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**CAPTION HEADING: Amended and Restated Declaration of Covenants,  
Conditions and Restrictions for Cottonwood Square and Cottonwood  
Commons**

AMENDED AND RESTATED  
DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
COTTONWOOD SQUARE AND COTTONWOOD COMMONS

This Amended and Restated Declaration of Covenants, Conditions and Restrictions for Cottonwood Square and Cottonwood Commons is intended to, shall and does fully amend, restate and supercede in their entirety the Covenants, Conditions and Restrictions described as follows: Declaration of Covenants, Conditions and Restrictions for Cottonwood Square recorded at Book 3822, Page 346, official records of Yavapai County, Arizona and amended by recordation at Book 3843, Page 230 official record of Yavapai County, Arizona and the Declaration of Covenants, Conditions and Restrictions for Cottonwood Commons recorded at Book 3823, Page 501 official records of Yavapai County, Arizona and amended in Book 3843, Page 231 official records of Yavapai County, Arizona.

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ARTICLE I

DEFINITIONS

Unless otherwise defined, the following words and phrases when used in this Declaration shall have the meanings set forth in this Article.

- 1.1 "Annexable Property" means the real property located in Yavapai County, Arizona, which is within the criteria set forth in Section 2.3 below.
- 1.2 "Annual Assessment" means the assessments levied against each Lot, and the Owner thereof, pursuant to Section 6.2 of this Declaration.
- 1.3 "Architectural Committee" or "Committee" means the committee of the Association, which may be created as a separate committee of the Board pursuant to Section 5.10 of this Declaration, as amended or supplemented from time to time.
- 1.4 "Architectural Committee Rules" means any rules, guidelines, standards and procedures adopted by the Architectural Committee pursuant to Section 5.10 of this Declaration, as amended or supplemented from time to time.
- 1.5 "Areas of Association Responsibility" means: (i) all Common Area; (ii) all land, and the Improvements situated thereon, located within the boundaries of a Lot which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or the terms of another recorded document executed by the Association; (iii) all real property, and the Improvements situated thereon, within the Project located within dedicated rights-of-way with respect to which the State of Arizona or any county or municipality has not accepted responsibility for the maintenance thereof, but only until such time as the State of Arizona or any county or municipality has accepted all responsibility for the maintenance, repair, and replacement of such areas; and (iv) those areas of lots on which the Association is to maintain landscaping as provided in Section 3.26.2.
- 1.6 "Articles" means the Articles of Incorporation of the Association, as amended from time to time.
- 1.7 "Assessment" means an Annual Assessment or Special Assessment or any other charge property levied against a Lot by the Association pursuant to this Declaration or Arizona law.
- 1.8 "Assessment Lien" means the lien created and imposed by Article 6 of this Declaration and Arizona law.

- 1.9 "Assessment Period" means the period set forth in Section 6.6 of this Declaration.
- 1.10 "Association" means the Arizona nonprofit corporation to be organized by Declarant to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns. Declarant intends to incorporate the Association under the name "COTTONWOOD SQUARE AND COMMONS HOMEOWNERS' ASSOCIATION" but if such name is not available, Declarant reserves the right to incorporate the Association under such other name as the Declarant deems appropriate.
- 1.11 "Association Rules" means any rules adopted by the Board pursuant to Section 5.3 of this Declaration, as amended from time to time.
- 1.12 "Board" means the Board of Directors of the Association.
- 1.13 "Bylaws" mean the Bylaws of the Association, as amended from time to time.
- 1.14 "Common Area" means: (i) Tracts A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R and S according to the Plat, including the recreational Improvements thereon; and (ii) all land, together with all Improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest. Improvements on the Common Area may include, but are not limited to, a clubhouse or cabanas, pool and spa amenities, sidewalks, parking, cluster mailboxes, and permanent signage.
- 1.15 "Common Expense(s)" mean expenditures made by or financial liabilities incurred by the Association, together with allocations to reserves.
- 1.16 "Declarant" means CW Cottonwood Properties, LLC an Arizona Limited Liability Company, its successors and assigns, but excluding members of the public or others who purchase lots.
- 1.16.1 "Declarant's Affiliates" means Read Development, Inc., an Arizona Corporation, Read Homes, Inc., an Arizona Corporation and other companies that Declarant may hereafter give notice of to the Association. The transfer of substantially all of the Lots to an Affiliate shall render the Declarant's Affiliate the successor and assignee and thus the Declarant, in which event, CW Cottonwood Properties, LLC shall be treated as said Declarant's Affiliate.
- 1.17 "Declaration" means this Declaration of Covenants, Conditions, Restrictions and Easements, as amended from time to time.



- 1.18 "Eligible Insurer or Guarantor" means an insurer or governmental guarantor of a First Mortgage who has filed a written request pursuant to Section 9.5.1 of this Declaration.
- 1.19 "Eligible Mortgage Holder" means any First Mortgagee who has filed a written request pursuant to section 9.5.1 of this Declaration.
- 1.20 "First Mortgage" means any mortgage or deed of trust on a Lot, which has priority over all other mortgages, and deeds of trust on the same Lot.
- 1.21 "First Mortgagee" means the holder or beneficiary of any First Mortgage.
- 1.22 "Improvement" means any building, fence, gate, sidewalk, wall, swimming pool, spa, or other structures, road, driveway, parking area, cluster mailboxes, permanent signage, and lighting fixtures, and trees, plants, shrubs, grass or other landscaping of every type and kind.
- 1.23 "Lessee" means the lessee or tenant under a lease, oral or written, of any Lot including an assignee of a lease.
- 1.24 "Lot" means a portion of the Project intended for independent ownership and use and designated as a lot on the Plat and, where the context indicates or requires, shall include any Residential Dwelling or other Improvements situated on the Lot.
- 1.25 "Member" means any Person who is a member of the Association.
- 1.26 "Owner" means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple title interest of a Lot. An Owner shall include a purchaser under a contract for the conveyance of real property, subject to the provisions of A.R.S. 33-741 et seq. An Owner shall not include: (i) Persons having an interest in a Lot merely as security for the performance of an obligation or a Lessee; or (ii) a purchaser under a purchase contract and receipt, escrow instructions or similar executory contract which are intended to control the rights and obligations of the parties to the executory contract pending the closing of a sale or purchase transaction. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to A.R.S. 33-801 et seq., the trustor shall be deemed to be the Owner. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

- 1.27 "Person" means a natural person, corporation, business trust, estate, trust, partnership, limited liability company association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.
- 1.28 "Plat" means the plat of COTTONWOOD SQUARE AND COMMONS recorded on April 4, 2000 in Book 42, pages 15-17, records of Yavapai County, Arizona, and all amendments, supplements and corrections thereto.
- 1.29 "Project" means the real property described on Exhibit "A" attached to this Declaration, together with all Improvements located thereon and all easements, rights and privileges appurtenant thereto.
- 1.30 "Project Documents" means this Declaration, the Articles, the Bylaws, and the Association rules and the Architectural Committee Rules, if any.
- 1.31 "Purchaser" means any Person, other than the Declarant, who by means of a voluntary transfer becomes the Owner of a Lot, except for: (i) a Person who purchases a Lot and then leases it to the Declarant for use as a model home or (ii) a Person who, in addition to purchasing a Lot, is assigned any or all of the Declarant's rights under this Declaration.
- 1.32 "Recording" means placing an instrument of public record in the office of the County Recorder of Yavapai County, Arizona and "Recorded" means having been so placed of record.
- 1.33 "Resident" means each individual occupying or residing in any Residential Dwelling, including, without limitation, an Owner's or Lessee's family members and other members of their household residing with them on a regular basis.
- 1.34 "Residential Dwelling" means any building, or portion of a building, situated on a Lot and designed and intended for independent ownership and for use and occupancy as a residence.
- 1.35 "Single Family" means 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) persons not all so related, who maintain a common household in a Residential Dwelling.
- 1.36 "Special Assessment" means any assessment levied and assessed pursuant to Section 6.5 of this Declaration.
- 1.37 "Yard" means the portion of the Lot devoted to Improvements other than the Residential Dwelling. "Private Yard" means that portion of a Yard, which is enclosed or shielded from view by walls, fences, hedges or the like so

that it is not generally Visible from Neighboring Property. "Public Yard" means that portion of a Yard, which is generally Visible from Neighboring Property, whether or not it is located in front of, beside, or behind the Residential Dwelling.

1.38 "Visible from Neighboring Property" means, with respect to any given object, that such object is or would be visible to a person six feet tall standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

ARTICLE 2

PROJECT GENERAL PLAN; BINDING EFFECT;  
DISCLAIMER OF REPRESENTATIONS; RIGHT OF ANNEXATION

**2.1 Project General Plan; Binding Effect**

This Declaration is being Recorded to establish a general plan for the development, sale, lease and use of the Project in order to protect and enhance the value and desirability of the Project. The Declarant declares that the Project shall be held, sold, and conveyed subject to this Declaration. By acceptance of a deed or by acquiring an interest in any portion of the Project, each Person, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, and Rules now or hereafter imposed by this Declaration, without regard to whether the Declaration is referenced in the instrument of conveyance or encumbrance. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development, sale, lease, and use of the Project and hereby evidences his interest that all restrictions, conditions, and covenants contained in this Declaration shall run with the land and be binding on all subsequent and future Owners and their Lessees, transferees, and assigns. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive, and enforceable by the Association and all Owners. Declarant hereby covenants and agrees that the Lots and the Membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

**2.2 Disclaimer of Representations**

Declarant makes no representations or warranties whatsoever that: (i) the Project will be completed in accordance with the plans for the Project as they exist on the date this Declaration is Recorded; (ii) any portion of the Project will be committed to or developed for a particular use or for any use, except that all such shall be consistent with the development of the project for Single Family Residential purpose; or (iii) the use of any portion of the Project will not be changed in the future.

**2.3 Annexation of Property**

Subject to limitations herein, the Declarant may annex property to the Project. Any property so annexed shall become part of the Project and shall be subject to this Declaration and all terms of this Declaration shall apply to the annexed property, except to the extent the document annexing the property specifically provides that certain provisions do not apply. Only property that is contiguous to or separated by no more than one hundred (100) yards from the Project, excluding public roadways or property titled to the State, County or local government or any agency or division thereof, may be annexed. No more than fifty (50) acres of real property may be annexed to the Project.

