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When recorded mail to:
Cottonwood Estates, LLC
3050 N. 44th Street, #200
Phoenix, AZ 85018

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Leonardil

The Talon Group

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

COTTONWOOD ESTATES

WHEN RECORDED RETURN TO:

Cottonwood Estates, LLC.
3050 N 44th St. #200
Phoenix, AZ 85018

***The Talon Group* DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
COTTONWOOD ESTATES**

THIS DECLARATION, made on the date hereinafter set forth
by COTTONWOOD ESTATES, LLC., an Arizona Limited Liability Company, hereinafter
referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in
the County of Maricopa, State of Arizona, which is a residential housing development
to be known as "Cottonwood Estates" and is more particularly described as:

Lots 1-50, COTTONWOOD ESTATES, as per recorded plat recorded in Book
688 of Maps, Page 26, Instrument No. 2004-0616188, Official Records of Maricopa
County, Arizona Recorder.

WHEREAS, the property subject to this Declaration of Covenants, Conditions and
Restrictions shall be irrevocably submitted to the Declaration upon the first event to occur,
as follows:

- a) The recordation of a deed of fee title to a Lot of the above-described property;
- b) The recordation by the Declarant, or any successor or assign, of a Notice of Substantial Completion for the Lots in such above-described Property. Notwithstanding the foregoing, any conveyance of Declarant's rights under the Declaration shall not cause the Property in which the Lots are located to be irrevocably committed to the Declaration.

WHEREAS, when the Property becomes subject to the Declaration of Covenants, Conditions and Restrictions, it shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions (hereinafter collectively sometimes called "restrictions"), which are for the purpose of enhancing and protecting the value, desirability and attractiveness of, and which shall run with the real property and be binding on all parties having any rights, title or interest in the described Properties, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof. This Declaration hereby establishes a plan for the individual ownership of real property estates, consisting of a Lot and the improvements contained thereon, and the ownership by a Community Association, as hereinafter provided, of all of the remaining property, and any improvements thereto.

ARTICLE I

DEFINITIONS

Section 1. "Architectural Control Committee" shall mean the committee established pursuant to Article VI of this Declaration.

Section 2. "Articles of Incorporation" shall mean the Articles of Incorporation of the Association, as the same may be amended from time to time.

Section 3. "Association" shall mean and refer to COTTONWOOD ESTATES COMMUNITY ASSOCIATION, an Arizona non-profit corporation, its successors and assigns.

Section 4. "Board of Directors" or "Board" shall mean Members of the Association duly elected to act on behalf of any and all Members of the Association, provided however, that the Declarant or Declarant's designees may be a member(s) of the Board of Directors without being an Owner.

Section 5. "By-Laws" shall mean the By-Laws of the Association, as the same may be amended from time to time.

Section 6. "Common Area" and "Common Elements" shall be synonymous and shall mean all the real property (including the improvements thereto) owned by the Association for the common use, maintenance and enjoyment of the Owners, including, but not limited to, any shown on the recorded plat of COTTONWOOD ESTATES, and all recorded plats and replats thereof and Annexations thereto.

Section 7. "Declarant" shall mean and refer to COTTONWOOD ESTATES, LLC., an Arizona Limited Liability Company, or its construction company, CHARLEVOIX HOMES GENERAL CONTRACTING, LLC., an Arizona Limited Liability Company, its successors and assigns.

Section 8. "Declaration" means this document, the Declaration of Covenants, Conditions and Restrictions for COTTONWOOD ESTATES.

Section 9. "House" shall mean a residential dwelling unit, including garage, constructed on a Lot, the perimeter of which shall be the dwelling's outside walls.

Section 10. "Lot" shall be synonymous and shall mean and refer to a separately designated and legally described freehold estate consisting of any plot of land on which a House is intended to be constructed, and the improvements thereon shown upon any recorded subdivision' map of the Properties.

Section 11. "Member" shall mean and refer to every person or entity who holds membership in the Association. Each Member is subject to the provisions of these covenants, conditions and restrictions.

Section 12. "Mortgage", "Mortgagor" and "Mortgagee" shall mean and refer to all instruments establishing a security interest, including deeds of trust, and do include trustors, trustee, and beneficiaries under deeds of trust.

Section 13. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities of equitable title in fee simple, (or legal title if equitable title has merged) which is a part of the Properties. Owner shall not include a person or entity having an ownership interest merely as security for the performance of an obligation.

Section 14. "Plat" shall mean the recorded plat of COTTONWOOD ESTATES, recorded in Book 688 of Maps, Page 26, Instrument 2004-0616188, *official records of Maricopa County, Arizona, Recorder.*

Section 15. "Property", "Properties" or "Premises" shall mean and refer to that certain real property hereinbefore described lots 1-50, Cottonwood Estates, as per the Plat, and additional real estate added thereto by annexation.

ARTICLE II**MEMBERSHIP AND VOTING RIGHTS**

Section 1. **Qualification for Membership.** Membership in the Association, shall be limited to record Owners of equitable title in fee simple (or legal title if equitable title has merged) of Lots constructed or planned to be constructed on or within the Property described above or in any duly annexed property. An Owner of a Lot shall automatically, upon becoming the Owner of a Lot, be a Member of the Association, and shall remain a Member of the Association until such time as the ownership ceases for any reason, at which time his membership in said Association shall automatically cease. Ownership of a Lot shall be the sole qualification and criteria for membership. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot, which is subject to assessment.

Section 2. **Restrictions.** A membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of such Lot and then only to such purchaser, or by intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. The Association shall record the transfer upon the books of the Association and issue a new membership to a purchaser and thereupon the old membership outstanding in the name of the Seller shall be null and void.

