

Amended and Restated Declarations  
of Covenants, Conditions and Restrictions  
Round Hill Club and Townhomes  
4135 S. Power Rd. #122  
Mesa, AZ 85212

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**AMENDED AND RESTATED DECLARATIONS OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
ROUND HILL CLUB AND TOWNHOMES**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ROUND HILL CLUB AND TOWNHOMES ("Declaration") is made on the date hereinafter set forth by the Round Hill Club Owners Association, an Arizona nonprofit corporation (the "Association").

**WITNESSETH:**

WHEREAS, a certain Declaration of Covenants, Conditions and Restrictions of Round Hill Club and Townhomes was recorded on January 15, 1981 in Docket No. 14958, Page 921 with the Maricopa County Recorder's Office; and an amendment was recorded thereafter on December 16, 1985 at Recording No. 1985-0593844; and an amendment was recorded thereafter on September 11, 2003 at Recording No. 2003-127878 (collectively referred to hereafter as the "Original Declaration");

WHEREAS, the Original Declaration governs the following real property within the County of Maricopa, State of Arizona ("Property" or "Properties"):

Lot 1 through 57 and Tracts A through H of ROUND HILL CLUB  
AND TOWNHOMES, according to an Amended Plat thereof  
recorded in the Office of the Maricopa County Recorder in Book  
223 of Maps, at page 8 thereof.

WHEREAS, the Association, by and through its members, wishes to amend and restate the Original Declaration in its entirety as set forth herein;

NOW, THEREFORE, the Association hereby declares that all of the Properties described above and referred to herein shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property, and all of which are hereby declared to be for the benefit of all of the Property described herein and the Owners thereof, their heirs, successors, grantees and assigns. These easements, covenants, restrictions and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described Properties or any part thereof, 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 nonprofit association comprised of all Owners of Lots, of all of the remaining property, both real and personal, which is hereinafter defined and referred to as the Common Area. These restrictions establish and impose a general plan for the improvement and development of the Property and the adoption and establishment of covenants, conditions and restrictions upon the Property and upon any and all Townhomes constructed on the Lots, and upon the use, occupancy and enjoyment thereof. Every conveyance of a Lot shall be and is subject to these easements, covenants, conditions and restrictions.

**ARTICLE I**  
**Definitions**

Section 1. "Articles" means the Articles of Incorporation of the Association, as the same may be amended from time to time in accordance with the provisions thereof and with the applicable provisions of this Declaration, the Bylaws and the statutes and regulations of the State of Arizona.

Section 2. "Association" shall mean and refer to ROUND HILL CLUB OWNERS ASSOCIATION, a nonprofit corporation, its successors and assigns.

Section 3. "Board of Directors" or "Board" means the elected body of the Association having its normal meaning under Arizona corporate law.

Section 4. "Bylaws" means the Bylaws of the Association, as the same may be amended from time to time in accordance with the provisions thereof and with the applicable provisions of this Declaration, the Articles and the statutes and regulations of the State of Arizona.

Section 5. "Common Area" means all property owned by the Association for the common use and enjoyment of the Members of the Association. The legal description of the Common Area at the time of the recording of this Declaration is as follows:

Tracts A through H of ROUND HILL CLUB AND  
TOWNHOMES, according to the plat of record in the  
office of the County Recorder of Maricopa County,  
Arizona, in Book 223, Page 8 of Maps.

Section 6. "Community Documents" means this Declaration, the Bylaws, Articles Rules, Architectural Guidelines, and any other documents governing the Association.

Section 7. "Lot" means a separately designated and legally described freehold estate consisting of any plot of land and the improvements thereon shown upon the Plat, with the exception of the Common Area.

Section 8. "Member" means every person or entity who holds membership in the Association as further provided herein.

Section 9. "Owner" shall mean and refer to (a) the record owner, whether one or more persons, of legal title to the fee simple interest of a Lot; (b) a purchaser under a contract for sale; and (c) in the case of a Lot the fee simple title to which is vested in a trustee pursuant to A.R.S. § 33-801, *et seq.*, the trustor. "Owner" shall not include: (i) a person having an interest in a Lot merely as security for the performance of an obligation; (ii) a lessee; or (iii) a purchaser under a purchase contract and receipt, escrow instructions or similar executory contract which is intended to control the rights and obligations of the parties to executory contracts pending the closing of a sale or purchase transaction.

Section 10. "Plat" shall mean the plat map for ROUND HILL CLUB AND TOWNHOMES, recorded in Book 223 of Maps, Page 8, official records of Maricopa County, Arizona Recorder and amended from time to time.

Section 11. "Property" shall mean and refer to all that real property included within Round Hill as further described on the Plat and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 12. "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 Townhome.

Section 13. "Townhome" means any residential structure located on a Lot which is intended for use and occupancy as a residence by a Single Family.

Section 14. "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 neighboring property, on the level of the base of the object being viewed.

The aforesaid definitions shall be applicable to this Declaration.

## **ARTICLE II**

### **Property Rights and Easements**

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title of every Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area and to establish reasonable rules and regulations pertaining to or restricting the use of the Common Area.

