, mopeds, golf carts, boats, or vans shall be permitted to be parked or to be stored at any place within the Property except in spaces by some or all of the above specifically designated by the Declarant or in an enclosed garage such that they are not Visible from Neighboring Property, provided that recreational vehicles shall be permitted on the Property but only for purposes of loading before a trip and unloading after a trip, and in no event may a recreational vehicle remain in the Property for longer than twenty-four (24) consecutive hours. Additionally, in no event may any vehicle, that does not bear a valid and current motor vehicle registration remain on the Property for longer than twenty-four (24) hours. For purposes of this subparagraph, commercial vehicles shall mean those that are not designed and used for customary personal/family purposes. The absence of commercial-type letters or graphics on a vehicle shall not be dispositive of whether it is a commercial vehicles. The prohibitions on parking contained in this subparagraph shall not apply to temporary parking of commercial vehicles such as for construction use or providing pickup and delivery and other commercial services nor to any vehicles of the Declarant or the Association. No overnight on-street parking or parking on Lots shall be permitted, except that parking in a driveway overnight shall be permitted but only for a number of vehicles that is equal to or lesser than the parking capacity of the respective Owner’s garage on his or her Lot. Subject to applicable laws and ordinances, any vehicle parked in violation of these or other restrictions contained in this Declaration or in the Governing Documents may be towed by the Association at the sole expense of the owner of the vehicle if the vehicle remains in violation for a period of twenty-four (24) hours from the time a notice of violation is placed on the vehicle. The Association shall not be liable to the owner of that vehicle for trespass, conversion or otherwise, nor guilty of any criminal act by reason of the towing, and once the notice is posted, neither its removal nor failure of the owner to receive it for any other reason, shall be grounds for relief of any kind. For purposes of this paragraph, ‘vehicle’ shall also mean campers, mobile homes and trailers. Any affidavit of the person posting the aforesaid notice stating that it was properly posted shall be conclusive evidence of proper posting;
14.2.2 Except for those Lots within the Property, if any, that may be
designated by the Association for the keeping of horses, in which case such use shall
be allowed and exempted from the following restrictions, the raising, breeding or
keeping of animals, livestock or birds or poultry of any kind is prohibited. However, a
reasonable number of dogs, cats, or other usual and common household pets may be
permitted on a Lot; provided, however, that those pets which are permitted to roam
free, or, in the sole discretion of the Board, make objectionable noise, endanger the
health or safety, or constitute a nuisance or inconvenience to the Owners or Occupants
of adjoining Lots or Dwelling Units shall be removed upon the request of the Board.
For purposes of this Declaration, more than four (4) dogs, cats or other usual and
common animals shall be automatically deemed unreasonable, unless prior written
consent is obtained from the Association. If the pet owner fails to honor such request,
the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in
a manner acceptable to the Board whenever outside of the Dwelling Unit. Pets shall be
licensed, registered and inoculated as required by law. No pet shall be kept, bred or
maintained for any commercial purpose. The above restrictions shall in no way restrict
an Owner or Occupant from bringing an "assistive animal" onto the Property as
defined under the federal and/or state disability statutes;

14.2.3 No portion of the Property shall be used, in whole or in part, for the
storage of any property or thing that will cause it to appear to be in an unclean or
untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or
material be kept on any portion of the Property that will emit foul or obnoxious odors
or that will cause any noise or other condition that will or might disturb the peace,
quiet, safety, comfort, or serenity of the Occupants of surrounding Property. No
noxious, illegal or offensive activity shall be carried on upon any portion of the
Property, nor shall anything be done on the Property tending to cause embarrassment,
discomfort, annoyance, or nuisance to any person using any portion of the Property.
There shall not be maintained any plants or animals or device or thing of any sort
whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant,
or of a nature that may diminish or destroy the enjoyment of the Property. No outside
burning of wood, leaves, trash, garbage, or household refuse shall be permitted within
the Property; provided, however, that the Owners of Dwelling Units shall be permitted
to burn wood in outdoor fireplaces or firepits approved by the ARC;

14.2.4 No rubbish, trash, garbage, or other waste material shall be kept or
permitted on the Property except in containers and in locations as approved by the
ARC and no odor shall be permitted to arise from the containers so as to render the
Property or any portions thereof unsanitary, unsightly, offensive, or detrimental to any
other Property in the vicinity thereof or to its Occupants. Appropriate flexibility shall
be afforded food service operations, however. No clothing or household fabrics shall
be hung, dried or aired in a manner that is Visible from Neighboring Property, and no
lumber, grass, shrub, or tree clippings or trash shall be kept, stored or allowed to
accumulate on any portion of the Property, except within containers and in locations
as approved by the ARC or an enclosed structure appropriately screened from view
erected for that purpose, if any;