Section 3. **Number of Memberships.** The record Owner of equitable title in fee simple (or legal title if equitable title has merged) of each Lot, shall be entitled to one (1) membership in the Association and there shall be no more than one (1) membership for each Lot, which membership shall be subject to all of the provisions of the Association's Articles of Incorporation, By-laws, and/or Management Agreement, and these covenant, conditions and restrictions, as now in effect or duly adopted or amended.

Section 4. **Effect of Arrearages in Payment of Assessments.** In the event any Owner shall be in arrears in the payment of any amounts due under any of the provisions of this Declaration for a period of twenty (20) days, or shall be in default in the performance of any of the terms of this Declaration for a period of twenty (20) days, said Owner's right to vote as a Member of the Association shall be suspended and shall remain suspended until all payments are brought current and all defaults remedied.

Section 5. Classes of Voting Members. The Association shall have two (2) classes of voting membership:

CLASS A. Class A Members shall be all Owners with the exception of the Declarant and Developer. A Class A Member shall be entitled to one (1) vote for each Lot owned by said Member. When more than one (1) person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

CLASS B. The Class B Members shall be the Declarant and Developer and shall be entitled to three (3) votes for each Lot owned. The Class B Members shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or,

b) Seven (7) years from the date of the recordation of this Declaration;

ARTICLE III

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Except for the Declarant, each Owner hereby covenants and agrees to pay to the Association; and each subsequent Owner, by acquiring an ownership interest therein, whether or not it shall be so expressed in the conveying document, is deemed to covenant and agree to pay to the Association:

- a) Annual assessment or charges; and
- b) Special assessments,

as authorized by the Association's Board of Directors, such assessments to be established and collected as provided herein.

The annual and special assessment, together with interest, costs of collection and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. It is specifically provided, however, that these assessments shall not be a lien on any Lots while beneficially owned by the Declarant or Developer, during the period ending when the final Lot has been sold, built upon, and Buyer's escrow closed. Each such assessment, together with interest, costs of collection and reasonable attorney's fees,

shall also be the personal obligation of the person who was the Owner of the Property at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them, or unless prior to the transfer of title as evidenced by the records of the County Recorder or other appropriate governmental agency, a lien for such assessments shall have been filed or recorded with the County Recorder.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Properties and for the improvement and maintenance of the Common Area.

Section 3. Establishment, Basis and Limits of Assessments. Declarant and the Owner of each Lot, for themselves, their heirs, successors and assigns, further covenant that each such Lot shall be subject to an assessment, in an amount to be determined by the Association in the following manner:

a) Each Lot's pro rata share of the actual costs for the repair, construction, replacement and maintenance of the Common Area landscaping and other facilities including, but not limited to, sprinkler system, dry wells, drainage areas, taxes, insurance, and other costs, as may, from time to time, be authorized by the Association's Board of Directors, including reserves therefor.

b) Each Lot's pro rata share shall be one fiftieth (1/50th) of the total amount determined under sub-paragraph (a) above.

c) The amount to be prorated among the Members pursuant to sub-paragraph (a) above shall be established annually by the Board of Directors of the Association. Said amount shall be established after the Board of Directors of the Association has met with the management corporation, if any, as hereinafter provided, and has examined the annual report to be prepared by said management corporation, and the annual financial report prepared by an accountant;

d) An annual report shall be prepared by a committee of the Board, or the management corporation, if any. The exact date for the annual report shall be determined by the Board of Directors. The Board of Directors shall meet with the group preparing said report within thirty (30) days following the preparation of same to discuss and set the rate for the current year;

e) At the time of the first conveyance of each Lot, and from time to time thereafter, the Board of Directors, or the designated representative, shall notify the Owner, or Owners, of each Lot as to the amount of the annual assessment and each quarter collect for each Lot, one-fourth (1/4) of said Lot's proportional share of said annual assessment; provided, however, that the Board of Directors may by resolution cause the collection of the annual assessments to be made in such other periodic periods, including annually, as

the Board of Directors may deem advisable and reasonable.

f) Until January 1, 2006, the annual assessment per each Lot conveyed shall be Nine Hundred Thirty Six Dollars (\$936), or Two Hundred Thirty Four Dollars (\$234) per quarter.

From and after January 1, 2006, the Board may, without a vote of the Members, increase or decrease the annual assessment during each fiscal year, by an amount proportional to the amount of the anticipated budget for the current year plus any shortfall in the budgeted expenses of the previous year.

Section 4. Special Assessments. In addition to any other assessments authorized by this Declaration, the Association may levy, in any assessment year, a special assessment, applicable to that year only, for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair, replacement or addition of a capital improvement upon the Common Area, and other areas to be maintained by the Association, provided that, any such assessment shall have the assent of two-thirds (2/3) of the votes of the membership who are voting in person or by proxy at a meeting duly called for this purpose, or at any annual meeting.

Section 5. Supplemental Assessments. In the event that the Board shall determine that its fund budgeted or available in any fiscal year are, or will, become inadequate to meet all expenses of the Association for any reason, including non-payment of assessments, it shall immediately determine the approximate amount of such inadequacies for such fiscal year and issue a supplemental budget and levy a supplemental assessment against the Owners of each Lot for the amount required to pay all such expenses; provided, however, that any such supplemental assessment must first be approved by Owners representing at least two-thirds (2/3) of the votes of the membership, who are voting in person or by proxy, at a meeting duly called for such purpose.