(b) The right of the Association to suspend the right of use of the recreational facilities by an Owner for any period during which any Assessment against his Lot remains unpaid; and for a reasonable time frame after the Owner has been given notice of the proposed suspension and an opportunity to be heard, for noncompliance with the Community Documents.

(c) The right of the Association to dedicate or transfer all or any part of the Common Area for such purposes and subject to such conditions as may be agreed to by the Members. Except for transfers under threat of condemnation or eminent domain, no such dedication or transfer shall be effective unless approved in writing by Members to which two-thirds (2/3) of the votes in the Association are allocated.

(d) The right of the Association to limit the number of guests of Members.

(e) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area and the recreational facilities thereon.

(f) The right of particular Owners to the use of any and all easements created hereby and by any and all other recorded instruments.

(g) The right of the Association, in accordance with any restrictions or limitations set forth in the Articles and/or Bylaws, to borrow money for any proper Association purpose and in aid thereof, to mortgage said property. The rights of such mortgagee in said properties shall be subordinate to the rights of the Owners hereunder.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment of the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the Property.

Section 3. Waiver of Use. No Member may exempt himself from personal liabilities for assessments duly levied by the Association, nor release the Lot owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area and the facilities thereon or by abandonment of his Lot.

Section 4. Blanket Easement. There is hereby created a blanket easement upon, across, over and under the Property for ingress, egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewers, gas, telephones and electricity, and a master television antenna system. By virtue of this easement, it shall be expressly permissible for the providing electrical and/or telephone company to erect and maintain the necessary poles and other necessary equipment on the Property and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of said Townhomes. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said premises except as approved by the Association's Board of Directors.

Section 5. Easement for Encroachments. Each Townhome and the Common Area shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Declarant. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the multi-family structure is partially or totally destroyed, and then rebuilt, the Owners of Townhomes agree that minor encroachments of parts of the adjacent Townhomes or Common Area due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

### **ARTICLE III** **Membership and Voting Rights**

Section 1. Membership. There shall be one membership in the Association for each Lot. Each such membership shall be held by the Owner of such Lot and shall be appurtenant to and may not be separated from ownership of such Lot. The foregoing is not intended to include

persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate an Owner's membership. No Owner, whether one or more persons, shall have more than one membership per Lot owned. In the event any Lot is owned by two or more persons or entities, whether by joint tenancy, tenancy in common, community property or otherwise, the membership as to such Lot shall be joint. In no event shall more than one membership exist for each Lot.

Section 2. Transfer of Membership. The rights and obligations of an Owner and a membership in the Association shall not be assigned, transferred, pledged or alienated in any way, except upon the transfer of the Lot to which it appertains whether by sale, intestate succession, testamentary disposition, foreclosure or other legal process transferring fee simple title to such Lot. Any attempt to make a prohibited transfer is void.

Section 3. Voting. Each Member shall be entitled on all issues to one (1) vote for each Lot owned. The vote for each such Lot must be cast as a unit, and fractional votes shall not be allowed. When more than one person owns any Lot, there shall be only one (1) vote with respect to such Lot.

Section 4. Suspension of Voting Rights. In the event any Owner is in arrears in the payment of any Assessment or amounts due to the Association under any of the provisions of this Declaration for a period of thirty (30) days, such Owner's right to vote as a Member of the Association shall be suspended and shall remain suspended until all payments are brought current. In addition, in the event any Owner is in default in the performance of any of the terms of the Community Documents, such Owner's right to vote as a Member of the Association may be suspended for a reasonable time frame after the Owner has been given notice of the proposed suspension and an opportunity to be heard.

#### **ARTICLE IV** **The Association**

Section 1. Purpose of the Association. The Association shall be a nonprofit corporation organized under and by virtue of the laws of the state of Arizona for the general welfare and benefit of the Owners in the Property. The Association, through its Members and Board, shall take the appropriate action to manage and maintain the Common Areas and to perform related activities, in accordance with the Community Documents and applicable law. In addition to the duties and powers enumerated in its Articles of Incorporation and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall have the power to own, maintain and otherwise manage all of the Common Area and all facilities, improvements and landscaping thereon, and all other property acquired by the Association and shall have the power and authority necessary to fulfill its obligations set forth herein and in the Community Documents.

Section 2. Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers as the directors may elect or appoint, in accordance with the Articles and the Bylaws, as same may be amended from time to time. The Board may also choose to delegate certain powers to its committees, officers, agents and employees.