ARTICLE 3

USE RESTRICTIONS

3.1 Architectural Control

3.1.1 No Improvement, which would be Visible from Neighboring Property, shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee. No addition, alteration, repair, change or work which in any way alters the exterior appearance of any part of a Lot and/or any improvements located thereon, and which is Visible from Neighboring Property, from their appearance on the date this Declaration is Recorded shall be made or done without the prior written approval of the Architectural Committee. Accordingly, approval of the Architectural Committee is not required for the construction, installation, addition, alteration, or repair of any Improvement situated in the Private Yard of a Lot. Any Owner desiring approval of the Architectural Committee for the construction, installation, addition, alteration, repair, change, or replacement of any Improvement which is or would be Visible from Neighboring Property shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the addition, alteration, repair, change, or other work which the Owner desires to perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Committee any additional information, plans, and specifications which the Committee may request. In the event that the Architectural Committee fails to approve an application for approval within thirty (30) days after receipt of the application, together with any fee payable pursuant to Section 3.1.5 of this Declaration and all supporting information, plans, and specifications requested by the Architectural Committee, have been submitted to the Committee, then the Applicant may give written notice to the Committee of Applicant's request for a decision and if there is no decision mailed or delivered within fifteen (15) days of such notice, such application shall be deemed approved. The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change, or other work pursuant to this Section 3.1 shall not be deemed a waiver of the Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change, or other work subsequently submitted for approval.

3.1.2 The Architectural Committee may disapprove plans and specifications for any construction, installation, addition, alteration, repair, change, or other work which must be approved by the Committee pursuant to this Section 3.1 if the Committee determines, in its sole and absolute discretion, that the proposed construction, installation, addition, alteration, repair, change, or other work: (i) would violate any provision of this Declaration; (ii) does not comply with any Architectural Committee Rule; (iii) is not in harmony with existing Improvements in the Project or with Improvements previously approved by the Architectural Committee but not yet constructed; (iv) is not aesthetically acceptable; (v) would be detrimental to or adversely affect appearance of the Project; or (vi) is not otherwise in accord with the general plan of development for the Project.

3.1.3 Upon receipt of approval from the Architectural Committee for any construction, installation, addition, alteration, repair, change, or other work, the Owner who had requested such approval shall proceed to perform or cause to be performed the work approved by the Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Committee.

3.1.4 Any changes, deletion or addition to the plans and specifications approved by the Architectural Committee must be approved in writing by the Committee.

3.1.5 The Architectural Committee shall have the right to charge a fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change or other work pursuant to this Section 3.1, which fee shall be payable at the time the application for approval is submitted to the Committee.

3.1.6 All Improvements constructed on Lots shall be of new construction, and no buildings or other structures shall be removed from other locations and placed on any Lot.

3.1.7 The provisions of this Section 3.1 do not apply to, and approval of the Architectural Committee shall not be required for, the construction, installation, addition, alteration, repair, or change of any Improvements made by, or on behalf of Declarant or Declarant's Affiliates.

3.1.8 The approval required of the Architectural Committee pursuant to this Section 3.1 shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation. Before commencing the work of the Improvement and, after receiving Architectural Committee approval, the Owner shall provide the Committee with a copy of any applicable permits required by law for the work.

3.1.9 The approval of the Architectural Committee of any construction, installation, alteration, addition, repair, change or other work pursuant to this Section 3.1 shall not be deemed a warranty or representation by the Architectural Committee as to the quality of such work or that such work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule, or regulation.

3.1.10 The Architectural Committee may condition its approval of plans and specifications upon the agreement of the Owner submitting such plans and specifications to furnish to the Association a bond or other security acceptable to the Committee in an amount to be determined by the Committee to be reasonably sufficient to: (i) assure the completion of the proposed Improvements or the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such Improvements, and (ii) repair any damage which might be caused to an Area of Association Responsibility as a result of such work. Any such

bond shall be released or security shall be fully refundable to the Owner upon: (i) the completion of the Improvements in accordance with the plans and specifications approved by the Architectural Committee; and (ii) the Owner's written request to the Architectural Committee, provided that there is no damage caused to an Area of Association Responsibility by the Owner or its agents or contractors.

3.1.11 If the plans and specifications pertain to an Improvement which is within an Area of Association Responsibility so that Association is responsible for maintenance, repair, and replacement of such Improvement, the Architectural Committee may condition its approval of the plans and specifications for the proposed construction, installation, alteration, addition, repair, change, or other work with respect to the Improvement on the agreement of the Owner to reimburse the Association for the future cost of the repair, maintenance, or replacement of such Improvement

### 3.2 Temporary Occupancy and Temporary Structures

No trailer, basement of an incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind shall be used at any time as a Residential Dwelling, either temporarily or permanently. Temporary structures used during the construction of Improvements approved by the Architectural Committee shall be removed immediately after the completion of construction.

### 3.3 Nuisances; Construction Activities

No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or any other portion of the Project and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any portion of the Project or activity thereon, unsanitary, unsightly, offensive or detrimental to any other portion of the Project or the Residents. No nuisance shall be permitted to exist or operate upon any Lot or any other portion of the Project so as to be offensive or detrimental to any other portion of the Project or to its Residents. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except ordinary and customary security devices used exclusively for security purposes, shall be located, used or placed on any Lot or any other portion of the Project. Normal construction activities, and parking in connection with the building of Improvements on a Lot or other portion of the Project shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots and all other portions of the Project shall be kept in a neat and tidy condition during construction periods and trash and debris shall not be permitted to accumulate. The Architectural Committee, in its sole discretion, shall have the right to determine the existence of any such nuisance. The provisions of this Section 3.3 shall not apply to construction activities of Declarant.

### 3.4 Diseases and Insects

No person shall permit any thing or condition to exist upon any Lot or other portion of the Project, which shall induce, breed, or harbor infectious plant or animal diseases or noxious insects.

**3.5 Antennas**

No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation including, without limitation, satellite or microwave dishes, shall be erected, used, or maintained on any Lot without the prior written approval of the Architectural Committee who may limit or restrict the placement of such antennas or other devices absent appropriate screening and architectural conformity consistent with FCC Rules as further described in Section 3.15 below.

**3.6 Mineral Exploration**

No Lot or other portion of the Project shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth, or any earth substance of any kind.

**3.7 Environmental Restrictions**

All Owners and Residents in the Project shall be responsible for complying with all federal and state environmental and health laws. Without limiting the foregoing, no Resident may dispose of, transport, or store "hazardous materials" on his Lot or on the Common Area other than small amounts of ordinary household non-combustible cleaning agents maintained on his Lot and in no event may any Owner or Resident dispose of any hazardous materials, including without limitation, motor oil, hydrocarbons, or other petroleum products, in or down a dry well within or adjacent to the Project.

**3.8 Trash Containers and Collection**

Except as required by construction activities, no garbage or trash shall be placed or kept on any Lot or other portion of the Project, except in covered containers of a type, size and style which are approved by the Architectural Committee and/or supplied by the County of Yavapai or the Town of Cottonwood. In no event shall such containers be maintained so as to be Visible from Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from Lots and other Portions of the Project and shall not be allowed to accumulate thereon. No indoor incinerators shall be kept or maintained on any Lot or other portion of the Project.

**3.9 Clothes Drying Facilities**

No outside clotheslines or other facilities for drying or airing clothes shall be erected, placed, or maintained on any Lot or other portion of the Project so as to be Visible from Neighboring Property.

**3.10 Utility Services**

No lines, wires, or other devices for the communications or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot or other portion of the Project unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under, or on buildings or other structures approved by the Architectural Committee.



No provision of the Declaration shall be deemed to forbid the erection of temporary power or telephone structures incidents to the construction of buildings or structures approved by Declarant or the Architectural Committee.

**3.11 Overhead Encroachments**

No tree, shrub, or planting of any kind on any Lot or other portion of the Project shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way, or other area from ground level to a height of eight (8) feet.

**3.12 Residential Use**

Subject to the provisions of any applicable federal or state Fair Housing Acts, all Residential Dwellings shall be used, improved, and devoted exclusively to residential use by a Single Family. Subject to such Fair Housing Acts, no trade or business may be conducted on any Lot or in or from any Residential Dwelling, except that an Owner or other Resident of a Residential Dwelling may conduct a business activity within a Residential Dwelling 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 Residential Dwelling; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Project; (iii) the business activity does not involve persons coming onto the Lot or the door-to-door solicitation of Residents; (iv) the trade or business conducted by the Owner or Resident does not require more than one (1) employee working in or from such Residential Dwelling who is not a lawful Resident thereof; (v) the volume of vehicular or pedestrian traffic generated by such trade or business does not result in traffic congestion or parking violations; (vi) the trade or business does not use flammable liquids or hazardous materials in quantities not customary for residential use; and (vii) the business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other Residents in the Project, as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade" as used in Section 3.12 shall be construed to have ordinary, general accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on any 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 for such activity.

The leasing of a Residential Dwelling by the Owner thereof shall not be considered a trade or business within the meaning of this Section 3.12 and the Owner of a Lot shall have the absolute right to lease his Lot and the Residential Dwelling thereon, provided that the Lease is in writing and all Residents occupying the Residential Dwelling under the Lease, including the Lessee, are specifically made subject to the covenants, conditions, restrictions, easements, limitations, and uses contained in this Declaration, the Bylaws, and any Association Rules and provided further that the lease shall not be for a period of less than thirty (30) days.

**3.13 Animals**

No animals, bird, fowl, poultry, reptile, or livestock may be kept on a Lot temporarily or permanently, except for dogs, cats, common domestic birds such as parakeets, cockatiels, and parrots, or similar household pets kept, bred, or raised thereon solely as domestic pets and not for commercial purposes. All dogs, cats, or other household pets permitted to be kept on a Lot under this Section 3.13 shall be confined to an Owner's Lot, except that a dog, cat, or other pet capable of being walked on a leash may be permitted to leave an Owner's Lot if such animal is kept at all times on a leash not to exceed six feet (6') in length and is not permitted to enter upon any other Lot. It shall be the responsibility of the Owner or Resident to immediately remove any droppings from pets. No household pet permitted on a Lot under this Section 3.13 shall be allowed to make an unreasonable amount of noise or to become a nuisance. The Association may adopt rules limiting the number of pets, but to no less than two (2) of a kind or in combination, such as two (2) dogs or two (2) cats or one (1) dog and one (1) cat. No structure for the care, housing, or confinement of any permitted household pet shall be maintained so as to be Visible from Neighboring Property. Upon the written request of any Owner or Resident, the Architectural Committee shall conclusively determine, in its sole discretion, whether for the purposes of the Section 3.13, a particular animal constitutes a household pet pursuant to this Section 3.13 or whether such animal is a nuisance or making an unreasonable amount of noise. Any decision rendered by the Architectural Committee shall be enforceable in the same manner as other restrictions set forth in this Declaration.

**3.14 Machinery and Equipment**

No machinery or equipment of any kind shall be placed, operated, or maintained upon or adjacent to any Lot, or any other portion of the Project, except: (i) such machinery or equipment used in connection with the maintenance or construction during the period of construction on an Improvement, or (ii) such machinery or equipment which Declarant or the Association may require for the operation and maintenance of the Project.