Section 6. Notice and Quorum for any Action Authorized Under Sections 3, 4 and 5. Written notice of any meeting, called for the purpose of taking any action authorized under Sections 3, 4 and 5, by the Association, shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. For the purposes of Section 3, 4 and 5, the presence at a duly called meeting of members or proxies entitled to cast sixty percent (60%) of all the votes, shall constitute a quorum. If the required quorum is not forthcoming at any meeting, 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 quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Assessment of Declarant. Anything herein to the contrary notwithstanding as to each Lot owned by Declarant, the Declarant shall not be responsible for any assessment, annual or special, up until such time as construction commences on that Lot.

Section 8. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots, as heretofore provided; however, Declarant's Lots are excluded as heretofore provided.

Section 9. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein, shall commence as to the Lot on the first day of the month following the conveyance of the individual Lot to the Owner, other than the Declarant. Each Owner, for himself, heirs, successors, grantees, and assigns, covenants that with respect to charges so determined during the period that he is the Owner, he will remit these charges directly to the Association or to such other party or parties as directed by the Association. The first annual assessment for each Lot shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment on each Lot shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors of the Association. The Association, shall upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association, setting forth whether the assessments on a specified Lot have been paid.

Section 10. Effect of Non-payment of Assessments: Remedies of the Association. Any assessment not paid within twenty (20) days after the due date, shall bear interest from the due date at the rate of eighteen percent (18%) per annum. The Association may bring, without electing a remedy, any and all actions and seek any and all relief against the Owner personally obligated to pay the same, and/or to foreclose the lien against the Property in a like manner as a deed of trust of real property, and such Owner hereby expressly grants to the Association the power of sale in connection with said lien. In any action taken against an Owner to collect delinquent assessments within the terms and conditions of this Declaration, or to force compliance, whether through lien foreclosure or otherwise, the Owner shall be obligated to pay, in addition to any and all other amounts required herein, all costs and all attorney's fees incurred; by the Association in such action. An Owner's failure to pay assessments shall not constitute a default under an insured mortgage.

Section 11. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust; but the Mortgagees or trust beneficiaries are not required to collect assessments. However, the sale or transfer of any Lot pursuant

to mortgage foreclosure, deed of trust sales, or any proceedings in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereon.

Section 12. Exempt Property. The following property, subject to this Declaration, shall be exempt from the assessments created herein:

- a) All real estate dedicated to and accepted by a local public authority;
- b) The Common Areas;
- c) All portions of the Property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Arizona; and,

Section 13. Payment of Declarant's Maintenance Expenses. The Declarant will be providing maintenance and repair services for the Association before the Association may be capable of paying for such services. These services shall include, but are not limited to landscaping maintenance, replacement planting, and upkeep of drainage areas.

ARTICLE IV

PROPERTY RIGHTS

Section 1. Owner's Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area, which is appurtenant to the title to the Lot. It is expressly acknowledged and agreed by all parties concerned, that this Article is for the mutual benefit of all Owners and of the Association and is necessary for the protection of said Owners. It is understood and agreed that the rights of enjoyment of the Common Area shall be subject to reasonable rules and regulations, as from time to time are promulgated or amended by the Association.

Section 2. Title to the Common Areas. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Area, to the Association, simultaneous with the conveyance of the first Lot sold by the Declarant.

Section 3. Waiver of Enjoyment. No Owner may exempt himself from

personal liability for assessments duly levied by the Association, nor release the Lot owned by him from the liens and charges hereof, by waiver of the enjoyment of the Common Area thereon or by abandonment of his Lot.

ARTICLE V

PARTY WALLS

The rights and obligations of the Owners in regard to any party wall shall be governed by the laws of the State of Arizona and the decisions of the Courts thereof.

ARTICLE VI

ARCHITECTURAL CONTROL COMMITTEE

Section 1. Organization, Power of Appointment and Removal of Members. Any Architectural Control Committee appointed by the Board shall be organized as follows:

a) **Committee Composition.** The Architectural Control Committee shall consist of three (3) members of the Board who shall be appointed by the Board; provided, however, so long as Declarant owns a Lot, Declarant shall have the absolute right to appoint the Architectural Control Committee. None of these members shall be required to be an architect or to meet any other particular qualifications for membership.

b) **Terms of Office.** The terms of office for each member shall be for a period of one (1) year and until the appointment of his successor. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members who have resigned, been removed or whose terms have been expired may be reappointed.

c) **Appointment and Removal.** Except for the rights of Declarant to appoint the Architectural Control Committee, the right to appoint and remove all members of the Architectural Control Committee at any time, shall be and is hereby vested solely in the Board.

d) **Resignations.** Any member of the Architectural Control Committee may, at any time, resign from the Committee by giving written notice thereof to the Board.

e) **Vacancies.** Vacancies on the Architectural Control Committee, however caused, shall be filled by an appointment by Declarant until all Lots are sold and then by an appointment by the Board of Directors of the Association. A vacancy or vacancies on the Architectural Control Committee shall be deemed to exist in case of the death, resignation or removal of any member.

Section 2. Duties. It shall be the duty of the Architectural Control Committee to consider and act upon any and all proposals or plans submitted to it pursuant to the terms hereof, to perform other duties delegated to it by the Board, and to carry out all other duties imposed upon it by this Declaration.

Section 3. Meetings and Compensation. The Architectural Control Committee shall meet, from time to time, as necessary to perform its duties hereunder. The vote or written consent of any two (2) members, at a meeting or otherwise, shall constitute the act of the Committee unless the unanimous decision of the Committee is required by any other provision of this Declaration. The committee shall keep and maintain a written record of all actions taken by it at such meeting or otherwise. Members of the Architectural Control Committee shall not be entitled to compensation for their services.