Section 3. Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal rules and regulations to be known as the "Association Rules" or "Rules". The Association Rules may (i) restrict and govern the use of any area by any Owner, or by any invitee, licensee, or lessee of such Owner (ii) adopt standards concerning the landscaping, color scheme and other related matters affecting the outside appearance of the Lots, Townhomes or other portions of the Property, and (iii) may govern all aspects of the Association's rights, activities and duties. Anything to the contrary notwithstanding, the Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. Such Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

Section 4. Indemnification. The Association shall indemnify every officer, director, and agent of the Association against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon any officer or director of the Association in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or an agent of the Association, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers, directors, and agents shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except indirectly to the extent that such officers or directors may also be Owners within the Association and therefore subject to Assessment to fund a liability of the Association), and the Association shall indemnify and forever hold each such officer, director, and agent free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, agent or former officer, director, or agent of the Association, may be entitled. This indemnification shall be mandatory in all circumstances in which indemnification is permitted by law; provided, however, that the Association shall have the right to refuse indemnification if the person to whom indemnification would otherwise have been applicable shall have unreasonably refused to permit the Association, at its own expense and through counsel of its own choosing, to defend him or her in the action.

Section 5. Limitation of Director Liability. In accordance with the provisions of the Nonprofit Corporation Act (set forth at A.R.S. § 10-3101 et seq., as may be amended from time to time), each director shall be immune from civil liability and shall not be subject to suit indirectly or by way of contribution for any act or omission resulting in damage or injury if said director was acting in good faith and within the scope of his official capacity (which is any decision, act, or event undertaken by the Association in furtherance of the purpose or purposes for which it is organized) unless such damage or injury was caused by willful and wanton or grossly negligent conduct of the director. This provision intends to give all directors the full extent of immunity available under the Nonprofit Corporation Act.

**ARTICLE V**  
**Covenant for Maintenance Assessments**

Section 1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot 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: (1) Annual Assessments; (2) Special Assessments; and (3) Individual Assessments. (collectively or individually referred to herein as "Assessment(s)"). Such Assessments to be established and collected as provided herein.

The Assessments, together with interest, costs of collection and reasonable attorneys' fees, whether or not a lawsuit is filed, shall be a lien upon the Lot against which each such Assessment is made (the "Assessment Lien"). Each such Assessment, together with interest, costs of collection and reasonable attorneys' fees incurred by the Association whether or not a lawsuit is filed shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal liability of multiple Owners of a Lot shall be joint and several. The personal obligation for the delinquent Assessments shall not pass to such Owner's successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents within the Association by providing for the improvement and maintenance of the Common Areas within the Association, and to permit the Board of Directors to carry out their obligations consistent with this Declaration and the purposes of the Association.

Section 3. Annual Assessments. Until January 1 of the year immediately following the recording of this Declaration, the maximum Annual Assessment shall be One-Hundred and Ninety-Eight Dollars (\$198.00) per month per Lot.

(a) From and after January 1 of the year immediately following the recording of this Declaration, the maximum Annual Assessment may be increased in accordance with A.R.S. §33-1803, as may be amended from time to time hereafter. In the event an increase in the Annual Assessment requires the approval of the Members, the maximum Annual Assessment may be increased with the affirmative vote of Members casting two-thirds (2/3) of the votes entitled to be cast by Members of the Association who are present in person or by absentee ballot at a duly called meeting of the Members at which a quorum is present.

(b) The Board may increase or decrease the actual Annual Assessment and shall fix the Assessments annually, but not in an amount in excess of the maximum as above stated and, subject to the provisions set forth in this Declaration, the actual Annual Assessment may be changed or modified during any fiscal or calendar year.

Section 4. Special Assessments. In addition to the Annual Assessments authorized above, the Association may levy, in any Assessment year, a Special Assessment applicable to that year only for any proper Association purpose. Such Special Assessment must first be approved by Members entitled to vote, through the affirmative vote of Members casting two-thirds (2/3) of



the votes entitled to be cast by Members of the Association who are present in person or by absentee ballot at a duly called meeting of the Members at which a quorum is present.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all Members not less than 30 days nor more than 50 days in advance of the meeting. At the first such meeting called, the presence of Members (in person or by absentee ballot) entitled to cast sixty percent (60%) of all the votes in the Association 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 quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Individual Assessments. Individual Assessments shall be levied by the Association against a Lot and its Owner to reimburse the Association for costs incurred in bringing an Owner and such Owner's Lot into compliance with the provisions of this Declaration or the Rules, any costs incurred by the Association due to the Owner's misconduct or other failure to comply with the Community Documents, any other charge designated as an Individual Assessment in this Declaration, and all attorneys' fees, interest, and other charges relating thereto.

Section 7. Uniform Rate of Assessment. Both Annual and Special Assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 8. No Exemption from Assessments. No Owner may exempt himself or herself from personal liability for Assessments duly levied by the Association, nor release the Lot owned by him or her from the Assessment Lien, by waiver of the use and enjoyment of the Common Areas and the facilities thereon or by abandonment of his or her Lot.

Section 9. Effect of Non-payment of Assessments; Remedies of the Association. Any Assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum or at such other interest rate as may be determined from time to time by the Board. Additionally, the Board may impose late charges as established by the Board and as permitted by applicable law. In the event of a default in payment of any such Assessment when due, in which case the Assessment shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Board may enforce each such obligation in any manner provided by law or in equity, or without any limitation of the foregoing, by either or both of the following procedures (and the exercise by the Association of one or more of the remedies set forth below shall not prevent the Association from exercising any other remedy available):

(a) The Board may bring a lawsuit against each Owner or former Owner to enforce each such personal Assessment obligation. Each Owner agrees that any judgment rendered in any such action shall include all attorneys' fees and costs incurred by the Association, as set forth above, plus all its court costs and necessary expenses and accounting fees incurred by the Association, plus interest on the amount of said Assessment at the rate of ten percent (10%) per annum from the date the Assessment becomes delinquent until paid in full.