**3.15 Roof Structures and Equipment**

No solar units or panels, heating, air conditioning or ventilation equipment, or any other equipment or structures shall be located or installed on any roof of a Residential Dwelling or other Improvement on a Lot. The Architectural Committee may grant a variance for solar panels or other solar equipment if attractively screened in accordance with standards established by the Committee, subject to applicable federal or state energy conservation laws governing the installation of solar equipment on Residential Units; and provided further, that the Association may not prohibit or unduly restrict satellite dishes and antennas of the types covered by the Federal Communication Commission rules promulgated to the Telecommunications Act of 1996, as amended from time to time; provided further, that nothing shall preclude the Association from adopting reasonable safety and/or architectural aesthetics Rules which do not impede the Owner's ability to obtain adequate reception from a protected class of satellite dishes or antennas within the scope of the FCC rules.

**3.16 Window Treatments**

All windows within any Residential Dwelling on a Lot shall be covered with appropriate window treatments within ninety (90) days after first occupancy by a Resident. No reflective materials, including but not limited to, aluminum foil, reflective screens or glass, mirrors or similar-type items shall be installed or placed on the outside or inside of any windows. The exterior of all drapes, curtains, or other window coverings shall be white, off-white, beige or natural wood-toned color, or such other colors as permitted by the Architectural Committee.

**3.17 Signs**

No emblem, logo, sign, or billboard of any kind whatsoever (including, but not limited to, commercial, political, "for sale", "for rent", and similar signs) which are Visible from Neighboring Property shall be erected or maintained on any Lot except: (i) signs required by legal proceedings; (ii) Residential Dwelling identification signs not exceeding 6 x 12 inches in size; (iii) one standard size realty company "for sale" or "for lease" sign; (iv) Project identification signs and other marketing signs installed by Declarant, Declarant's Affiliates or the Association; and (v) such other signs as are approved by the Architectural Committee.

**3.18 Restrictions on Further Subdivision, Property Restrictions and Rezoning**

No Lot shall be further subdivided or separated into smaller Lots or parcels or divided into "time share" intervals as that term is defined in A.R.S. 32-2197, as amended from time to time, and no portion less than all of any such Lot shall be conveyed or transferred by an Owner other than Declarant, without the prior written consent of the Architectural Committee. No further covenants, conditions, restrictions, or easements shall be recorded by any Owner, Lessee, or other Person other than Declarant or the Board without the provisions thereof having first been approved by the Architectural Committee. No application for rezoning, variances, or use permits pertaining to any Lot shall be filed with any governmental authority by any Person other than Declarant or the Board, unless the application has been approved by the Architectural Committee and the proposed use otherwise complies with this Declaration.

**3.19 Commercial Vehicles**

No truck (other than a Family Vehicle truck as defined below), mobile home, bus, travel trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle (hereinafter "Commercial Vehicles") may be parked, maintained, constructed, reconstructed, or repaired on any Lot or Common Area (including driveways or Public Yards of Lots and any Common Areas streets) so as to be Visible from Neighboring Property without the prior written approval of the Architectural Committee, except for: (i) the temporary parking of any Commercial Vehicle on a Lot or street for loading and unloading for a period of not more than twenty-four (24) consecutive hours; (ii) temporary construction trailers or facilities maintained during, and used exclusively in connection with, the construction of any Improvement by the Declarant or any Improvement approved by the Architectural Committee; (iii) Commercial Vehicles parked completely within enclosed Residential Dwelling garages; and (iv) commercial vehicles used in construction on the Project or any Lot therein. A "Family

Vehicle" means any domestic or foreign car, station wagon, sport wagon, pick-up truck of less than one ton capacity with camper shells not exceeding eight (8) feet in height measured from ground level, mini-van, jeep, sport utility vehicle, motorcycle, and similar non-commercial and non-recreational vehicles that are used by a Resident for family and domestic purposes and which are used on a regular and recurring basis for basic transportation. The Architectural Committee may, acting in good faith, designate a Commercial Vehicle as a Family Vehicle if the parking of such Vehicle on a Lot will not adversely affect the Project or the Residents. Family Vehicles and Commercial Vehicles are collectively referred to in this Article 3 as "Vehicles".

### **3.20 General Vehicle Restrictions and Guest Parking**

3.20.1 Except for emergency Vehicle repairs, and subject to the further restrictions of Section 3.19 above, no Vehicle shall be constructed, reconstructed, or repaired on a Lot or any other portion of the Project except within the enclosed garage of a Residential Dwelling.

3.20.2 Subject to the further restrictions of Section 3.19 above, no Vehicle shall be parked on the Public Yard of any Lot, except for the driveway or attached garage or on any Common Area street or the designated side of the private roads in the Project. Guests must abide by the same parking restrictions as Owners and other Residents.

3.20.3 Parking spaces, if any, located on the Common Area shall be available for use by the guests and invitees of Owners and other Residents; provided, however, that the Board shall have the right to assign such parking spaces to the exclusive use of a Lot. The Board shall have the right to adopt Association Rules limiting the duration of guest parking.

### **3.21 Towing of Vehicles**

The Board shall have the right to have any Vehicle which is parked, kept, maintained, constructed, reconstructed, or repaired in violation of the Project Documents and this Article 3 towed away at the sole cost and expense of the owner of the Vehicle. Any expense incurred by the Association in connection with the towing of any Vehicle shall be paid to the Association upon demand by the owner of the Vehicle. If the Vehicle is owned by an Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the same manner as provided for in this Declaration for the collection of Assessments.

### **3.22 Lighting**

Except as initially installed by Declarant, no spotlights, flood lights, or other high intensity lighting shall be placed on or utilized on any Lot which will allow light to be directed or reflected in any manner on the Common Area or any Lot.

**3.23 Drainage**

No Residential Dwelling or other Improvement shall be constructed, installed, placed, or maintained in any manner that would obstruct, interfere with, or change the direction or flow of water in the Project as originally developed by Declarant including construction by a person other than Declarant in any drainage easements set forth on the Plat, or for any Lot as shown on the drainage plans on file with the County of Yavapai unless such construction is to facilitate drainage as platted or planned and is approved by the Architectural Committee.

**3.24 Garages/Garage Sales**

Garages shall be used only for the parking of Vehicles and shall not be used or converted for living or recreational activities without the prior written approval of the Architectural Committee.

**3.25 Basketball Goals and Backboards**

No basketball goal or backboard shall be attached to a roof of a Residential Dwelling.

**3.26 Planting and Landscaping**

3.26.1 Except for: (i) such planting, landscaping, fences and walls as are installed by Declarant or Declarant's Affiliates in accordance with the initial construction of Residential Dwellings on a Lot; or (ii) Private Yard plantings and landscaping, no planting or landscaping shall be done and no fences, hedges, or walls shall be erected or maintained on any Lot without the prior written approval of the Architectural Committee.

3.26.2 The Association shall be responsible for maintaining landscaping as follows: (i) all landscaping within the Common Areas in Cottonwood Square and Cottonwood Commons, as those two areas of the Project are depicted in the Plat at Pages 2 and 3 of the plat respectively; (ii) Landscaping within certain areas of the Lots of the Cottonwood Commons portion of the Project described as that portion of such Lots, which are outside Residential structures and fences installed on the Lots, whether such fences are installed before or after the Lot is sold to a Purchaser; (iii) All of the areas of the Lots in the Cottonwood Square portion of the Project outside the residential structures subject to the following: a) The Association's duty to maintain landscape shall only apply to lots 38A, 38B, 38C, 39A, 39B, 39C, 39D, 40A, 40B, 40C, 41A and 41B if and when the Owner of such a Lot executes an agreement and easement allowing the Association to maintain (and, if the Association so desires, to install and/or modify) the landscape on the Lot and the Owner obtains consent for the same from all persons who hold mortgages on the Lot and b) The Association shall have no duty to maintain landscape on any portion of any Lots in the Cottonwood Square portion of the Project, which is presently or hereafter enclosed by a fence which has been or is allowed to be constructed on the Lot.

3.26.3 The Association shall have an easement upon, over and through those areas of an Owner's Lot on which the Association is to maintain landscape and including areas of the Lots immediately adjacent to such areas as is reasonably necessary for the Association to carry out its landscape maintenance duties.

3.26.4 No Lot Owner may alter or modify the landscape in areas that the Association is maintaining landscape without the Association's written approval.

### 3.27 Variances

The Architectural Committee may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 3 if the Architectural Committee determines in its discretion that: (i) a restriction would create an unreasonable hardship or burden on an Owner or Resident or a change of circumstances since the Recording of this Declaration has rendered such restriction obsolete; and (ii) the activity permitted under the variance will not have any substantial adverse effect on the Owners or Residents of the Project. Such variances must be evidenced in writing and must be signed by a majority of the Committee members. If such variance is granted, no violation of the covenant, conditions, and restrictions contained in this Declaration shall be deemed to have occurred with respect to the specific matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular provision hereof covered by the variance, and only for so long as the special circumstances warranting the variance exist, nor shall it affect in any way the Owner's and/or Resident's obligation to comply with all governmental laws and regulations affecting the use of his Lot. The Architectural Committee shall have the right to condition the granting of a variance as it may determine in the Committee's sole discretion, including, without limitation, making a variance temporary or permanent; or requiring the removal or replacement of a non-permanent or semi-permanent structure upon the sale or other conveyance of a Lot. Moreover, because of the unique facts and circumstances surrounding each variance request, the granting of a variance in one instance or under certain circumstances, terms, and conditions does not mandate the granting of a variance under similar or related circumstances, terms, or conditions if the experiences of the Association and the Project as a whole or the differences in circumstances (however slight) of a variance request from a previously approved variance lead the Architectural Committee, in good faith, to disapprove a variance request in such instance.

### 3.28 No Warranty of Enforceability

While Declarant has no reason to believe that any of the restrictive covenants contained in this Article 3 or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to an extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in the Project in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by acquiring the Lot agrees to hold Declarant harmless therefrom.

ARTICLE 4

EASEMENTS

4.1 Owner's Easements of Enjoyment in Common Area/Declarant's Obligation to Convey Common Area

4.1.1 Subject to the rights and easements granted to the Declarant in Sections 4.3 and 4.4 of this Declaration, every Owner, and any Resident, shall have a right and easement of enjoyment in and to the Common Area (including, but not limited to, the right to use any private streets which are part of the Common Area for ingress to the Owner's Lot), which right shall be appurtenant to and shall pass with title to every Lot, subject to the following provisions:

- (i) The right of the Association to dedicate, convey, transfer, mortgage, or encumber the Common Area as provided in Section 5.11 of this Declaration;
- (ii) The right of the Association to regulate the use of the Common Area through Association Rules and to charge reasonable admission or other fees for the use of any clubhouse or recreational facilities situated on the Common Area and to prohibit access to such portions of the Common Area, such as landscaped areas, not intended for use by the Owner or Residents;
- (iii) The right of the Association to suspend the right of an owner and any Resident of the Owner's Residential Dwelling to use the Common Area (other than the right of an Owner and such Resident to use any private streets which are part of the Common Area for ingress or egress to the Owner's Lot) if such Owner is more than thirty (30) days' delinquent in the payment of Assessments or other amounts due to the Association or if the Owner or Residential violated any provision of the Project Documents and has failed to cure such violation within thirty (30) days after the Association notifies the Owner of the violation, with such suspension not to exceed sixty (60) days for any infraction of the Project Documents other than the failure to pay Assessments, which suspension shall continue until the delinquent Assessment and all other late fees, interest, and other charges in conjunction therewith shall be paid.