Section 4. Architectural Control Committee Rules. The Architectural Control Committee may, from time to time, adopt, amend and repeal, by unanimous vote or written consent, rules and regulations. Said rules shall interpret and implement this Declaration by setting forth the standards and procedures for Architectural Control Committee review and the guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use within the Property. The rules and regulations may also provide for the payment of a processing fee by each Owner requesting approval of the Architectural Control committee.

Section 5. Waiver. The approval by the Architectural Control Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Control Committee under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

Section 6. Liability. Neither the Architectural Control Committee nor any member thereof shall be liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of:

- a) The approval or disapproval of any plans, drawings, or specifications, whether or not effective;
- b) The construction, or performance of any work, whether or not pursuant to approved plans, drawings and

specifications;

- c) The development of any portion of the Property;
- d) The execution and filing of any estoppel certificate, whether or not the facts therein are correct; provided however, that with respect to the liability of a Member, such Member has acted in good faith on the basis of such information as may be possessed by him.

Section 7. Required Approval/Time for Approval. All landscaping, walls, buildings, sheds, garages, signs, colors of same and other improvements made on a Lot shall require prior Architectural Control Committee approval before construction thereon shall commence. Such approval shall be sought by an owner upon application therefore to the Architectural Control Committee pursuant to any rules and regulations and requirements the Architectural Control Committee may implement to accompany the applications. In the event the Architectural Control Committee fails to approve or disapprove any application for approval within thirty (30) days after the application, together with supporting plans and specifications, have been submitted to it, approval will not be required and this Article will be deemed to have been complied with.

ARTICLE VII

MAINTENANCE

Section 1. Responsibility of Owner. It is anticipated that residential dwellings (Houses) will be constructed on the Lots. Maintenance, upkeep and repair of individual Houses, other improvements, yards and landscaping within a Lot, shall be the sole responsibility of the individual Owners thereof and not, in any manner, the responsibility of the Association. It shall be the responsibility of each Owner to submit to the Architectural Committee their proposed front yard landscaping plan within one hundred twenty (120) days of the final inspection or issuance of an occupancy certificate on their House, and installing the front yard landscaping within six (6) months of receipt of an occupancy certificate on their House or applicable municipality's Final Inspection, whichever comes first.

Section 2. Responsibility of the Association. Except as set forth in the dedication of the Plat the Association, or its duly delegated representative, shall maintain and otherwise manage all Common Area Property, including, but not limited to, landscaping, dry wells, gates, pumps, streets, sidewalks, curbs, gutters and drainage areas, and such additional maintenance as the Association shall, from time to time, determine to be in the best interest of the Association.

The Association shall further manage and be responsible for the removal of rubbish from the Common Areas. The Association shall use a reasonably high standard of care in providing for the repair, management and maintenance for the Common Area and the improvements thereon, so that said Properties will reflect a high pride of ownership.

Section 3. Maintenance due to Neglect of Owner. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests or invitees, the cost of such maintenance or repairs to the Lot(s) or Common Area shall be added to and become part of the Owner's assessment.

ARTICLE VIII

INTERIOR AND OTHER MAINTENANCE

Each Owner shall be responsible for the upkeep and maintenance of the exterior and interior of his House and for the upkeep and maintenance of all areas, features or parts of his Lot. All fixtures and equipment installed within a House, commencing at the Lot line, shall be maintained and kept in repair by the Owner thereof. Termite control shall be the responsibility of the Owner. An Owner shall do no act nor any work that will impair any easement, hereditament, nor do any act nor allow any condition to exist which will adversely affect the other Lots or their Owner. In the event that the Association's Board of Directors determine that any Owner has not properly repaired or kept said residential premises in such condition as reflects the intention of this paragraph, then, and in that event, after fifteen (15) days written notice by the Association to said Lot Owner, the Association may perform such necessary maintenance or repairs, or ask the Court of competent jurisdiction for an order requiring the Owner to make such repair or maintenance. The actual cost of such repairs or maintenance, so performed by the Association, or costs and legal expenses incurred by the Association in any legal action, shall be charged to the individual Lot Owner as a special assessment.

ARTICLE IX

DAMAGE OR DESTRUCTION OF PROPERTY

Section 1. Common Area Damaged. In the event any Common Area is damaged or destroyed by the negligent or willful acts of an Owner or any of his guests, tenants, licensees, agents or members of his family, such Owner, if liable pursuant to Arizona law, does hereby irrevocably authorize the Association to repair the damaged element in a good and workmanlike manner, in substantial conformance with the original plans and specifications. The Owner shall then

repay the Association in the amount actually expended for such repairs.

Section 2. Charges for Repairs. Each Lot Owner further agrees that these charges for repairs, if not paid within ten (10) days after completion of the work and billing for the repairs, shall be delinquent and shall become a lien until fully paid. The lien shall be subordinate to any First Mortgage or encumbrance on the Lot. Said charges shall bear interest on and from the date of delinquency at the rate of eighteen percent (18%) per annum. The amount of principal and interest owed by the Owner to the Association shall be a debt, and shall be collected by any lawful procedure allowed by the laws of the State of Arizona.

Section 3. Enforcement of Liens. Each such Owner, by his acceptance of the conveyance document regarding a Lot and House, hereby expressly vests in the Association, or its agent, the right and power to bring all actions against such Owner for the collection of said charges, and to enforce the aforesaid lien by all methods available for the enforcement of such liens and such owner hereby expressly grants to the Association a power of sale in connection with the lien.