14.2.5 It shall be the responsibility of each Owner and the Association to
prevent the development of any unclean, unhealthy, unsightly, or unkempt condition
on a Dwelling such Owner’s Lot. The pursuit of hobbies or other activities, including
specifically, without limiting the generality of the foregoing, the assembly and disassembly of mechanical devices that might tend to cause disorderly, unsightly or unkempt conditions shall not be undertaken on any part of the Property;

14.2.6 Use or discharge of any radio, loudspeaker, horn, whistle, bell or other Sound device so as to be audible to the Owners or Occupants of adjoining Lots, except alarm devices used exclusively for security purposes;

14.2.7 Obstruction or rechanneling of drainage flows after location and installation of drainage swales or channels, storm sewers, or storm drains, except that the Declarant and the Association shall have such right; provided, that the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Lot without the Owners Consent;

14.2.8 Subdivision of a Lot into two (2) or more Lots, or changing boundary lines of any Lot after a subdivision plat including such Lot has been approved and Recorded, except that Declarant shall be permitted to subdivide or replat Lots that it owns;

14.2.9 Use of any Lot for the operation of a timesharing program, whereby the right to exclusive use of the Lot or Dwelling Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, except for those time-share programs which are specifically permitted by the Declarant and which are operating in accordance with the terms of this Declaration;

14.2.10 Discharge of firearms; provided, that the Association shall have no obligation to take action to prevent or stop such discharge. The term “firearms” includes BB-guns, pellet guns and other firearms of all types, regardless of size;

14.2.11 On-site storage of gasoline or other fuels, with the exception of up to five (5) gallons of fuel stored on each Lot for emergency purposes and operation of lawn mowers or similar tools or equipment, is prohibited on any part of the Property without the express consent of the Association, which consent may require conditions to be observed, relating to matters such as the screening of any above-ground storage tanks, etc. Notwithstanding the foregoing, the Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment;

14.2.12 Capturing, trapping or killing of wildlife within the Property, except in circumstances posing an imminent threat to the safety of persons using the Property;

14.2.13 Conversion of any carport or garage to finished space for use as an apartment or other integral part of living area in any Dwelling Unit without the prior written approval of the ARC of all plans and specifications associated therewith;

14.2.14 Nothing shall be done or kept on any Lot which would result in the cancellation of insurance on any Property insured by the Association or which would be in violation of any law.

14.2.15 “Leasing” for purposes of this Declaration, is defined as regular, exclusive occupancy of a Dwelling Unit by any Person other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument.
Dwelling Units may be rented only in their entirety; no fraction or portion may be rented. There shall be no subleasing of Dwelling Units or assignment of leases unless prior written approval is obtained from the Association. No transient tenants may be accommodated in a Dwelling Unit. All leases shall be in writing except with the prior written consent of the Association. No Dwelling Unit may be subject to more than one (1) lease in any six (6) month period, regardless of the lease term, unless approved in writing by the Association. The Owner must make available to the lessee copies of this Declaration and the Governing Documents. Every Owner shall cause all Occupants of such leased Dwelling Unit to comply with this Declaration and the Governing Documents and shall be responsible for all violations, notwithstanding the fact that such Occupants of a Dwelling Unit are fully liable and may be sanctioned for any violation of this Declaration and the Governing Documents. All leases of Dwelling Units shall be automatically deemed to include a covenant on the part of the tenant to comply with, and be fully bound by, the provisions of this Declaration and the Governing Documents. This subparagraph shall also apply to subleases of Dwelling Units and assignment of leases.