4.1.2 If a Lot is leased or rented by the Owner thereof, the Lessee and the Resident members of the Lessee's family shall have the right to use the Common Area for recreational purposes during the term of the lease, and the Owner of such Lot shall have no right to use the Common Area until the termination or expiration of such lease.

4.1.3 Declarant shall convey the Common Area free and clear of all liens and monetary encumbrances to the Association not later than the earlier of when the last Lot in the project has sold or four (4) years from the date of recordation of this Amended Declaration of Covenants, Conditions and Restrictions. Declarant shall provide the Association, at Declarant's expense, with a title insurance policy insuring good and marketable title to the Common Area.

#### 4.2 Utility Easement

There is hereby created a blanket easement upon, across, over, and under the Common Area for reasonable ingress, egress, installation, replacing, repairing, or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television, and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Area but no sewer, electrical, water, or other utility or service lines may be installed or located on the Common Area except as designed, approved, and constructed by or for the Declarant or as hereafter approved by the Architectural Committee.

#### 4.3 Declarant's Use for Sales and Leasing Purposes

Declarant shall have the right and an easement to maintain sales and leasing offices, management offices, and model homes throughout the Project and to maintain one or more advertising, identification, or directional signs on the Common Area or on any Lots owned by Declarant while Declarant is selling Lots. Declarant reserves the right to place model homes, management offices, and sales and leasing offices on any Lots owned by Declarant or on any portion of the Common Area in such number, or such size and in such locations as Declarant deems appropriate. Declarant reserves the right to retain all personal property and equipment used in the sales, management, or development of the Project that has not been represented as property of the Association and to remove all such goods and Improvements used in marketing, whether or not they have become fixtures. So long as Declarant is marketing Lots in the Project, Declarant shall have the right to reserve parking spaces on the Common Area not otherwise assigned to Residents, for use by prospective Purchasers, Declarant's employees, agents, and others engaged in sales, leasing, maintenance, construction, or management activities. In the event of any conflict or inconsistency between this Section 4.3 and any other provisions of this Declaration, this Section 4.3 shall control.

#### 4.4 Declarant's Easements

Declarant shall have the right and an easement on or over the Areas of Association Responsibility to construct all Improvements the Declarant may deem necessary and to use the Area of Association Responsibility and any Lots and other property owned by Declarant for construction related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project. Declarant shall have the right and an easement upon, over, and through the Areas of Association Responsibility as may be reasonably necessary for the purpose of discharging its obligations or exercising the rights granted to or reserved by the Declarant in this Declaration. Declarant shall have an easement for the installation and



maintenance of such landscape and irrigation as it determines to install and maintain upon, over and through the Areas of Association responsibility and including areas as provided in Section 3.26.1. Declarant's right to so install and maintain landscape and irrigation shall not be a duty and there is no warranty on or duty to maintain landscape and irrigation so installed. In the event of any conflict or inconsistency between this Section 4.4 and any other provisions of this Declaration, this Section 4.4 shall control.

#### **4.5 Easements in Favor of Association**

The Lots are hereby made subject to easements in favor of the Association and its directors, officers, agents, employees, and independent contractors for: (i) inspection of the Lots (but not the interior of Residential Dwelling) in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible and compliance by Owners and Residents with the Project Documents; (ii) inspection, maintenance, repair, and replacement of the Areas of Association Responsibility accessible only from such Lots; (iii) correction of emergency conditions on one or more Lots; (iv) the purpose of enabling the Association, the Board, the Architectural Committee, or any other committees appointed by the Board, to exercise and discharge their respective rights, powers, and duties under the Project Documents; and (v) the Association shall have an easement for the installation and maintenance of Landscape and attendant irrigation upon, over and through the Areas of Association Responsibility and including areas added thereto as provided in Section 3.26.1.

#### **4.6 Easements for Encroachments**

Each Residential Dwelling and other Improvements on the Lot are hereby declared to have an easement over adjoining Lots and Common Areas for the purpose of accommodating minor encroachments due to engineering errors, errors in original construction, settlement or shifting of Improvements, or any similar cause for as long as such encroachments shall exist; provided, however, that in no event shall such easement exist for willful misconduct by any Owner or Resident or intentional encroachments, and provided, further that Declarant may remove and/or relocate any boundary wall or other encroachments onto Lots owned by Declarant, at Declarant's sole expense unless caused by the willful misconduct of any adjacent Owner or Resident.

ARTICLE 5

THE ASSOCIATION: ORGANIZATION, MEMBERSHIP  
AND VOTING RIGHTS

5.1 **Formation of Association**

The Association shall be a non-profit Arizona Corporation charged with the duties and invested with the powers prescribed by law and set forth in the Article, Bylaws, and this Declaration.

5.2 **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 the Bylaws. Unless the Project Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

5.3 **Association Rules**

The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend, and repeal Rules pertaining to: (i) the management, operation, and use of the Areas of Association Responsibility including, but not limited to, any recreational facilities situated upon the Areas of Association Responsibility; (ii) minimum standards for maintenance of Lots; or (iii) the health, safety, and welfare of the Owners and Residents.

5.4 **Personal Liability**

No member of the Board or of any committee of the Association, no officer of the Association, and no managing agent, representative, or employee of the Association shall be personally liable to any Member, or to any other Person, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, a managing agent, any representative, or employee of the Association, or any committee, committee member, or officer of the Association; provided, however, the limitations set forth in this Section 5.4 shall not apply to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct

5.5 **Implied Rights**

The Association may exercise any right or privilege given to the Association expressly by the Project documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Project Documents or reasonably necessary to effectuate any such right or privilege, including, without limitation, the right to employ a managing agent or other independent contractor to perform all of the duties and responsibilities of the Association and the Board, subject to Section 9.5.6 hereof, the Bylaws and

restrictions imposed by any governmental or quasi-governmental body or agency having jurisdiction over the Project.

**5.6 Identity of Members**

Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a Member of the Association and shall remain a Member until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease.

**5.7 Classes of Membership and Voting Rights**

The Association shall have the following two classes of voting membership:

**5.7.1 Class A.** Class A Members are all of the Owners of Lots and with the exception of Declarant until the termination of the Class B membership, each Class A member shall be entitled to one (1) vote for each Lot owned. Upon the termination of the Class B membership, Declarant shall be a Class A Member and shall be limited to one (1) vote for each Lot owned by Declarant but only for so long as Declarant owns any Lots. By way of clarification, notwithstanding the forgoing, Section 5.7.2 or any other provision of this Declaration, whenever an affirmative vote of a specified percentage of the total membership or a specified percentage of the Owners of Lots is required to take an action, to withhold taking an action or to approve or disapprove an action, inaction, change or amendment, as specified herein, then Declarant shall have the right to vote all Lots owned by Declarant and its affiliates, at one vote per Lot owned, in order to meet the percentage specified. This vote is separate from not in derogation of Declarant's right to or the requirement that Declarant approve of certain decisions, actions, amendments or the like before the same are effective or may be taken.

**5.7.2 Class B.** The Class B Member shall be Declarant. The Class B Member shall be entitled to seven (7) votes for each lot owned by Declarant, held in a subdivision trust in which Declarant is a beneficiary and shall include Lots transferred to Declarant's Affiliates for purposes of construction and/or sale of residences and Declarant shall have the right to vote for all such Lots they may own, so long as CW Cottonwood Properties, LLC remains the Declarant. If Declarant shall transfer substantially all of its' Lots to its' Affiliate, then the Affiliate shall become the Declarant and Declarant shall become an Affiliate of such company and the forgoing voting rules shall apply for Class B voting. The Class B Membership shall cease and be converted to Class A Membership on the earlier of:

- a. One hundred and twenty (120) days after the sale of all Lots to individual buyers or buyers who purchase Lots or residences already constructed; or
- b. Ten (10) years after the Recording of this Declaration; or
- c. The Declarant, by authorized written document, advises the Association that it is relinquishing all Class B votes.

If any Person to whom Declarant has assigned, or hereafter assigns, all or substantially all of its rights under this Declaration as security for an obligation (including any mortgage or beneficiary under a Deed of Trust or Subdivision Trust) succeeds to the interests of Declarant by virtue of the assignment, Class B membership shall not be terminated and the Person so succeeding to Declarant's interest shall hold Class B membership on the same terms as they were held by Declarant.

#### 5.8 Voting Procedures

No change in ownership of a Lot shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each Lot must be cast as a unit and fractional votes shall not be allowed. In the event that a Lot is owned by more than one Person and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one (1) vote is cast by the Class A Member for a particular Lot, none of the votes for such Lot shall be counted and all of the votes shall be deemed void.

#### 5.9 Transfer of Membership

The rights and obligations of any Member other than Declarant shall not be assigned, transferred, pledged, conveyed, or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the membership appurtenant to said Lot to the new Owner thereof. Each Purchaser or other Person who becomes an Owner of a Lot shall notify the Association within ten (10) days after he becomes an Owner.

#### 5.10 Architectural Control

The Association shall have an Architectural Committee to perform the functions of the Committee set forth in this Declaration. The Architectural Committee shall be a Committee subject to the Board and subject to Board control except as provided in this Section 5.10. The Architectural Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. So long as the Declarant owns any Lot, Declarant shall have the sole right to appoint and remove the members of the Architectural Committee. At such time as Declarant no longer owns any Lots, the members of the Architectural Committee shall be appointed by the Board. The Declarant may, at any time, voluntarily surrender its right to appoint and remove the members of the Architectural Committee in writing and, in that event, Declarant may require, for as long as Declarant owns any Lot, that specified action of the Committee as described in a Recorded instrument executed by Declarant be approved of

by the Architectural Committee and the surrender of this right to appoint and remove is contingent upon the Architectural Committee's compliance with the recorded instrument. In the absence of an acting or appointed Committee at any time, the members of the Board shall serve as the Architectural Committee. The Architectural Committee may promulgate Architectural Committee Rules to be followed in rendering its decisions. Such Rules may include, without limitation, provisions regarding: (i) architectural design, with particular regard to the harmony of the design with the surrounding structures and topography; (ii) requirements concerning exterior Improvements; and (iii) signage. The decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration.