(b) The Board may foreclose the Assessment Lien against the Lot in accordance with the then-prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency), and the Lot may be redeemed after foreclosure sale as provided by law. Each Owner agrees that any judgment rendered in any such action shall include all attorneys' fees and costs incurred by the Association, as set forth above, plus all court costs, title search fees, interest and all other costs and expenses to the extent permitted by law, and such costs and expenses shall be added to the Assessment Lien. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

Section 10. Subordination of the Assessment Lien to Mortgages. The Assessment Lien provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any Lot shall not affect the Assessment Lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure, deed of trust sale, or any proceeding in lieu thereof, shall extinguish the Assessment Lien 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 11. Reserve Contribution. Each person who purchases or otherwise becomes the Owner of a Townhome and provided such transaction involves a purchase price or exchange of value, shall pay to the Association, immediately upon becoming the Owner of the Townhome, an amount equal to three (3) months of Assessments ("Reserve Contribution"). The amount of the Reserve Contribution may be adjusted by the Board from time to time hereafter, provided any increase of the Reserve Contribution is approved by Members holding more than fifty percent (50%) of the votes in the Association. All Reserve Contributions shall be deposited into the Association's Reserve Account and shall be non-refundable and shall not be considered as an advance payment of Assessments.

Section 12. Transfer Fee – Each purchaser of a Townhome shall pay to the Association immediately upon becoming the Owner of the Townhome a transfer fee in the amount set from time to time by the Board to compensate the Association for the administrative cost resulting from the transfer. The transfer fee is not intended to compensate the Association for the costs incurred in preparation of the statement, which the Association is required to mail or deliver to a purchaser pursuant to A.R.S. § 33-1806 and, therefore, the transfer fee shall be in addition to the fee which the Association is entitled to charge pursuant to A.R.S. § 33-1806.

## **ARTICLE VI** **Architectural Control**

Section 1. Improvements, Alterations and Construction. No excavations, additions, alterations, construction, landscaping or other work that is or would be Visible From Neighboring Property and/or that in any way alters the exterior appearance of any Lot or Townhome or any landscaping or structures located thereon, including, but not limited to, any building, fences, hedges, trees, walls and other structures or landscaping shall be commenced, erected or maintained until the plans and specifications showing the nature, kind, shape, height, materials, and location

of same shall have been submitted to and approved in writing as to conformity and harmony of external design and location with existing structures in the Property by the Board of Directors of the Association or by a representative designated by the Board of Directors.

Section 2. Standard of Review. The Board shall have the right, in its sole and absolute discretion, to deny approval of any plans or specifications which, in its opinion, are not suitable or desirable for aesthetic or any other reasons. In this regard the Board shall have the right to take into consideration all matters mentioned above (i.e., location, kind, material, etc.), as well as the effect any proposed building or structure may have upon the site where it is proposed to be constructed or placed, and the suitability of the same with respect to the surrounding area and the effect thereof (including but not limited to harmony of external design and location) upon adjacent Lots and Properties as a whole.

Section 3. Changes or Alterations from Approved Plans. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme and building materials, shall be subject to the prior written approval of the Board of Directors. No changes or deviations in or from such plans and specifications once approved shall be made without the prior written approval of the Board of Directors.

Section 4. Design Guidelines. The Board may, from time to time, adopt, amend and repeal procedural and design standards, rules and regulations to be known as "Design Guidelines". The Design Guidelines may interpret and implement the Declaration by setting forth the standard and procedures for review and the guidelines for architectural design, placement of improvements, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use in the Property.

Section 5. Architectural Committee. The Board may assign its rights and duties of architectural review to an architectural committee composed of the Board of Directors of the Association, or by a representative or committee designated by the Board of Directors; however, at least one Director must serve on the architectural committee as the chairperson of the architectural committee. The members of such committee shall not be entitled to compensation for services performed pursuant to this Article.

## **ARTICLE VII**

### **MAINTENANCE; PARTY WALLS**

Section 1. Maintenance by the Association. The Association shall provide maintenance, repair, and replacement of the Common Areas including trees, shrubs, sprinkler systems, walks, parking areas, and other exterior improvements thereon and not excluded herein. The Association's shall also paint, repair, and replace the exterior vertical surface walls of each Townhome, gutters, down-spouts, exterior building surfaces, rear patio walls, and gates constructed or installed at the time of original construction of the Townhome. The Association's maintenance obligation shall not include any portions of a Townhome or Lot to be maintained by the Owner as stated below. The costs associated with the Association's maintenance obligation shall be an Association expense. The Association shall have an easement on, over, across and through each Lot to permit it to carry out its duties and obligations hereunder.