Section 4. Liability of Insurance Carrier. Nothing contained in this Article shall be construed in any way so as to relieve an insurance company from the payment of any and all amounts which would be payable under any policy or policies, had not this Article been inserted.

ARTICLE X

INSURANCE

Section 1. Authority to Purchase Public Liability and Other Insurance. The Association, or its duly authorized agent, shall have the authority to and shall obtain insurance for all Improvements, if any, situated on any of the Common Areas, against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any hazard and shall also obtain a broad form public liability policy covering all common elements, and all damage or injury caused by the negligence of the Association, or any of its agents. Said insurance may include coverage against vandalism. Premiums for all such insurance shall be common expenses. All such insurance coverage obtained by the Association, shall be written in the name of COTTONWOOD ESTATES COMMUNITY ASSOCIATION; with the Declarant names as additional insured. The Association may also purchase fidelity insurance or fidelity bonds on its officers and directors.

Section 2. Insurance Provided by Owners. Each Owner is required to carry sufficient insurance to cover the replacement cost of his individual House. Insurance on individual Houses obtained by such Owners may be written in the name of the individual Owners. Should any Owner fail to maintain such

insurance, the Association shall have the right to obtain coverage. Premiums for insurance obtained by the Association on individual Houses shall not be part of the Common Expense, but shall be an expense of the specific House so covered and a debt owed by the Owner, and shall be collectible by any lawful procedure permitted by the State of Arizona. In addition, if said debt is not paid within twenty (20) days after notice of such debt, such amount shall automatically become a lien until fully paid. This lien shall be subordinate to the lien of any First Mortgage and shall be enforceable in the same manner as any lien created by failure to pay the maintenance assessments.

Section 3. Optional Insurance. In addition to the aforesaid insurance required to be carried by the Owners and/or the Association, any Owner may, if he wishes, at his own expense and carry any and all insurance he deems advisable. It shall be the individual responsibility of each Owner, at his own expense, to provide as he sees fit, homeowner's liability insurance, theft, and other insurance covering personal property damage and loss.

Section 4. Repair of Damaged Property. In the event of damage or destruction by fire or other casualty to any property covered by insurance written in the name of the Association, the Association shall, upon receipt of the insurance proceeds, contract to rebuild, or repair such damaged or destroyed portions of the Property to as good condition as formerly. All such insurance proceeds shall be deposited in a bank or other financial institution, the accounts of which bank or institutions are insured by a federal governmental agency, with the proviso agreed to by said bank or institution that such funds may be withdrawn only, by signature of at least one-third (1/3) of the members of the Association's Board of Directors. The Association shall contract with any licensed contractor, who shall be required to provide a full performance and payment bond for the repair, reconstruction or rebuilding of such destroyed building or buildings. A special assessment shall be levied against all Owners, as established by Article IV herein to make up any deficiency for repair or rebuilding of the Common Elements not a physical part of a House. In the event such insurance proceeds exceed the cost of repair and reconstruction, such excess shall be paid over to the respective Mortgagees and Owners, as their interests may then appear.

ARTICLE XI

ANNEXATION

It is not intended that any additional property be annexed to COTTONWOOD ESTATES or become subject to this Declaration.

ARTICLE XII**USE RESTRICTIONS**

Section 1. Use and Occupancy Restrictions. The residential structures on each Lot, is hereby restricted to a House of at least 2,500 livable square feet, and related amenities, no more than one (1) story in height (although one (1) story houses with a basement may be permitted), with no less than an attached three (3) car garage. An additional detached garage and/or a guesthouse, is permitted subject to governmental and Architectural Committee approval and if it meets such guidelines as may be established from time to time by the Directors. All buildings or structures erected upon said premises shall be of new construction and no building or structure shall be moved from other locations onto said Lots. No buildings or structures shall be built on any Lot without Architectural Control Committee approval. No structures of a temporary character, trailer, tent, shack, garage, barn, storage building or other out-building shall be used on any portion of the Premises at any time as a residence or for other purposes either temporarily or permanently, except as permitted herein. All improvements to a Lot must meet any applicable state or governmental laws or ordinances.

Section 2. Declarant's Use of Premises. Notwithstanding any provision herein contained to the contrary, it shall be expressly permissible for the Declarant to maintain during the period of construction and sale of said Lots, upon such Premises as Declarant may desire, such facilities as may be reasonably required or convenient or incidental to the construction and sale of said Lots, including, but without limitation, a business office, storage area, construction yard, signs, sales office, and sales/construction trailer, without approval of the Architectural Control Committee.

Section 3. Nuisances. No noxious or offensive activity may be carried on or permitted on any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. The Owner shall not permit or suffer anything to be done or kept upon any portions of the Premises which will endanger the health or obstruct or interfere with the rights of other Owners; or annoy them by unreasonable noise or otherwise, nor will he commit or permit any nuisance on the Premises or commit or suffer any illegal act to be committed thereon. No part of the Premises shall be used for business, professional, commercial, religious or institutional purposes, except home occupations as may be allowed by local zoning ordinances; provided, however, that the foregoing restrictions shall not apply to the business activities of construction and maintenance by the Declarant, its agents and assigns, during the construction and sale period. The Owner shall comply with all of the requirements of the

Board of Health and all other governmental authorities with respect to the said Premises.