**5.11 Conveyance or Encumbrance of Common Area**

Once common areas are conveyed to the Association and subject to the further restrictions of Article 9 below, that Common Area shall not be mortgaged, conveyed, transferred, dedicated, or encumbered without the prior written consent or affirmative vote of the Class B Member, while Declarant holds Class B membership, and the affirmative vote or written consent of the Owners representing at least two-thirds (2/3) in total ownership of the Lots (including Declarant, if Declarant then owns lot(s)). Without limiting the foregoing, once conveyed to the Association, no portion of the Common Area providing ingress and egress to any Lots may be mortgaged, conveyed, transferred, dedicated, or encumbered without the prior written consent or affirmative vote of the Owners of the affected Lots and all First Mortgages whose First Mortgages encumber those Lots.

**5.12 Suspension of Voting Rights**

If any Owner fails to pay any Assessments or other amounts due to the Association under the Project Documents within fifteen (15) days after such payment is due or if any Owner or a Resident of an Owner's lot violates any other provisions of the Project Documents and such violation is not cured within thirty (30) days after the Association notifies the Owner of the violation in writing, the Board shall have the right to suspend such Owner's right to vote until such time as all payment, including late charges, interest, and attorney's fees are brought current. Additionally, the Board shall have the right to suspend such Owner's right to vote for any other infraction or violation of the Project's Documents if such violation is not cured within thirty (30) days after written notification from the Board.

ARTICLE 6

COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

6.1 Creation of Lien and Personal Obligation of Assessments

Declarant, for each Lot owned by it, hereby covenants and agrees, and all other Owners, by becoming the Owner of a Lot, are deemed to covenant and agree to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided in this Declaration. The Assessments, together with interest, late charges, and all costs and charges permitted under the Project Documents, including but not limited to, reasonable attorney's fees incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, late charges, and all costs and charges permitted under the Project Documents, including, but not limited to, reasonable attorney's fees incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them.

6.2 Annual Assessments

6.2.1 In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under the Project Documents, including the establishment of replacement and maintenance reserves, the Board, for each Assessment Period, shall assess against each Lot an annual Assessment (the "Annual Assessment").

6.2.2 Except in the year 2004, the Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the viability of the Annual Assessment established by the Board nor relieve any Owner from its obligations to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the Annual Assessment for that Assessment (except as expressly limited in Section 6.2.3 (iv) below and by Arizona law) up to the Maximum Annual Assessment for that year and the revised Annual Assessment for that Assessment Period shall commence on the date designated by the Board.

6.2.3 The maximum Annual Assessment (the "Maximum Annual Assessment") for each fiscal year of the Association shall be as follows:

- (i) Until January 1, 2005 the Maximum Annual Assessment for each Lot shall be SEVEN HUNDRED EIGHTY DOLLARS (\$780.00), which assessment shall be prorated for the partial year of 2004.
- (ii) From and after January 1, 2005 the Board may, without a vote of the Members, increase the Maximum Annual Assessment during each fiscal year of the Association by twenty percent (20%) of the Maximum Annual Assessment for the immediately preceding fiscal year.
- (iii) From and after January 1, 2005, the Maximum Annual Assessment may be increased by an amount greater than the amount established under Section 6.2.3(ii) above, only by a majority vote of all Members who are entitled to vote, whether voting in person or by proxy at a meeting duly called for such purpose.

#### 6.3 Rate of Assessment

Except for Lots owned by Declarant and Declarant's Affiliates, the Owner of each Lot shall bear an equal share of each Annual or Special Assessment. The Annual Assessment for Lots owned by Declarant shall be an amount equal to twenty-five percent (25%) of the Annual Assessment levied against Lots owned by Owners other than Declarant. If a Lot ceases to qualify for the twenty-five percent (25%) rate of assessment during the period to which an Annual Assessment is attributable, the Annual Assessment shall be prorated between the applicable rates on the basis of the number of days in the Assessment Period that the Lot qualified for each rate.

#### 6.4 Obligation of Declarant for Deficiencies

So long as there is a Class B membership in the Association, and unless Declarant, on its' own behalf and on behalf of Declarant's Affiliates, elects to have full Assessments paid for such Lots owned by Declarant and Declarant's Affiliate, in which event this obligation to pay Common Expense shortfall shall not apply to such Lots, Declarant shall pay and contribute to the Association, within thirty (30) days after the end of each fiscal year of the Association, or at such other times as may be requested by the Board, such funds as may be necessary, when added to the Annual Assessments levied by the Association, to pay all Common Expenses of the Association as they become due. Declarant's duty to contribute the forgoing sums is limited: it shall only include sums known to be then needed to pay the common expenses, it shall include no additional contribution for improvements to the common areas or to provide the Association with a reserve, and it shall include no sums to meet expenses for attorneys' fees and costs incurred by the Association without Declarant's approval.

#### 6.5 Special Assessments

The Association may levy against each Lot which is then subject to assessment, in any Assessment Period, a special Assessment (the "Special Assessment") for the purpose of defraying, in whole or in part, the cost of any

construction, reconstruction, repair, or replacement of an improvement on the Common Area or in an Area of Association Responsibility, including fixtures and personal property related thereto, provided that any Special Assessment shall have the assent of Declarant while Class B membership exists and a majority vote of all of the Members of the Association, at one vote per Lot owned, whether they are voting in person or by proxy at a meeting duly called for this purpose.

**6.6 Assessment Period**

The period for which the Annual Assessment is to be levied under this Declaration shall be the calendar year (the "Assessment Period"), except that the first Assessment Period, and the obligation of the Owners to pay an Annual Assessment shall commence on March 1, 2004. The first assessment period shall terminate on December 31, 2004. The Board in its sole discretion from time to time may change the Assessment Period.

**6.7 Commencement Date of Assessment Obligation**

Except as provided in Section 6.21 below, with respect to Lots annexed into the Project pursuant to Section 2.3 of this Declaration, all Lots shall be subject to assessment set forth in this Declaration upon its recordation.

**6.8 Rules Regarding Billing and Collection Procedures**

Annual Assessments shall be collected on a monthly basis or such other basis as may be selected by the Board (but no less frequently than quarterly). Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt Rules setting forth procedures for levying Assessments and for the billing and collection thereof provided that the procedures are not inconsistent with the provision of this Declaration, the Article or Bylaws. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this the Project Documents, but any foreclosure of the Assessment Lien therefore shall not be commenced until the Member has been given not less than thirty (30) days written notice that the Assessment or any installment thereof and any then accrued penalty and/or interest is or will be due. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period, but successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

**6.9 Effect of Nonpayment of Assessments; Remedies of the Association**

**6.9.1** Any Assessment, or any installment of an Assessment, not paid within fifteen (15) days after the Assessment or any installment thereof first became due, shall have added thereto a late charge of \$15.00 or 10% of the amount of the unpaid Assessment or installment, whichever is greater. In addition thereto, the Association via the Board may establish an interest charge to apply to accrue on that portion of any assessment(s) which is due and unpaid to be charged from the date due until the principal is retired as provided in ARS § 33-1803 as amended from time-to-time. Such interest rate shall not exceed ten percent (10%) per annum.



6.9.2 The Association shall have a lien on each Lot for: (i) all Assessments levied against the Lot; (ii) all interest, lien fees, late charges, fines, penalties and other fees and charges assessed against the Lot or payable by the Owner of the Lot; (iii) all attorney fees, court costs, title report fees, costs and fees charged by any collection agent either to the Association or to an Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot; (v) any amounts payable to the Association pursuant to Section 7.3 and 7.4 of this Declaration; and (vi) any other amounts payable to the Association pursuant to the Project Documents. The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent Owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is Recorded and the amount claimed to be past due as of the date of the Recording of the Notice, including interest, late charges, lien recording fees and reasonable attorney's fees. Before Recording any Notice of Lien against a Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent amounts. The demand shall state the date and amount of the delinquency and a statement as to the nature of the amounts due. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within a single demand. If the delinquency is not paid within thirty (30) days after delivery of the demand, the Association may proceed with Recording a Notice of Lien against the Lot. If the Association Records a Notice of Lien, the Association may charge to Owner of the Lot against which the Notice is Recorded a lien fee in an amount to be set from time to time by the Board.

6.9.3 Except as may be otherwise provided by Arizona law, the Assessment Lien shall have priority over all liens or claims except for: (i) tax liens for real property taxes; (ii) assessments in favor of any municipal or other governmental body; and (iii) the lien of any First Mortgagee and other Person acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchased at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title free and clear of any claims for unpaid Assessments and charges against the Lot which became payable prior to the acquisition of such Lot by the First Mortgagee or other Person. Any Assessments and charges against the Lot, which accrue prior to such sale or transfer, shall remain the obligation of the defaulting Owner of the Lot until the same are paid.

6.9.4 Except as may be otherwise provided by Arizona Law, the Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, interest, late charges, lien fees, fines, penalties, reasonable attorneys' fees, court costs, collection costs, and all other sums payable to the Association by the Owner of the Lot have been paid in full.

6.9.5 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, late charges, lien fees, fines, penalties, reasonable attorney's fees, court costs, and all other sums due to the Association in any manner allowed by law, including, but not limited to: (i) bringing an

action at law against the Owner personally obligated to pay the  
brought without waiving the Assessment Lien securing the  
foreclose the Assessment Lien against the Lot in the manner  
mortgage.

Assessments and such action may be  
Assessments or; (ii) bringing an action to  
by law for the foreclosure of a realty

mortgage, and convey any and all Lots purchased at such sale.

**6.10 Evidence of Payment of Assessments/Resale Unit Information**

Upon Receipt of a written request by a Member or other Person, and within a reasonable period of time thereafter (but not to exceed fifteen (15) days or such earlier time period as may be established under A.R.S. 33-1807 from time to time), the Association shall issue to such Member or other Person a written certificate stating that all Assessments, interest, late charges, lien fees, fines, penalties, and other fees and costs have been paid with respect to any specified Lot as of the date of such certificate, or if all Assessments or other charges have not been paid, the amount of such Assessments or other charges due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges are due at the time the request for any such certificate is made.

**6.11 Purposes for Which Association's Funds May Be Used**

The Association shall apply all funds and property collected and received by it (including Assessments, fees, loan proceeds, surplus funds and property from any other source) for the common good and benefit of the Project and the Owner and Residents by devoting said funds and property among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies, and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project, the Owners and Residents. The following are some, but not all, of the areas in which the Association may seek to aid, promote, and provide for such common benefit: social interaction among the Residents, maintenance of landscaping in Areas of Association Responsibility, recreation, insurance, communication, education, transportation, health, utilities, public services, safety and indemnification of officers and directors of the Association. The Association may also expend its funds for any purpose for which a nonprofit corporation may expend funds under the laws of the State of Arizona.

**6.12 Surplus Funds**

The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any 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, and the Association may carry forward from year to year such surplus as the Board, in its discretion, may determine to be desirable for the greater financial security of the Association and the accomplishments of its purposes.