14.3 Prohibited Conditions. The following provisions shall apply to structures and conditions within the Property:

14.3.1 No structures, equipment or other items located on or about the exterior of a Lot which have become rusty, dilapidated or otherwise fallen into disrepair shall be permitted;

14.3.2 No sprinkler or irrigation systems or wells, reservoirs of any type which draw water from ground or surface except the reasonable collection shall be permitted;

14.3.3 No walls, dog runs, animal pens or fences of any kind on any Lot except as approved by the ARC shall be permitted;

14.3.4 No excessive exterior lighting on any Lot shall be permitted. The ARC shall, in its discretion, determine whether any exterior lighting is excessive;

14.3.5 No tents, shacks or other structures of a temporary nature shall be permitted on any Lot except as approved under this Declaration or as authorized by the Declarant during construction on the Property;

14.3.6 No storage of furniture, appliances, machinery, equipment or other goods and chattels, including bicycles, scooters, and other recreational equipment not in active use shall be permitted on any portion of a Lot that is Visible from Neighboring Property;

14.3.7 No garage doors shall be permitted to remain open while the garage is not in use. Garage doors shall remain closed at all times except when entering and exiting the garage;

14.3.8 No construction, erection or replacement of any thing, permanently or temporarily, on the outside portions of any Improvements, Dwelling Units or any Lot, whether such portion is improved or unimproved, shall be permitted except in strict compliance with the Architectural Design Guidelines unless previously approved by the ARC. This shall include, without limitation, signs, basketball hoops, swing sets and similar sports and play equipment, clotheslines, garbage cans or containers,
woodpiles, above ground swimming pools, antennas, satellite dishes, or other apparatus for the transmission or reception or television, radio, satellite, or other signals of any kind, and hedges, walls, landscaping, dog runs, animal pens, fences of any kind or gazebos;

14.3.9 No such equipment shall be permitted to be roof-mounted unless concealed as approved by the ARC. Included within this restriction shall be air conditioning, evaporative coolers, solar equipment, and pool pump and heating equipment;

14.3.10 No signs, billboard, or advertisement of any kind, including, without limitation, those of realtors, contractors, and subcontractors, shall be erected within the Property without the written consent of the Association, except as may be required by legal proceedings, and except signs, regardless of size, used by Declarant, its successors and assigns, and replacement of those signs (similar or otherwise). If permission is granted to any Owner to erect a sign within the Property, the Association reserves the right to revoke such permission and to restrict the size, color, lettering, and location of such sign. Under no circumstances shall signs, flags, banners, or similar items advertising or providing directional information for activities being conducted outside the Property be permitted within the Property. No sign shall be nailed or otherwise attached to trees;

14.3.11 No above ground pools shall be permitted except that above-ground spas or Jacuzzis may be permitted on Lots with approval of the ARC;

14.3.12 All property located at street intersections shall be landscaped to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem;

14.3.13 No overhead utility lines, including lines for cable television, shall be permitted within the Property except for temporary lines as required during construction and high-voltage lines if required by law or for safety purposes.

14.3.14 Except as may be permitted by the ARC or its designee, no window air conditioning units may be installed in a Dwelling Unit;

14.3.15 Except for seasonal decorative lights, which may be displayed between Thanksgiving Day and January 10 only, all exterior lights must be approved by the ARC;

14.3.16 No artificial vegetation on the exterior of any portion of the Property shall be permitted. Exterior sculpture, fountains, flags, and similar items must be approved by the ARC; provided, however, that nothing herein shall prohibit the appropriate display of the American flag; and,

14.3.17 No reflective window coverings and awnings, canopies or shutters shall be permanently installed on the exterior of any Dwelling Unit unless first approved by the ARC.

14.4 Modification. The Board may modify or increase the foregoing restrictions or otherwise restrict and regulate the use and occupancy of the Property by the Association rules and regulations of general application adopted by the Board from time to time.
14.5 **Declarant Exemption.** Declarant shall, in addition to the rights set forth in this Article, have the right to permanently exempt any Lot from all of the provisions of this Article or to modify the application of this Article to any Lot. Declarant’s right to exempt Lots from the provisions of this Article shall terminate only in a Recorded document executed by Declarant specifically waiving such right. The Declarant or any Developer Owners designated in writing by the Declarant are exempt from the provisions of this paragraph 14.5 during the construction phase of any Dwelling Unit within the Property.

**ARTICLE 15**

**INSURANCE PROVISIONS**

15.1 **Required Coverages.** The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

- **15.1.1 Blanket property insurance covering “risks of direct physical loss” on a “special form” basis (or comparable coverage by whatever name denominated) for all insurable improvements that are Areas of Association Responsibility. If such coverage is not generally available at reasonable cost, then “broad form” coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes.

- **15.1.2 Commercial general liability insurance on Areas of Association Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents or contractors while acting on its behalf, if generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least $1,000,000.00 per occurrence with respect to bodily injury, personal injury and property damage; provided, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

- **15.1.3 Workers compensation insurance and employers liability insurance, if and to the extent required by law;

- **15.1.4 Directors and officers liability coverage; and,

- **15.1.5 Such additional insurance as the Board, in its best business judgment, determines advisable.