Section 4. Animals. Except as set forth in this Paragraph, no animals, fish or birds of any kind, shall be raised, bred or kept on the Premises; except those commonly accepted as household pets, may be kept, provided that such pets are not kept, bred or maintained for any commercial purposes. Such acceptable pets must be kept under control by its Owner(s) at all times to the satisfaction of the Association, including the noise of barking dogs that are annoying other Owners. Individual Owners are responsible for the cleanup of any deposits made by their pets throughout the subdivision. Failure to comply with the restrictions in this section will result in the forfeiture of Owners' ability to keep the pet on the Premises.

Section 5. Clothes Drying Facilities. No outside clotheslines more than six feet (6') in height will be permitted on any Lot.

Section 6. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to the Premises except such machinery or equipment as is usual and customary in connection with the use, maintenance, or construction of residential homes, improvements or structures, which are within the permitted uses of the Property, and except that which Declarant or the Association may require for the operation and maintenance of the Common Area. All equipment shall be stored within a building on the Property, and woodpiles or storage piles shall be kept screened so as to conceal them from view of neighboring houses and streets.

Section 7. Trash Containers and Collection. No garbage or trash shall be placed or kept on the Property except in covered containers of a type, size and style which are approved by the Architectural Control Committee. 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. The Board shall have the right to subscribe to a trash service for the use and benefit of the Association and all Owners, and to adopt and promulgate rules and regulations regarding garbage, trash, trash containers and collection. The Board shall have the right to require all Owners to place trash and garbage in containers located in areas designated by the Board. All rubbish, trash or garbage shall be removed from the Property and not allowed to accumulate on the Premises. No rubbish, trash or garbage shall be burned on the Premises. Incinerators of every kind shall be prohibited.

Section 8. Utility Lines. Electric, power, telephone, water, sewer, cable television and other utility or service lines used for the general benefit of the Lot Owners, and other utility or service lines of every kind or character, (whether

now or hereafter invented or used) shall be placed and kept underground up to the walls of the Houses on the Premises, except to the extent, if any, such underground placement may be prohibited by law, or by nature of the services to be rendered, such underground placement prevents the lines from being functional. This restriction shall apply to the service and utility lines for each and every Lot and the Common Areas, as well as the distribution lines located in the streets and elsewhere in the subdivision. However, the foregoing shall not prohibit service pedestals and aboveground switch cabinets and transformers, where required, and shall not prohibit use of temporary overhead power installations during construction and sales by the Declarant.

Section 9. Antennas. All antenna or other transmission or reception devices, including, but not limited to, satellite dishes, are subject to regulation and approval by the Architectural Control Committee. The foregoing is subject to any prohibition or regulation by governmental authority.

Section 10. Signs. No sign exceeding twenty-four inches by thirty inches (24" x 30") in size, of any nature whatsoever, shall be permitted on any Lot, except that Declarant has the right to erect whatever signs are necessary for sales and directional purposes. In the event any unauthorized sign is erected, the Association shall have the right to remove such sign. Any expense incurred by the Association in removing such sign shall be paid, upon demand, by the Owner or Owners responsible for erecting the sign and the Association may enforce Section of same in the same manner as provided for herein for the collection of assessments.

Section 11. Parking of Recreational Vehicles. No trucks, buses, trailers, boats, campers, all terrain vehicles, snowmobiles, RV's, and other like vehicles, or the trailers for such vehicles, (other than passenger automobiles) shall be permitted to remain parked on any street or any Lot, for more than twelve (12) hours during any day of any year, without prior written approval each year from the Association, or its delegated agent; except without written permission such vehicle may be parked behind a wall or RV gate approximately six (6) feet in height, or enclosed in the garage unless restricted by governmental authority. No automobile, truck, camper or vehicle may be kept on blocks or jacks, at any time unless enclosed within the garage.

Section 12. Violation of Insurance Policy. Nothing shall be done or kept on any Lot which will increase the rate of insurance on any Lot or House or on the contents thereof, without the approval of the Association. No Owner shall permit anything to be done or kept on any Lot which will result in the cancellation of insurance on any Common Area or which would be in violation of any law.

Section 13. Structural Alteration. There shall be no structural alteration, addition, construction or removal of any House, fence or other structure on the Premises without the approval of the Architectural Control Committee, as set

forth herein above. Nothing shall be done in or on any Lots or in, on or to any House which would structurally change any such House except as is otherwise provided herein.

Section 14. Exterior and Exterior Alterations. The color of the exterior of the House and other structures, including the roof color (except flat roofs which are not visible), on a Lot shall require prior approval of the Architectural Control Committee and shall be in the earth tone family. Roof material shall be concrete tile, clay tile or slate. Flat roof material will be foam or a built up material, and shall be of a color approved by Architectural Control Committee. Other high quality materials may be used if approved by the Architectural Control Committee.

Except with the approval required by Article VI, no change, modification or addition of any kind whatsoever (including but not limited to painting, decorating, planting, awnings, and sunshades) shall be made or carried out on the exterior of any House.

Section 15. Detached Garages. May be front-facing provided they are set back a minimum of fifteen (15) feet from the front of the home. Detached garage height is to be limited to sixteen (16) feet from finished floor to the top of the ridge or parapet, provided, however detached garages may be taller if they are set back from the rear and side lot boundaries a minimum of ten (10) feet, plus one (1) foot for every one (1) foot or part thereof the garage height exceeds twenty (20) feet. [Example: if the garage height is twenty-one (21) feet, the required set back would be a minimum of eleven (11) feet. Under any circumstance the maximum detached garage height shall not exceed twenty-five (25) feet above finished floor to ridge or parapet.