Section 2. Maintenance by Owners. Each Owner shall be responsible for the maintenance, repair, replacement and general care of the Lot, and the Townhome and any improvements situated thereon (except for the portions maintained by the Association). Each Owner's responsibility shall include, but is not limited to: all structural components of or casualty damage to the Townhome, the garage door, the roofs, gutters and downspouts, patio covers, skylights, overhead shade structures, exterior windows and doors (including all hardware, framing and casings) air conditioning units, evaporative coolers, hot water heaters, solar panels, all utility lines, pipes and fixtures serving the Lot, patio and yard walls, the foundations of the structures on the Lots, the interiors of the Townhome, and landscaping located in the rear yard and private patio areas on the Lot. Termite control and pest control shall be the responsibility of each Owner. An Owner shall do no act or any work that will impair the structural soundness or integrity of any Townhome, nor do any act nor allow any condition to exist that will adversely affect the other Townhomes or their Owners or occupants.

Section 3. Party Walls. The rights and duties of the Owners of Lots within the Property with respect to party walls shall be governed by the following:

(a) Each wall, including patio and Lot line walls, which is constructed as part of the original construction or improvements, any part of which is placed on the dividing line between separate Lots, shall constitute a party wall ("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 inconsistent herewith, the general rules of law regarding party walls shall be applied thereto.

(b) The cost of reasonable repair and maintenance of a party wall shall be shared by the adjoining Owners of such wall in proportion to the use thereof, without prejudice, however, to the right of any Owner to call for a larger contribution from the adjoining Owner under any rule of law regarding liability for negligent or willful acts or omissions.

(c) In the event any Party Wall is damaged or destroyed through the act of one adjoining Owner, or any of such Owner's guests, tenants, licensees, agents, family members or pets (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 Party Wall, then the first of such Owners shall forthwith proceed to rebuild and repair the same to as good condition as formerly without cost to the adjoining Owner.

(d) In the event any such Party Wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, or any of such Owner's guests, tenants, licensees, agents, family members or pets (including ordinary wear and tear and deterioration from lapse of time), then in such event both such adjoining Owners shall proceed forthwith to rebuild or repair such Party Wall to as good condition as formerly at their joint and equal expense.

(e) In addition to meeting the other requirements of the Community Documents and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild his or her Townhome or other improvement on the Lot in any manner

that requires the extension or other alteration of any Party Wall shall first obtain the written consent of the adjoining Owner.

(f) These covenants shall be binding upon the heirs and assigns of any Owners, but no person shall be liable for any act or omission respecting any Party Wall except such as took place while an Owner.

Section 4. Repairs Necessitated by Owners. In the event that the need for maintenance, repair or replacement of any Common Area or portion of a Lot maintained by the Association (including painting of the building exterior) is caused through the willful or negligent act of the Owner, the family members, guests, invitees, or pets of such Owner, such Owner hereby authorizes the Association to undertake any necessary maintenance, repairs and/or replacements and agrees that the Association's costs in doing so (costs not covered by insurance) together with interest thereon at a rate of 10% per annum from the date of expenditure until paid in full shall be paid by the Owner, upon demand, to the Association and such amount shall be added to and become a part of Individual Assessment on the Lot if not paid within ten (10) days after completion of the work.

Section 5. Improper Maintenance of Lots. In the event that any improvement upon any Lot maintained by an Owner is maintained (i) in violation of the standards established by the Community Documents, (ii) so as to create a public or private nuisance, (iii) so as to impair substantially the value or desirability of the surrounding Lots, or (iv) prevent the Association from performing its maintenance responsibilities on the Lots, the Board may give notice to such Owner that unless corrective action is taken within a reasonable timeframe, as determined by the Board, the Association may cause such action to be taken at such Owner's expense. If, as of the expiration of such time frame the requisite corrective action has not been taken, the Association may cause such action to be taken; and the Association's cost thereof, including any attorney's fees, shall be paid by the Owner, upon demand, to the Association and shall be added to and become part of the Individual Assessment on the Lot.

## ARTICLE VIII Insurance

Section 1. Insurance to be Obtained by the Association. The Board, or its duly authorized agent, shall have the right and duty to obtain insurance for all Common Area buildings, against loss or damage by fire, or other hazards in an amount sufficient to cover the replacement cost of any repair or reconstruction work in the event of damage or destruction from any Common Area hazard, and shall also obtain a broad form public liability policy covering all Common Areas. The Association may also obtain such other insurance including, but not limited to, fidelity coverage, workers' compensation insurance and directors' and officers' liability insurance, as the Board deems appropriate. Such insurance coverage shall be written in the name of the Board of Directors of the Association, as Trustee, for each of the Lot Owners proportionately.

Section 2. Premiums and Deductibles. All premiums for the insurance required or permitted to be obtained by the Board by this Article shall be an Association expense, except that the amount of increase over any annual or other premium occasioned by the act or omission of an

Owner shall be assessed against that particular Owner as an Individual Assessment. In the event that damage to Common Area was caused by an Owner's act or omission, the entire amount of the deductible pertaining to such claim shall be assessed against the responsible Owner. If an Owner is required to pay the amount of the deductible to the Association to perform any repair or reconstruction work, said amount shall be an Individual Assessment.