15.2 **Policy Requirements.** The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one (1) or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Cochise County, Arizona area. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy
the requirements of paragraph 16.1. In the event of an insured loss, the deductible shall be treated as an expense of the Association in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines that the loss is the result of the negligence or willful misconduct of one (1) or more Owners, their guests, invitees or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Dwelling Units as a Special Assessment.

15.3 Additional Requirements. All insurance coverage obtained by the Board shall:

15.3.1 Be written with a company authorized to do business in the State of Arizona which satisfies the requirements of the Agency, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

15.3.2 Be written in the name of the Association as trustee for the benefited parties. Policies on Areas of Association Responsibility shall be for the benefit of the Association and its Members; and

15.3.3 Not be brought into contribution with insurance purchased by Owners, Occupants or their Mortgagees individually.

15.4 Optional Requirements. In addition, the Board shall use reasonable efforts to secure insurance policies, which list the Owners as additional insured's and provide:

15.4.1 A waiver of subrogation as to any claims against the Association's Board, officers, employees and its manager, the Owners or household member of an Owner and their tenants, licensees, agents and guests;

15.4.2 A waiver of the insurer's rights to repair and reconstruct instead of paying cash;

15.4.3 An endorsement excluding Owners individual policies from consideration under any "other insurance" clause;

15.4.4 An endorsement requiring at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification or non-renewal;

15.4.5 A cross-liability provision;

15.4.6 A provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss;

15.4.7 Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth (1/6) of the Annual Assessments on all lots plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation.

15.4.8 Contain an inflation guard endorsement;

15.4.9 Include an agreed amount endorsement, if the policy contains a coinsurance clause;

15.4.10 Provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's membership in the Association; and,
15.4. I include an endorsement precluding cancellation, invalidation, suspension, condition to recovery or non-renewal by the insurer on account of any one (1) or more individual Owners or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure.

15.5 Restoring Damaged Improvements. In the event of damage to or destruction of Areas of Association Responsibility or other Property which the Association is obligated to insure, the Board or its duly-authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the Property to substantially the condition in which it existed prior to the damage, allowing for changes or Improvements necessitated by changes in applicable building codes.

Damaged Improvements on the Areas of Association Responsibility shall be repaired or reconstructed unless Members representing at least seventy-five percent (75%) of the total Class A votes in the Association, and the Class B Member, if any, decide within sixty (60) days after the loss not to repair or reconstruct. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such sixty (60) day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional days. No First Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Areas of Association Responsibility shall be repaired or reconstructed.

If a decision is made not to restore the damaged Improvements, and no alternative Improvements are authorized, the affected Property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction or after such settlement as is necessary and appropriate, shall be retained by the Association for the benefit of its Members and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the First Mortgagee of any affected Lot.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under paragraph.

ARTICLE 16
MISCELLANEOUS

16.1 Interpretation of the Covenants. Except for judicial interpretation and as hereinafter provided, the Association, by the Board, shall have the exclusive right to construe and interpret the provisions of this Declaration and all other Governing Documents. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association’s construction or interpretation of the provisions hereof or Governing Documents, shall be final, conclusive, and binding as to all Persons and property benefited or bound by this Declaration.
16.2 Severability. Any determination by a court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity of enforceability of any of the other provisions hereof.

16.3 Violation of Law. Any violation of any federal, state, municipal or local law, ordinance or regulation, pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

16.4 Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

16.5 Successors and Assigns. Any reference in this Declaration to Declarant shall include any successors or assignees of Declarants rights and powers hereunder. Any such assignment shall be evidenced by a Recorded document executed by the Declarant and its successors and assigns.

16.6 Gender and Number. Whenever the Context of this Declaration so requires, the words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders. Words in the singular shall include the plural and words in the plural shall include the singular.

16.7 Captions. All captions, titles or headings of the Articles and paragraphs in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

16.8 Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or any other Governing Document or any resolution of the Board to be given to any Owner or Occupant then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in a newspaper in general circulation within Cochise County, Arizona. This paragraph shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

16.9 Survival of Liability. The termination of Membership in the Association shall not relieve or release any such former Member from any liability or obligation incurred under or in any way connected with the Association during the period of such Membership, or impair any rights or remedies which the Association may have against such former Member arising out of, or in any way connected with such Membership and the covenants and obligations incident thereto.