Section 16. Restriction of Further Subdivision and Time Shares. No Lot shall be further subdivided or separated into smaller parcels by any Owner, and no portion less than all of any such Lot, or any easement or any other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of the Association. No portion of a Lot, but for the entire Lot, together with the improvements thereon may be rented, and then only to a single family. Neither the ownership nor occupancy of Lot shall be in Time Shares. No Owner shall transfer, sell, assign or convey any Time Share in his Lot and improvements thereon, and any such transaction shall be void. "Time Share" as used in this section shall mean the right to occupy a Lot or any one of several Lots during five (5) or more separate time periods over a period of five (5) years, including renewable options, whether or not coupled with an estate or interest in a Lot or a specified portion of a Lot. Nothing herein shall prevent the dedication or conveyance of or granting of easements over portions of Lots for public utilities or other public or quasi-public purposes, in which event the remaining portion of any such Lot shall, for the purpose of these restrictions, be considered as a whole Lot.

Section 17. Common Area. The Common Area shall remain undivided and shall at all times, be owned by the Association, or its successors or assigns; it being agreed

that this restriction is necessary in order to preserve the rights of the Owners with respect to the Common Areas. The Common Area cannot be mortgaged or conveyed without the consent of at least two-thirds (2/3rds) of the Owners.

Section 18. Rules and Regulations. Reasonable rules and regulations concerning the use of the Properties and all portions thereof, and imposing reasonable restrictions upon the Owners and use of the House may be made and amended from time to time by the Board Notwithstanding the foregoing, until seventy-five percent (75%) of all of the Lots are sold by the Declarant as evidenced by deeds (or recorded Agreements of Sale), delivered to purchasers. The Declarant (without any additional approval of the Board) shall be authorized to promulgate the rules, and regulations referred to above Copies of such regulations and amendments thereto shall be furnished by the Association to all Owners and residents of the Property.

After seventy-five percent (75%) of the Lots are sold by the Declarant, as herein described, the Association upon recommendation of the Board and by a vote of seventy five percent (75%) of the Lot Owners, shall have the full and absolute power to adapt rules and regulations as it deems in the best interest of all of the Owners in connection with the use and operation of the Common Area, and to delegate any or all of its rights, powers and duties under this Declaration, to a management agent.

Section 19. Guests and Tenants. Each Owner shall be responsible for his guests, tenants, agents, licensees, and invitees in ensuring compliance with all of the covenants, conditions, restrictions and rules and regulations, as may be established by the Board of Directors.

ARTICLE XIII

EASEMENTS

Section 1. Easements for Ingress and Egress. Except as otherwise set forth on the Plat, there is hereby created a blanket easement, upon, across, over and under all Common Areas for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines and systems, including, but not limited to, water, sewer, gas, telephones, electricity, television and cable, or communication lines and systems, drainage, etc. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on said Property and to affix and maintain wires, circuits and conduits, on, in and under the roofs and exterior

walls of said Houses. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electric lines, water lines or other utility or service lines may be installed or relocated on said Premises except as initially programmed and approved by Declarant of said Premises or thereafter approved by the Association or its delegated agents: This easement shall in no way affect any other recorded easements on said Premises.

Section 2. Easement for Encroachments. Each House to be built on a Lot and the Common Areas shall be subject to an easement for encroachments created by construction settling and overhangs. A valid easement for said encroachments and for maintenance of same, so long as it stands, shall and does exist. In the event the structure is partially or totally destroyed and then rebuilt, the Owners of Houses agree that minor encroachments of parts of the adjacent House or the Common Areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 3. Easement for Utilities. There is hereby dedicated and declared a permanent easement over, across and under any or all of the Property for such uses, at such locations and at such widths as reflected on the Plat for the installation and maintenance of any utility facility, including water, gas, electricity, television, sewage, telephone, irrigation and any other similar utility purposes serving the Property. All portions of each Lot named herein, on which no House, sidewalk or driveway exists, has by these covenants an established easement for purposes of maintenance of plantings, water systems and utilities.

Section 4. Association's Right of Entry. In the event of an emergency, the Declarant, or any member of the Board, or its representative, has a right to enter upon and take the appropriate action to save life or property.

Section 5. Declarant Easements. Declarant hereby reserves a blanket easement upon, over, across and under the Property (other than inside any residential dwelling) for itself for the purpose of ingress to and egress from any portion of the Property for the purpose of development and construction of improvements, including but not limited to Houses on any portion of the Property and for the purpose of extending to or within any portion of the Property all utilities referred to in this Section and for the purpose of developing, advertising and selling any Lot on the Property.

ARTICLE XIV

WATER AND SEWER

Section 1. Water, Sewer and Electricity. The costs and charges of water, sewer and electricity usage for the Common Area herein shall be paid by the Association from assessments levied pursuant to Article III. There shall be a separate meter for water and electricity serving the Common Area. Each Lot shall have its own water and electric meter. All costs and charges of water, sewer and electricity usage for the Lots

shall be paid by, and be the sole expense of the Lot Owner, including the water used for the watering of his landscaping on his Lot.

Section 2. Maintenance. The Owners shall provide maintenance for the private water lines and facilities located upon all areas of his Lot as follows:

repair, replace and clear all water lines from points of origin to intersection with public water facilities.

Section 3. Water Conservation. It is intended that all Property that is subject to this Declaration practice water conservation, and to that end all plant watering systems should be of the drip irrigation type, all Houses shall use low water use fixtures, and all turf watering shall be by efficient, maintained sprinkler systems; provided, however, if there are other methods, means or appliances, now or in the future, to equally accomplish such conservation of water, those methods, means or appliances shall be permitted to be used on the Property.