Section 3. Unavailability of Insurance. The Board shall not be liable for failure to obtain or maintain any of the insurance coverage required by this Article, or for any loss or damage resulting from such failure, if such failure is due to the unavailability of such insurance coverage from reputable companies authorized to provide such insurance in the State of Arizona, or if such insurance coverage is available only at an unreasonable cost.

Section 4. Insurance Obtained by Owners. Each Owner shall insure his own Lot and Townhome located thereon and all improvements thereon for fires and casualty in an amount of the value of the premises and structure. Owners shall name the Association as a secondary beneficiary under the insurance policy, and the Owner shall provide proof of insurance to the Association on or before the first day of November each year by providing the declaration page regarding the policy and a copy of the payment instrument for the policy together with a letter from the insurance carrier indicating coverage is in force and paid for a one-year period. It shall be the individual responsibility of each Owner to purchase homeowners' liability insurance, theft and other insurance covering damage to the interior of the Townhome, additions, improvements, and betterments thereto, furnishings and personal property therein and loss as he or she deems necessary as the Association shall insure neither the individual Owner's Townhome or Lot nor any of the Owner's personal belongings.

Section 5. Damage, Destruction, Reconstruction and Repair. Any portion of the Common Area or other property covered by property insurance obtained by the Association which is damaged or destroyed must be repaired or replaced promptly by the Association using any available insurance proceeds unless (a) repair or replacement would be illegal under any state or local health, safety or other statute or ordinance, or (b) Owners representing at least eighty percent (80%) of the total votes in the Association vote not to rebuild. The responsibility for making and paying for repairs or replacements if the cost is less than the insurance deductible, or to the extent not covered by insurance, shall be according to the maintenance obligations (and responsibility for payment) set forth in Article VII herein. In the event such insurance proceeds exceed the cost of repair and reconstruction, such excess proceeds shall be deposited into the Association's reserve account. Any deficiency after applying the available insurance proceeds shall be paid by having the Board of Directors levy a special assessment uniformly against all Lot Owners. However, in the event that such claim was caused by an Owner's act or omission, any such deficiency shall be assessed against the responsible Owner. If an Owner is required to pay such amount to the Association to perform any repair or reconstruction work, said amount shall be an Individual Assessment.

## **ARTICLE IX**

### **Use Restrictions**

**Section 1. Construction.** No subsequent buildings or structures other than Townhomes shall be built on any Lot. No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other out building shall be used on any portion of the Property at any time as a residence either temporarily or permanently.

**Section 2. Residential Use.** Lots shall be used only for Single Family residential and related purposes. No Lot shall have more than one Townhome situated thereon. No gainful occupation, profession, trade, business, or other non-residential use shall be conducted on any Lot, except that an Owner or other resident of a Lot may conduct a business activity upon the Lot so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside of the Lot; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Lot; (iii) the business activity does not involve the door-to-door solicitation of Owners or other residents in the Property; (iv) no unreasonable amount of on-street parking occurs relating to the business activity; and (v) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other residents in the Property, as may be determined from time to time in the sole discretion of the Board. Furthermore, no advertising or directional signs may be placed upon the Lot or any portion of the Common Areas regarding the business activity. The terms "business" and "trade" as used in this section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended or does generate a profit; or (c) a license is required for such activity.

**Section 3. Animals; Pets.** No swine, horses, cows or other livestock, and no pigeons, chickens, ducks, turkeys, or other poultry shall ever be kept on any portion of the Property. Dogs, cats or other household pets may be kept, provided, they are confined to the Owner's Lot or on a leash held by a person capable of controlling the animal, and not permitted to run free and further or make an unreasonable amount of noise, and provided they are not kept, bred or maintained for any commercial purpose, or in numbers as determined by the Board. In no event shall a combination of more than three (3) dogs and/or cats be kept on the Property at any one time. Owners shall be responsible for immediately removing their animal's excrement on the Property and shall be responsible for any and all damage to property and injuries to persons and other animals caused by their pets. The Board may also conclusively determine, in its sole and absolute discretion, whether any animal as described herein constitutes a nuisance and the keeping and maintaining of pets shall be subject to the Association's Rules.

**Section 4. Signs.** No signs shall be permitted on any of the Common Areas without the prior written consent of the Board. No signs of any type or character shall be erected or permitted on any Lot, except:

- (a) a single nameplate and/or address plate not exceeding 9" x 30" in size, provided that such nameplates and address plates shall be subject to the Rules;
- (b) signs the nature, number and location of which have been approved in advance and in writing by the Board or are permitted by the Rules; and
- (c) signs required by legal proceedings; and
- (d) signs required by law to be allowed on the Lot.