**6.13 Working Capital Fund**

To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser of a Lot from the Declarant or from another other Owner, shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-sixth ( $1/6^{\text{th}}$ ) of the current Annual Assessment for the Lot. Funds paid to the Association pursuant to this Section 6.13 may be used by the Association for payment of operating expenses or any other purpose permitted under the Project Documents. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

**6.14 Transfer Fee**

Each Purchaser of a Lot from any Owner other than Declarant shall pay to the Association immediately upon becoming the Owner a transfer fee in such amount as is established from time to time by the Board.

**6.15 No Offsets**

All Assessments and other amounts payable to the Association shall be payable in accordance with the provision of the Project Documents, and no offsets against such Assessments or other amounts shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Project Documents.

**6.16 No Exemption of Owners**

No Owner of a Lot may exempt himself from liability for Assessments levied against his Lot or for other amounts which he may owe to the Association under the Project Documents by waive and nonuse of any of the Common Area facilities or by abandonment of his Lot.

**6.17 Maintenance of Reserve Fund**

Out of the Annual Assessments, the Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of Improvements to the Common Area and other Areas of Association Responsibility.

**6.18 Notice and Quorum for Any Action Authorized Under Sections 6.2 or 6.5**

Written notice of any meeting called for the purpose of obtaining the consent of the Members for any action for which the consent of Member is required under Sections 6.2 or 6.5 or this Declaration shall be sent to all Members not less than ten (10) days nor more than fifty (50) days in advance of the meeting. At this first such meeting called, the presence of a majority of Members by total number of votes entitled to be cast in person or by proxy shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half ( $1/2$ ) of the required

number of the preceding meeting. No such subsequent meeting shall be held more than fifty (50) days following the preceding meeting without the quorum requirements reverting back to the original level.

**6.19 Unallocated Taxes**

In the event that any taxes are assessed against the Common Area or the personal property of the Association rather than against the Lots, said taxes shall be included in the Assessments made under the provisions of this Article 6, and, if necessary, a Special Assessment may be levied on a pro rata basis to each of the Lots to cover the cost of the taxes so levied.

**6.20 Information Requests**

In addition to the foregoing information, the Association shall provide such information to prospective Residential Dwelling Purchasers as may be requested by a Member for purposes of complying with A.R.S. § 33-1806, as amended from time to time in the event of a resale of a Lot, and the Association may charge a reasonable fee for such services as determined by the Board from time to time. The Association shall provide all information it is required to provide by law, but may charge a reasonable fee for providing such information to the recipient(s).

**6.20 Assessments on Lots Subsequently Annexed**

The Annual Assessment for Lots annexed by the Declarant pursuant to Section 2.3 of this Declaration shall commence on the first day of the first month following the month in which any annexed portion or phase of the Annexable Property becomes irrevocably annexed to the Project in accordance with said Section 2.3, and no Assessments may be levied against any such Lot until such time.

ARTICLE 7

MAINTENANCE

**7.1 Maintenance of Common Area and Other Areas of Association Responsibility**

The Association, or its duly designated representatives, shall be responsible for the maintenance, repair, and replacement of the Common Area and may, without any approval of the Owners or First Mortgages being required, do any of the following:

7.1.1 Reconstruct, repair, replace, or refinish any Improvement thereon (including any Project perimeter wall regardless of whether located on a portion of a Lot or Common Area) to the extent that such work is not being done by a governmental entity, if any, responsible for such maintenance or upkeep.

7.1.2 Construct, reconstruct, repair, or refinish any portion of the Common Area used as a road, street, walk, driveway, and parking area.

7.1.3 Replace damaged or diseased trees or other vegetation in the Common Area and plant trees, shrubs, and ground cover to the extent the Board deems necessary for the conservation of water and soil and for aesthetic purposes.

7.1.4 Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use, and regulation thereof.

7.1.5 Do all such other and further acts, which the Board deems necessary to preserve and protect the Common Area and other Areas of Association Responsibility and the appearance thereof, in accordance with the Project Documents.

7.1.6 The Association shall maintain all water and sewer utility installations located in the Common Areas except for those installations maintained by the City of Cottonwood.

**7.2 Maintenance of Lots by Owners**

Each Owner of a Lot shall be responsible for maintaining, repairing, or replacing his Lot, and/or all Improvements thereon, as applicable, including his Residential Dwelling and all Public Yard landscaping, except for any Areas of Association Responsibility established in accordance with this Declaration. All such Improvements shall be kept in good condition and repair. All Public Yard landscaping shall be irrigated, mowed, trimmed and/or cut, as appropriate, at regular intervals so as to be maintained in a neat and attractive manner. Any such landscaping which dies shall be promptly removed and replaced with living foliage of like kind unless different foliage is approved in writing by the Architectural Committee. No yard equipment, wood piles, or storage areas may be maintained so as to be Visible from Neighboring Property. Any Lots without Residential Dwelling thereon shall be maintained in a weed free manner.

**7.3 Assessment of Certain Costs of Maintenance and Repair**

In the event that the need for maintenance, repair, or replacement of Common Area or other Area of Association Responsibility is caused through the willful or negligent act of any Owner or Resident of a Lot, or their guests, invitees or animals from whom the Owner or Resident is legally responsible under Arizona law, the Association shall cause the maintenance, repairs, or replacement to be performed and the cost of such work shall be paid by the Owner of the Lot to the Association upon demand to the extent the Owner is liable under Arizona law. Payment of such amounts shall be secured by the Assessment Lien and the Association may enforce collection of any such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

**7.4 Improper Maintenance and Use of Lots**

In the event any portion of a Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in any manner which violates the Project Documents, or in the event an Owner is failing to perform any of his obligations under the Project Documents, the Board may make a finding to that effect. The Board shall specify the particular condition or conditions which exist, and pursuant thereto, give notice of such findings to the offending Owner that unless corrective action is taken within thirty (30) days, the Board may cause such action to be taken at said Owner's expense. If, at the expiration of said thirty (30) day period, the requisite action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be paid by such Owner to the Association upon demand. Payment of such amounts shall be secured by the Assessment Lien.

**7.5 Party Walls**

7.5.1 The portion of each wall, including patio walls, which is constructed as part of the original construction of the Project or as part of any reconstruction thereof, any part of which is placed on the dividing line between separate Lots, shall constitute a Party Wall. With respect to any such wall, each of the adjoining Owners shall assume the burdens and be entitled to the benefits of these restrictive covenants and, to the extent not to inconsistent herewith, the general rules of law regarding Party Walls shall be applied thereto. Without limiting the generality of the foregoing, and except as provided in this Section 7.5 and in the event any Party Wall is wholly or partially damaged or in need of repair, then, each of the adjoining Owners shall share equally in the cost of replacing the Party Wall or restoring the same to its original condition. Without limiting the foregoing, each Owner at his sole expense shall paint, decorate and perform routine maintenance (other than structural repair which shall be shared by adjoining Owners) of the portion of any Party Wall or fence facing his Unit as may be necessary from time to time in accordance with approved color schemes for the Project as adopted by Architectural Control Committee.

7.5.2 In the event a Party Wall is damaged or destroyed through the act of one adjoining Owner or any of his guests, tenants, licensees, agents, or members of his family (whether or not such act is negligent or otherwise

culpable) so as to deprive the other adjoining Owner of the full use and enjoyment of such wall, then the first of such Owners shall be liable and responsible therefore and shall forthwith proceed to rebuild and repair the same to as good a condition as it was formally in prior to the damage at issues without cost to the adjoining Owner. The adjoining Owner shall be entitled to commence an action at law or in equity under Arizona law to enforce this responsibility and duty and/or recover damages therefore.

7.5.3 Notwithstanding any other provision of this article, an owner who, by his negligent or willful act, causes any Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

7.5.4 In addition to meeting the other requirements of this Declaration and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild his Lot or Unit in any manner which requires the extension or other alteration of any Party Wall shall first obtain the written consent of the adjoining Owner. An Owner who desires to install a wall entirely on said Owners' own property shall be responsible for maintaining it and shall not need the adjacent Lot Owner's consent to extend or alter the same, but will need Architectural Committee approval. In the event any boundary wall encroaches upon a Lot, if the circumstances bring the wall within the provisions of Sections 4.6, a valid easement for such encroachment and for the maintenance of the boundary wall shall and does exist in favor of the Owners of the Lots, which share the boundary walls. To the extent necessary for an Owner to construct Improvements in the Private Yard of his Lot, Owner may remove all or part of a boundary wall, provided the Owner gives reasonable notice to the adjoining Owner and Residents that all or part of the boundary wall will be removed and the Owner desiring to temporarily remove a portion of the walls makes appropriate arrangements (including the erection of a temporary fence or barrier) or pays appropriate compensation for the protection of children or pets on the adjoining Lot. Any Owner removing all or part of a boundary wall pursuant to this Section 7.5 shall rebuild and restore the boundary wall to its prior condition at such Owner's sole cost and expense within a reasonable time after entry through the boundary wall is no longer necessary in connection with the construction of Improvements.

7.5.5 The right of an Owner to contribution from any other Owner for costs of repairs or refurbishing a Party Wall shall be appurtenant to the land and shall pass to such Owner's successors in title. In the event of a dispute between Owners with respect to the repair of or rebuilding of a Party Wall, then, upon written request of one of such Owner(s) addressed to the Association, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Association and the final decision resulting from such arbitration shall be binding upon the Owners. If no such rules have been adopted, the matter shall be submitted to three arbitrators, one chosen by each of the Owners and the third arbitrator to be chosen by the two (2) Arbitrators, and if they can not agree, they by any judge of the superior Court of Yavapai county, Arizona. A determination of the matter signed by any two (2) of three (3) arbitrators shall be binding upon the Owners who shall share the cost of arbitration equally. In the event one Owner fails to choose an arbitrator within ten (10) days after personal receipt of a request in writing

for arbitration from the Owner, then said requesting Owner shall have the right and power to choose both arbitrators. Arbitration decisions shall be fully enforceable and may be lodged with the Yavapai County Superior Court under prevailing rules for purposes of obtaining a judgment therefore.

7.5.6 These covenants shall be binding upon the heirs and assigns of every owner but no Person shall be liable for any act or omission respecting any Party Wall (as opposed to a share of the cost of repair or refurbishing) except such as took place while said Person was an Owner.