ARTICLE XV

GENERAL PROVISIONS

Section 1. Binding Effect and Enforcement. The covenants, conditions, restrictions, charges, liens, reservations, and easements contained herein shall run with the land and shall be binding upon all persons purchasing, owning, leasing, subleasing, or occupying or otherwise having any interest in any House on said Property, their heirs, executors, administrators, successors, grantees, and assigns. After the date on which this Declaration becomes effective, as described herein, these restrictions may be enforced by any one or more of the following:

- a) The Declarant, its successors and assigns, or its delegated agent, which shall have the right and duty to enforce the same and expend collected monies in pursuance thereof;
- b) The Association, or its Board of Directors, which shall have the right and duty to enforce the same and expend Association monies in pursuance thereof;
- c) The Owner or Owners of any Lot.

Any person who acquires title to a Lot, except through delivery of a sheriff's deed as a result of a foreclosure proceeding or by a deed in lieu of foreclosure, shall take title to such Lot subject to the lien hereof for all charges, pursuant to the provisions of this Declaration, that have accrued prior to such acquisition of title, and subject to the lien hereof for all said charges that shall accrue

subsequent to the date said person takes title; and, provided any said restrictions may be enjoined, abated or reviewed by appropriate proceedings, notwithstanding the lien or existence of any such Mortgage or Deed of Trust. The personal obligation to pay the annual and special assessments as provided in this Declaration shall not pass to a successor in title unless the obligation is expressly assumed by the successor in title, or unless, prior to such transfer of title, as evidenced by the records of the County Recorder, or other appropriate governmental agency, a lien for such assessments shall have been filed in writing with the County Recorder or other appropriate governmental agency. All instruments of conveyance of any interest of all or any part of said Lots may contain the restrictions herein by reference to this instrument. However, the terms, and conditions of this instrument shall be binding upon all persons affected by its terms, regardless of whether any reference is made to this instrument in the deed or other instrument of conveyance.

Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenants either to restrain violation or to recover damages. In the event the Declarant, the Association, or its designated agent, employs an attorney, or attorneys, to enforce said lien or the collection of any amounts due pursuant to this Declaration, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, the Owner, Owners and parties against whom the action is brought, shall pay all attorney's fees and costs thereby incurred by any such enforcing party, prevailing in any such action. Nothing herein shall be deemed to indicate that damages at law constitute an adequate remedy for violation of a restriction herein.

Section 2. Waiver of Abandonment. The waiver of, or failure to enforce any breach or violation of any restriction herein contained, shall continue to apply to the Property regardless of whether there has been a waiver, abandonment, or waiver of right to enforce any breach or violation of these restrictions. The foregoing shall apply regardless of whether any person affecting hereby (or having the right to enforce these restrictions) have knowledge of the breach or violation.

Section 3. Equal Treatment of Owners. These restrictions shall be applied to all Owners without discrimination.

Section 4. Severability. The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections hereof shall not affect the remaining portions of this instrument or any part thereof, all of which are inserted conditionally on their being held valid in law, and in the event that one or more of the phrases, sentences, clauses, paragraphs or sections contained therein should be invalid or should operate to render this agreement invalid, this Declaration shall be construed as if such invalid phrase or phrases, sentence or sentences, clause or clauses, paragraph or paragraphs, or section or sections had not been inserted.

Section 5. Gender. The singular, whenever used herein, shall be construed to mean the plural when applicable and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each was fully expressed.

Section 6. Construction. In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Articles, By-Laws, Association rules or Architectural Control Committee rules, the provisions of this Declaration shall prevail.

Section 7. Governing Law. This Agreement shall be governed by the laws of the State of Arizona. In the event of litigation, each party consents to the jurisdiction of either the state or federal courts located in Arizona and to service of process, either personally or by registered mail, return receipt requested.

Section 8. No Waiver. No failure or delay on the part of any person in exercising any right, power or privilege hereunder and no course of dealing between or among the persons subject hereto, shall operate as a waiver of any provision thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, nor the exercise of any other right, power or privilege. No notice to or demand on any person in any case shall entitle such person to any other or further notice or demand in similar or other circumstances or constitute a waiver of rights to any other or further action in any circumstances.

Section 9. Topical Headings. The marginal or topical headings of the paragraphs contained in this Declaration are for convenience only and do not define, limit or construe the contents of the paragraphs or of this Declaration.

Section 10. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by the then Owners of not less than sixteen (16) of the Lots and, thereafter, by an instrument by the Owners of not less than thirteen (13) of the Lots. Anything contained herein to the contrary notwithstanding, the provisions in Article VI, shall not be amended or altered in any manner, and any such attempted amendment or alteration, shall not be valid or effective without the signed and acknowledged concurrence of Declarant and Charlevoix Homes, LLC, until such time as Charlevoix Homes General Contracting, LLC is no longer developing any Houses in the subdivision, and Declarant has sold all of the Lots in the subdivision.

Section 11. Effective Date of this Declaration of Covenants, Conditions and

Restrictions. The recordation of this document shall not make these Covenants, Conditions and Restrictions effective. The provisions of this Declaration shall become effective only upon the conveyance of the first Lot to an Owner by the Declarant.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 4th day of January, 2005.

COTTONWOOD ESTATES, LLC

By: 

Its: Director

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 4th day of January, 2005, before me, the under-signed, personally appeared Michael Roberts who acknowledged himself to be an officer of COTTONWOOD ESTATES, LLC, an Arizona limited liability company, and that he, as such officer, being authorized so to do, executed the within instrument for the purposes therein contained by signing the name of said limited liability company, by himself as such officer.

WITNESS my hand and official seal.

Janet P. Mason
Notary Public

MY COMMISSION EXPIRES:

August 31, 2007