16.10 Construction. In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and any other Governing Documents, the provisions of this Declaration shall prevail.

16.11 Joint and Several Liability. In the case of joint ownership of a Lot or Dwelling Unit, the liabilities and obligations of each of the joint Owners set forth in or imposed by this Declaration shall be joint and several.

16.12 VA Approval. If this Declaration has been initially approved by the VA in connection with any loan programs made available by VA in regard to the Property, then for
so long as there is a Class B Member, amendments of this Declaration will require the prior approval of the VA, unless the need for such approval has been waived by VA.

16.13 **Annexable Property.** Declarant or its affiliate(s) may own now or in the future or control fee title to certain real property located adjacent to the Property (the “Annexable Property”). Declarant reserves the right, in its sole discretion, to cause the Annexable Property, or portions thereof from time to time, to be annexed into and added as Property subject to this Declaration. Such annexation(s) shall be evidenced by a Certificate(s) of Annexation as executed by Declarant and recorded in the official records of Cochise County, Arizona.
IN WITNESS WHEREOF, the Declarant has executed this Declaration effective as of the day of the 15th day of May, 2004.

CASTLE & COOKE ARIZONA, INC

By [Signature]
Richard Coffman, Vice President

By [Signature]
Michael Cerepanye, Assistant Secretary
STATE OF ARIZONA
County of Cochise

On 3-22-7 before me, Barbara J. Bok, Notary Public, personally appeared RICHARD COFFMAN 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 entity upon behalf of which the person acted, executed the instrument.

My Commission Expires:

November 2, 2008

BARBARA J. BOK
NOTARY PUBLIC - STATE OF ARIZONA
COCHISE COUNTY
My Comm. Expires November 2, 2008

STATE OF ARIZONA
County of Cochise

On 3-22-7 before me, Barbara J. Bok, Notary Public, personally appeared MICHAEL CEREPANYA 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 entity upon behalf of which the person acted, executed the instrument.

My Commission Expires:

November 2, 2008

BARBARA J. BOK
NOTARY PUBLIC - STATE OF ARIZONA
COCHISE COUNTY
My Comm. Expires November 2, 2008

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EXHIBIT A

Legal Description of the Property

That portion of Sections 20 and 29, Township 23 South, Range 21 East of the Gila and Salt River Base and Meridian, records of Cochise County, Arizona, more particularly described as follows:

BEGINNING at the South quarter corner of said Section 29, said point being marked by a 3-inch United States forestry service aluminum cap on ¾-inch aluminum rod stamped “L.S. 4080; thence along the following ten courses:

1. North 89°43'49" West, along the South line of said Section 29, a distance of 747.54 feet to the Northeasterly right of way line of state highway 92;

2. thence North 46°31'03" West, along said Northeasterly right of way line, a distance of 1,109.55 feet to the beginning of a non-tangent curve, concave Northeasterly, having a radius of 2,764.79 feet, from which point a radial line bears North 40°56'02" East;

3. thence Northwesterly along said curve and continuing along said Easterly right of way, through a central angle of 43°32'44", an arc distance of 2,101.27 feet to the beginning of a non-tangent compound curve, concave Easterly, having a radius of 5,680.00 feet, from which point a radial line bears North 86°12'30" East;

4. thence Northerly along said curve and continuing along said Easterly right of way line, through a central angle 04°25'18", an arc distance of 438.35 feet;

5. thence North 01°58'05" West, continuing along said Easterly right of way, a distance of 523.73 feet;

6. thence North 00°01'37" East, continuing along said Easterly right of way line, a distance of 5,727.23 feet to the South line of Valley Vista Estates filed in Book 5 of Maps and Plats, page 56;

7. thence North 89°54'51" East, along said South line, a distance of 2,553.32 feet;

8. thence South 00°11'08" West, a distance of 3,969.58 feet;

9. thence South 00°19'54" West, a distance of 2,655.45 feet;

10. thence South 00°05'56" West, a distance of 2,657.33 feet to the POINT OF BEGINNING;

EXCEPT all reservations contained in Document No. 8712-31763, records of Cochise County, Arizona

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EXHIBIT B

Legal Description of Areas to be designated as Common Areas

As noted in The Oaks Subdivision Final Plat recorded on the 9th Day of May, 2007, in Book 15 of Maps and Plats at Page 77 in Cochise County, Arizona.