Section 5. Unsightly Items/Trash. All equipment, garbage cans, service yards, woodpiles, or storage piles shall be kept screened by adequate planting or fencing so that they are not Visible From Neighboring Property. All rubbish, trash or garbage shall be kept in closed containers and shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. No clotheslines shall be permitted.

Section 6. Vehicles and Parking. No truck (other than a Family Vehicle truck described below), mobile home, mini or standard size motor home, travel trailer, tent trailer, trailer, all-terrain vehicle, bus, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle (hereinafter referred to as "Commercial Vehicles") shall be permitted to remain on any Lot, or remain parked adjacent thereto, except for loading and unloading purposes only. A "Family Vehicle" means any domestic or foreign car, station wagon, sport wagon, pick-up truck of ¾ ton capacity or less 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 the Owner or its family members, tenants, guests or invitees for family and domestic purposes and which are used on a regular and recurring basis for basic transportation.

No vehicle of any type, boat, camper, bicycle, tricycle or other wheeled toy shall be parked or left unattended in any Common Area and no overnight parking in the street or driveways at any time. Vehicles parked in violation of the Community Documents may be towed away at the vehicle owner's expense, including storage charges. No Vehicle of any type which is abandoned or inoperable shall be stored or kept on any Lot, parking area, street or drive in such a manner to be Visible From Neighboring Property.

The Board of Directors may, acting in good faith, designate a Commercial Vehicle as a Family Vehicle, if prior to use, the Owner petitions the Board of Directors to classify the same as a Family Vehicle if the Commercial Vehicle is similar in size and appearance to a Family Vehicle and the parking of such Vehicle on the Condominium will not adversely affect the Association or the Owners. Family Vehicles and Commercial Vehicles are collectively referred to herein as "Vehicles".

Section 7. Antennas and Satellite Dishes. No radio, television or other antennas or devices of any kind or nature, or device for the reception or transmission of television, radio, microwave or other similar signals, shall be placed or maintained upon any Lot except in compliance with the Rules and except those devices covered by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule), as amended, repealed, or recodified, will be permitted as provided herein. Any such device shall comply with the applicable antenna installation Rules of the Association and shall be mounted, to the extent reasonably possible, so as to not be Visible From



Neighboring Property. The devices governed by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule) as of the date of the recording of this Declaration are as follows: (i) Direct Broadcast Satellite (“DBS”) antennas one meter in diameter or less, and designed to receive direct broadcast satellite service, including direct-to-home satellite service, or receive or transmit fixed wireless signals via satellite; (ii) Multi-point Distribution Service (“MDS”) antennas one meter or less in diameter or diagonal measurement, designed to receive video programming services (wireless cable) or to receive or transmit fixed wireless signals other than via satellite; (iii) Antennas designed to receive local television broadcast signals (“TVBS”); and (iv) Antennas designed to receive and/or transmit data services, including Internet access. If the FCC expands the types of antennas that fall under the FCC Rule, this Section 7 shall encompass those antennas as well.

Section 8. Nuisances or Offensive Activities. No activity shall be carried on upon any Lot or any part of the Properties, nor shall anything be done thereupon which may be, or may become, an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners of his respective Townhome, or which shall in any way increase the rate of insurance. The Board of Directors in its sole discretion shall have the right to determine the existence of any such nuisance. No activity or condition shall be carried on or permitted on any Lot that harbors or induces insects, rodents, or other pests.

Section 9. Association Rules. All Owners and occupants shall abide by Bylaws and any Rules adopted by the Association.

Section 10. Leasing. Lots may be rented or leased only to a Single Family in accordance with the following. All leases shall be for a period of at least thirty (30) days. All leases and rental agreements shall be in writing and subject to the terms and conditions of the Community Documents. Each Owner agrees to cause his, her, or its tenant, occupant or persons living with such Owner or with his, her, or its tenant to comply with the Community Documents, and each Owner is responsible and liable for all violations and losses caused by such tenants or occupants. Upon rental of their Lot, the Owner shall provide the Association with the information required under A.R.S. 33-1806.01, as may be amended or recodified.

Section 11. Exterior Coverings. No exterior screening or shade materials of any type including, but not limited to, awnings, shutters, screens and coverings affecting the exterior appearance of any Lot, shall be permitted except as expressly authorized by the Association Rules or as may be permitted by the Board of Directors. Only materials intended and designed as window coverings (such as drapes, curtains, blinds, and shutters) may be placed over windows so as to be Visible From Neighboring Property, and no reflective materials (including, but without limitation, aluminum foil, reflective films, screens, glass, or mirrors), paper, cardboard, or sheets may be placed over windows that are Visible From Neighboring Property except as expressly authorized by the Association Rules or as may be permitted by the Board of Directors.

Section 12. Flags and Flagpoles. An Owner may install a flagpole on the Lot, no higher than the rooftop of the Townhome, after first obtaining the written approval of the Association. The following flags may be flown on the Lot in accordance with the Federal Flag Code (P.L. 94-344): the United States flag, the Arizona state flag, the Gadsden flag, the flag of the United States Army, Navy, Air Force, Marine Corps, or the Coast Guard, the POW/MIA flag, and an Arizona

Indian Nations; however, the Rules may limit the number of flags flown to no more than two at once. Other flags may be flown only with the prior written approval of the Board of Directors.