**7.6 Maintenance of Walls Other Than Party Walls**

Walls (other than Party Walls between Lots) located on a Lot shall be maintained, repaired, and replaced by an Owner of the Lot. Any wall, which is placed on a boundary line between a Lot and the Common Area, shall be maintained, repaired, and replaced by the Owner of the Lot, except that the Association shall be responsible for the repair and maintenance of the side of the wall, which faces the Common Area. In the event any such wall encroaches upon the Common Area or a Lot, an easement for such encroachment shall exist in favor of the Association or the Owner as the case may be, pursuant to Section 4.6 above. Any wall which is placed on the boundary line between a Lot and public right-of-way (including the Project perimeter walls) shall be maintained, repaired, and replaced by the Association, except that the Owner of the Lot shall be responsible for the repair, painting, and stuccoing or re-texturing of the surface of the wall which faces the Private Yard or interior of the Lot and is Not Visible from Neighboring Property. To the extent necessary for an Owner to construct Improvements in the Private Yard of this Lot, an Owner may remove all or part of a wall separating his Lot from Common Area or public right-of-way with the prior written consent of the Architectural Committee and, if applicable, the appropriate government authority. Such approval may be conditioned on the erection of a temporary fence or barrier and said Owner must replace the fence or wall upon completion of the improvements.



ARTICLE 8

INSURANCE

8.1 Scope of Coverage

Commencing not later than the time of the first conveyance of a Lot to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

8.1.1 Comprehensive General Liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000.00 for any single occurrence, and \$2,000,000.00 general aggregate. Such insurance shall cover all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of Areas of Association Responsibility;

8.1.2 Property insurance on all Areas of Association Responsibility insuring against all risk of direct physical loss, in an amount equal to the maximum insurable replacement value of Areas of Association Responsibility, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations, and other items normally excluded from a property policy. If the Common Area or other Areas of Association Responsibility are located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, the Association shall also maintain a "blanket" policy of flood insurance on those areas. Such policy shall be in form and amount as determined by the Board, but, in any event, shall always satisfy the requirements of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, as amended from time to time.

8.1.3 Workmen's compensation insurance to the extent necessary to meet the requirements of Arizona law.

8.1.4 Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners and Residents or required by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, including, without limitation, fidelity coverage against dishonest acts by directors, managing agents, officers, trustees, employees, or volunteers of the Association who are responsible for handling funds belonging to or administered by the Association. Any fidelity insurance purchased shall name the Association as the insured and shall provide coverage in an amount not less than one and one-half times the Association's estimated annual operating expenses and reserves.

### 8.2 Contents of Policies

The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions: (i) that there will be no subrogation with respect to the Association, its agents, servant, and employees, with respect to Owners and Residents; (ii) no act or omission by any Owner or Resident, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy; (iii) that the coverage afforded by such policy shall be brought into contribution or proration with any insurance which may be purchased by Owners or Residents, their First Mortgagees, or other insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners; (v) a statement of the name of the insured as that the insurance carrier shall notify all First Mortgages named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction, or cancellation of the policy.

### 8.3 Limitation of Liability

Neither the Declarant nor the Association, or any member, director, officer, shareholder, employee, or agent thereof, shall be liable to any Owner or Resident or any other Person if any risk or hazard is not covered by insurance or the amount thereof is inadequate. Without limiting the foregoing, each Owner shall be responsible for obtaining insurance for his own benefit and at his own expense insuring his Lot and the Improvements thereon against loss and providing personal liability coverage. Each Owner is responsible for ascertaining the Association's coverage and for procuring such additional coverage as such Owner deems necessary. First Mortgagees may pay overdue premiums and may secure new insurance coverage upon the lapse of any policy with respect to any insurance required to be maintained by the Association or any Owner under this Declaration, and any First Mortgagee making such expenditure shall be entitled to immediate reimbursement from the Association or Owner on whose behalf the expenditure was made.

### 8.4 Certificates of Insurance

An insurer that has issued an insurance policy under this Article 8 shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner, First Mortgagee, or other mortgagee or beneficiary of a deed of trust. Any insurance obtained pursuant to this Article 8 may not be canceled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each First Mortgagee or other mortgagee or beneficiary of a deed of trust to whom certificates of insurance have been issued.

### 8.5 Payment of Premiums

The premiums for any insurance obtained by the Association pursuant to Section 8.1 of this Declaration shall be included in the budget of the Association and shall be paid by the Association as a Common Expense.

### 8.6 Payment of Insurance Proceeds

With respect to any loss to any Area of Association Responsibility covered by property insurance obtained by the Association in accordance with this Article 8, the loss shall be adjusted with the Association, and the

insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 8.7 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

**8.7 Repair and Replacement of Damaged or Destroyed Property**

Any portion of an Area of Association Responsibility which is damaged or destroyed shall be repaired or replaced promptly by the Association unless: (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance; (ii) Members, representing at least sixty-seven percent (67%) of the total authorized votes in the Association, at one vote per Lot, elect not to rebuild by vote or proxy cast at a duly held meeting or by written agreement. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Areas of Association Responsibility are not repaired or replaced, insurance proceeds attributable to the damaged Areas shall be used to restore the damaged Areas to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either: (i) be retained by the Association as an additional capital reserve; or (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Owners representing more than fifty percent (50%) of the votes in the Association.

Subject to other provisions of this Declaration, in the event of damage to or destruction of any part of a Residential Dwelling or Lot, the Owner of each Lot shall reconstruct the same as soon as reasonably practicable and substantially in accordance with the plans and specifications therefore or shall remove all debris from the Lot such that the Lot does not have an unsightly appearance or otherwise constitute a nuisance. Each Owner shall have an easement of reasonable access into any adjacent Lot for purposes of repair or reconstruction of his Residential Dwelling as provided in this Section 8.7.

## ARTICLE 9

## GENERAL PROVISIONS

## 9.1 Enforcement

The Association or any Owner shall have the right to enforce the Project Documents in any manner provided for in the Project Documents or by law or in equity, including, but not limited to, any action to obtain an injunction to compel removal of any Improvements constructed in violation of this Declaration or to otherwise compel compliance with the Project Documents. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Project Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Project Documents in the future. If any law suit is filed by the Association or any Owner to enforce the provisions of the Project Documents or in any other manner arising out of the Project Documents or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorney's fees incurred by the prevailing party in the action. In addition to any other rights or remedies available to the Association pursuant to the Project Documents or at law or in equity, the Association shall have the power to levy reasonable monetary fines or penalties against an Owner for a violation of the Project Documents by the Owner or by any Resident of the Owner's Lot, or their guests and invitees under their control.

## 9.2 Term; Method of Termination

This Declaration shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is Recorded. After which time, this Declaration shall be automatically extended for successive periods of ten (10) years each. This Declaration may be terminated at any time during the initial term of this Declaration or any extension or renewal term, if such termination is approved by the affirmative vote or written consent, or any combination thereof, of the Owners representing ninety percent (90%) or more of the votes in each class of membership and by the holders of First Mortgages on Lots, the Owners of which have seventy-five percent (75%) or more of the votes in the Association. If the necessary votes and consents are obtained, the Board shall cause to be Recorded with the County Recorder of Yavapai County, Arizona, a Certificate of Termination, duly signed by the President or Vice-President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon, this Declaration shall have no further force or effect and the Association shall be dissolved pursuant to the provisions set forth in the Articles.

## Amendments

Declaration may be amended at any time during the initial term of this Declaration or any renewal or extension term, without regard to whether such amendments are of uniform effect as to the Owners or the Lots, by the written

approval or the affirmative vote, or any combination thereof, of not less than sixty-seven percent (67%) of the Members, with one (1) vote per Lot.

9.3.2 Declarant, so long as Declarant owns any Lot, and thereafter the Board, may amend this Declaration or the Plat, without obtaining the approval or consent of any Owner or First Mortgagee in order to conform to this Declaration to the Plat or to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration, or any federal, state, or local governmental agency whose approval of the Project, the Plat, or the Project Documents is required by law or requested by the Declarant or, after there is no Declarant, the Board.

9.3.3 So long as the Declarant owns any Lot, any amendment to this Declaration must be approved in writing by the Declarant.

9.3.4 Declarant, so long as Declarant owns any Lot, and thereafter the Board, may amend this Declaration without the consent of any other Owner or First Mortgagee to correct any error or inconsistency in the Declaration.

9.3.5 So long as Declarant owns the requisite number of Lots under this Section 9.3 to effect an amendment hereunder, any amendment to this Declaration shall be signed by Declarant and Recorded in the records of the County Recorder of Yavapai County, Arizona. At any time Declarant does not own the requisite number of Lots, any amendment approved by the Board pursuant to Sections 9.3.1, 9.3.2, or 9.3.5 shall be signed by the President or Vice President of the Association and shall be Recorded with the County Recorder of Yavapai County, Arizona, and any such amendment shall certify that the amendment has been approved as required by this Section 9.3. Unless a later effective date is specified in the amendment, any amendment to this Declaration shall be effective upon the Recording of the instrument.

9.3.6 Declarant may amend the Plat at any time without the consent of any other Owner to alter the size of and the boundaries between any Lots still owned by Declarant and Declarant's Affiliates so long as all such altered Lots are owned by Declarant and Declarant's Affiliates, and may modify or change the boundaries of any the Common Area so long as the size of the Common Area in total is not diminished more than ten percent (10%), so long as the changes do not materially impair (and at least by ten percent (10%)) the total value of the Common Areas and so long as the changes do not materially increase the share of Common Expenses payable by Owners. Owners hereby consent to any re-platting of the Project necessary to accomplish the foregoing, but do not hereby consent to any re-platting, which alters the size, location or boundary of a Lot they may then own. Notwithstanding the forgoing, the provisions of this Section shall not prohibit the Declarant from deeding additional property, so long as it is free and clear of liens, to the Association.

#### 9.4 Additional Requirements for Amendment of Certain Provisions

The following provisions do not apply to amendments to the Project Documents or termination of the Project as a result of destruction, damage, or condemnation:

9.4.1 The consent of the Members who have the right to cast at least sixty-seven percent (67%) of the votes in the Association, at one vote per Lot, and the approval of Eligible Mortgage Holders holding First Mortgages on Lots which have at least fifty-one percent (51%) of the votes of Lots subject to First Mortgages held by Eligible Mortgage Holders shall be required to terminate the legal status of the Project as a subdivision under Arizona law; and

9.4.2 The consent of the Members who have the right to cast at least sixty-seven percent (67%) of the votes in the Association, at one vote per Lot, and the approval of Eligible Mortgage Holders holding First Mortgages on Lots which have at least fifty-one percent (51%) of the votes of Lots subject to First Mortgages held by Eligible Mortgage Holders shall be required to add to or amend any "material" provisions of the Project Documents which establish, provide for, govern, or regulate any of the following: (i) voting; (ii) Assessments, Assessment liens or subordination of such liens; (iii) reserves (should they be established) for maintenance, repair, and replacement of the Common Area and other Areas of Association Responsibility; (iv) hazard insurance or fidelity bonds; (v) rights to use of the Common Area or interest in the Common Area; (vi) responsibility for maintenance and repair of the various portions of the Project; (vii) expansion or contraction of the Project by the addition, annexation, or withdrawal of property to or from the Project, except as specifically provided in Section 2.3 above; (viii) convertibility of Lots into Common Area or of Common Area into Lots or any change in each Owner's respective interest in the Common Area as a Member of Association, except as specifically allowed herein; (ix) leasing of Lots; and (x) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his Lot (subject to further provisions of Section 9.5.12 below).

9.4.2 No addition or amendment to the Project Documents shall not be considered "material" if it is for the purpose of correcting technical errors, is for clarification, is designed to conform a provision to applicable law, regulations or an approved Plat, or is allowed by the provisions of this Declaration. An Eligible Mortgage Holder, which receives a written request to approve additions or amendments under this Section 9.4 and does not deliver or post to the requesting party a negative response within thirty (30) days, shall be deemed to have approved such requests. The eligible Mortgage Holder is deemed to have received a written request three (3) days after the same is mailed postage pre-paid to said Mortgage Holders' address of record in the mortgage or any address that said Mortgage Holder provides in writing to the Association.

#### 9.5 Interpretation

A court of competent jurisdiction, the Association's construction and interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefited bound by this Declaration. In the event

of any conflict between this Declaration and the Article, Bylaws, Association Rules, or Architectural Committee Rules, this Declaration shall control. For judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the event of any conflict between the Articles and the

**9.6 Severability**

Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

**9.7 Rule Against Perpetuities**

If any interest, privilege, covenant, or right created by this Declaration shall be unlawful, void or voidable for violation of the Rule against Perpetuities or any related rule, then such interest, privilege, covenant, or right shall continue until twenty-one (21) years after the death of the last survivor of the now living descendants of the President of the United States in office on the date this Declaration is Recorded.

**9.8 Non Waiver and Non Party**

Declarants' failure to enforce or utilize any right or power it may have under this Declaration shall not constitute a waiver of Declarants' rights or powers relating to the same type or similar events, activities or situations. The fact that Declarant may have the power, right or authority to do an act or take some action shall not mean, in any and all events, by implication or otherwise, that it is required or responsible to take such act or action. Declarant makes no warranties or representations unless the same are set forth with particularity herein, including being identified as warranties and/or representations herein and no warranties, representations or duties shall be implied based upon the terms of this Declaration.

**9.9 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.

**9.10 Notice of Violation**

The Association shall have the right to record a written notice of a violation by any Owner or Resident of any restriction or other provision of the Project Documents. The notice shall be executed by an officer of the Association and shall contain substantially the following information: (i) the name of the reputed Owner or Resident violating, or responsible for the violation of the Project Documents; (ii) the legal description of the Lot against which the notice is being Recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being Recorded by the Association pursuant to this Declaration; (v) a statement of the specific steps which must be taken by the Owner or Resident to cure the violation. Recordation of a notice of violation shall serve

as notice to the Owner and Resident, and any subsequent Purchaser or other Person who may acquire the Lot, that there is such a violation. If, after the recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Association may record a "Notice of Compliance" and shall record a Notice of Compliance within twenty (20) days after receipt of a written demand for the same from the Owner. The "Notice of Compliance" shall state the legal description of the Lot against which the notice of violation was Recorded, and the Recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or that the violation does not exist. Failure by the Association to record a notice of violation shall not constitute a waiver of any such violation, constitute any evidence that no violation exists with respect to a particular Lot or constitute a waiver of any right of the Association to enforce the Project Documents.

**9.11 Laws, Ordinances, and Regulations**

The covenants, conditions, and restrictions set forth in this Declaration and the provisions requiring Owners and other Persons to obtain the approval of the Board or the Architectural Committee with respect to certain actions are independent of the obligation of the Owners and other Persons to comply with all applicable laws, ordinances, and regulations. Compliance with this Declaration shall not relieve an Owner or any other Person from the obligation to also comply with all applicable laws, ordinances, and regulations. Any violation of any state, municipal or local law, ordinance, or regulation pertaining to the ownership, occupation, or use of any property within the Project is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

**9.12 Right to Inspect Documents; Audited Financial Statements**

The Association shall make available to Owners, Mortgagees, and insurers or guarantors of First Mortgagees, current copies of the Project Documents and the books, records, and financial statements of the Association. "Available" means available for inspection (and copying at the expense of the requesting party), upon request, during normal business hours or under other reasonable circumstances. In addition, First Mortgagees holding fifty-one percent (51%) or more of First Mortgages shall be entitled to have prepared, at their expense, an audited financial statement of the Association for the immediately preceding fiscal year if one is not otherwise available, and the Association shall have prepared and distributed such statement to the First Mortgagees requesting it within a reasonable time following receipt by the Association of the request.

**9.13 Condemnation**

Upon receipt of notice of intention or notice of proceedings whereby all or any part of the Common Area is to be taken by any governmental body by exercise of the Power of condemnation or eminent domain, all Owners shall be immediately notified by the Association thereof. The Association shall represent the Owners in any condemnation or eminent domain proceedings or in negotiations, settlements, and agreements with the condemning authority for acquisition of any part of the Common Area and every Owner appoints the Association as his attorney



in fact for this purpose. The entire award made as severance damages or the entire amount received and paid in anticipation and settlement for such taking, after deducting therefrom, in each case, reasonable and necessary costs and expenses, including, but not limited to, attorneys' fees, appraisers' fees, and court costs (which net amount shall hereinafter be referred to as the "Award"), shall be paid to the Association as trustee for the use and benefit of the Association. The Association shall, as it is practicable, cause the Award to be utilized for the purpose of repairing and restoring the Project, including, if the Association deems it necessary or desirable, the replacement of any Improvements so taken or conveyed.

In the event of any taking of any Lot in the Project by eminent domain, the Owner of such Lot shall be entitled to receive the award for such taking, and after acceptance thereof he and all of his mortgagees shall be divested of all interest in the Project if such Owner shall vacate his Lot as a result of such taking. The remaining Owners shall decide by majority vote whether to rebuild or repair the Project or take other action. The remaining portion of the Project shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking. In the event of a taking by eminent domain of more than one Lot at the same time, the Association shall participate in the negotiations and shall propose the method of division of the proceeds of condemnation where Lots are not valued separately by the condemning authority or by the court. In the event any Owner disagrees with the proposed allocation, he may have the matter submitted to arbitration under the rules of the American Arbitration Association.

**9.14 References to This Declaration in Deeds**

Deeds to and instruments affecting any Lot or any other portion of the Project may contain the covenants, conditions, and restrictions herein set forth by reference to this Declaration, but, regardless of whether any such reference is made in any deed or instrument, each and all of the provisions of this Declaration shall be binding upon the Owner or other Person claiming through any deed instrument and his heirs, executors, administrators, successors, and assignees.

**9.15 Gender and Number**

Wherever 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.

**9.16 Captions and Titles**

All captions, titles, or headings of the Articles and Sections 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 of context thereof.

**9.17 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 resolution of the Board, to be given to any Owner or Resident, 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 in any newspaper of general circulation within Yavapai County. This Section 9.17 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.

**9.18 FHA/VA Approval**

So long as there is Class B membership in the Association, and if required by law and Section 9.20 below, the following actions shall require the prior written approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties (other than the Annexable Property), dedication, mortgaging, or conveyance of Common Area, and amendment of this Declaration.

**9.19 No Absolute Liability**

No provision of the Project Documents shall be interpreted or construed as imposing on Owners absolute liability for damage to the Common Area or the Lots. Owners shall only be responsible for damage to the Common Area or Lots caused by negligence or intentional acts of the Owners or Residents of their Lots.

**9.20 References to VA and FHA**

In various places throughout the Project Documents, references are or may be made to the Department of Veterans Affairs ("VA") and the Federal Housing Administration ("FHA") and, in particular, to various consents or approvals required of either or both of such agencies. Such references are included so as to cause the Project Documents to meet certain requirements of such agencies only should Declarant, in its discretion, request approval of the Project by either or both of those agencies. Unless and until FHA or VA have so approved the Project as acceptable for insured, all references herein to required approvals of consents of such agencies shall be deemed null and void and no force and effect.

**9.21 Declarant's Right to Use Similar Name**

The Association hereby irrevocably consents to the use by any other corporation or other entity which may be formed or incorporated by Declarant of an entity name which "is the same or deceptively similar to the name of the Association, provided, however, one or more words are added to the name of such other entity to make the name of the Association distinguishable from the name of such other entity. Within five (5) days after being requested to do so by Declarant, the Association shall sign such letters, documents, or other writings as may be required by the Arizona Corporation Commission or the Arizona Secretary of State in order for any other corporation or other entity formed or incorporated by the Declarant to use a name which is similar to the name of the Association.

**9.22 Rights of Declarant's Affiliates**

Declarant's Affiliates, Read Homes, Inc., an Arizona Corporation and/or Read Development, Inc., an Arizona Corporation, shall have any and all rights granted and reserved herein to the Declarant as regards developing the Project. By way of illustration, Affiliates shall not, thus, be subject to the provisions of Sections 3.1 and Affiliate will be entitled to utilize all easements granted to Declarant in Article 4.

**9.23 Authority to Execute Declaration**

This Amended and Restated Declaration of Covenants, Conditions and Restrictions is executed solely by CW Cottonwood Properties as the Declarant of record on the Project. Declarant is empowered to execute this Declaration because Declarant is the Owner of in excess of sixty-seven percent (67%) of the Lots in both the portions of the Project, including that designated in the Plat as Cottonwood Square and the portion designated as Cottonwood Commons, and no approval from any other person beyond the signature of the Declarant is necessary for this Amended and Restated Declaration to be effective and binding.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand to be effective as of the date first set forth above.

DECLARANT:

CW COTTONWOOD PROPERTIES, LLC,  
an Arizona Limited Liability Company

By Chris Read  
Chris Read, Member

STATE OF ARIZONA )  
COUNTY OF YAVAPAI )<sup>33</sup>

On this 18th day of February, 2004, before me, undersigned notary public in and for said county and state, personally appeared Chris Read, the sole member of CW Cottonwood Properties, LLC an Arizona Limited Liability Company, personally known (or proved) to me to be the person whose name is subscribed to the above instrument and who acknowledged that he executed the above instrument for and on behalf of the corporation, in his capacity as an authorized officer thereof.

NOTARY PUBLIC

My Commission Expires:  
9-11-06

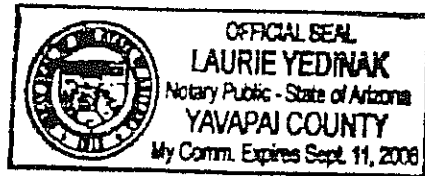


EXHIBIT "A"

Units 1A-41A, Units 1B-41B, Units 38C-40C and Unit 39D, Lots 1 through 92, and Tracts A-S, COTTONWOOD SQUARE/COTTONWOOD COMMONS, according to the Plat of Record in Book 42 of Maps, Pages 15-17, records of Yavapai County, Arizona.

EXCEPT all oil, minerals, ores, metals of every kind and character as reserved from said land.