Section 13. Violation of Law. Any violation of any state, municipal, or local law, ordinance or requisition, pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in this Declaration.

## **ARTICLE X**

### **Duties and Powers of the Association**

In addition to the duties and powers enumerated in its Articles of Incorporation and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall have the power to:

- (a) Levy Assessments that shall cover the costs of the Association.
- (b) The use and expend the Assessments collected to carry out the purpose of the Assessments as described above.
- (c) Own, maintain and otherwise manage all of the Common Area and all facilities, improvements and landscaping thereon, and all other property acquired by the Association.
- (d) Pay any real personal property taxes and other charges assessed against the Common Area.
- (e) To pay for water, insurance, sewer and other utilities and expenses as shall be designated by the Board of Directors.
- (f) Grant easements where necessary for utilities and sewer facilities over the Common Area to serve said area and the Lots.
- (g) Protect and defend the Property from loss and damage by suit or otherwise.
- (h) Have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association. Notwithstanding the above, any and all management agreements shall be written for a term not to exceed one year, subject to renewal by agreement of the parties for successive one year periods, and shall further provide that said management agreement may be cancelled and terminated by the Board of Directors for any reason whatsoever upon giving thirty (30) days written notice of such cancellation and termination to the managing entity. The Board of Directors shall make all necessary arrangements for continuity of management and maintenance prior to the expiration of the term of any prior management agreements or the termination of the same. Any and all management agreements shall be entered

into with a responsible party or parties having considerable experience with the management of a project of this type.

(f) Contract for and pay maintenance, gardening, utilities, materials and supplies, and services relating to the Common Area, and to employ personnel necessary for the operation of the project, including legal and Accounting services.

(g) Delegate its powers to its committees, officers and employees.

(h) Perform all other acts which are necessary or incidental to fulfilling the purposes of the Association and the obligations set forth in this Declaration or the Community Documents.

## **ARTICLE XI** **Easements**

Section 1. Blanket Easement for Utilities. There is hereby created a blanket easement upon, across, over and under the Common Area for ingress, egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephones, and electricity, irrigation facilities and a master television antenna system. By virtue of this easement, it shall be expressly permissible for the providing electrical, utility and/or telephone company to erect and maintain the necessary poles and other necessary equipment on said property. Notwithstanding anything to the contrary contained in this paragraph, no sewer, electrical lines, water lines, or other utilities may be installed except as approved by the Association's Board of Directors. These easements shall in no way affect any other recorded easements on said premises.

Section 2. Special Easement for Utilities. There is hereby created a special easement under the roof, floor and within the walls of each Townhome erected upon each Lot, for ingress, egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, common water, sewer, telephone and electric facilities, which serve more than one Townhome; and a master television antenna system. The Association shall have the obligation to repair and maintain said facilities and systems, and it shall be expressly permissible for the Association, or its authorized agent, to enter upon any Owner's Lot and Townhome for the purpose of effecting such repairs and maintenance.

Section 3. Easement for Encroachment Due to Construction. Each Townhome and the Common Area shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed and for the maintenance of same, so long as it stands, shall and does exist. In the event a Townhome is partially or totally destroyed and then rebuilt, the Owners of Townhomes agree that minor encroachments on parts of the adjacent or Common Areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist. Notwithstanding any provisions herein to the contrary, and encroachment permitted herein shall not exceed one (1) foot.

**ARTICLE XII**  
**Prohibition and Disclosure – Tract E**

Section I. Disclosure. An "earth fissure" was discovered to have occurred in approximately January, 1980, within the area designated as Tract "E" of the above-described Property as shown in the Plat. By way of explanation and disclosure "earth fissures" are cracks in the land which sometimes appear in south-central Arizona in areas of great water table decline. They are primarily due to subsidence of the land (earth) caused by the lowering of the ground water level. As the water levels in such areas decline, the ground soil or sediment dries out and may settle around bedrock protrusions or ridges existing under the sediment/soil. These cracks originate below the surface and extend upward until the roof of the crack at the surface collapses from tension and/or surface or percolating water breaking or wearing through the soil into the crack. When the surface-soil roof of the underground crack breaks or wears open, this results in a "crack" or "fissure" appearing on the surface of the land. The exact locality where such cracks will form is unpredictable. The water level in the basins between the mountain areas in Paradise Valley, Phoenix and Scottsdale has declined rapidly, particularly in Paradise Valley and the West part of Scottsdale. Thus, these "basin" areas are believed to be active subsidence zones. Other such fissures or cracks may appear which may be parallel to the one in Tract "E", may occur in the same general (Paradise Valley-Scottsdale) area and/or may or may not necessarily occur in the same locality, i.e., (ROUND HILL) or as a continuation of the crack in Tract "E".

The crack now existing in Tract "E" for the most part is a "hair-line" crack in size, other than one portion of the crack existing in a low water retention area which, because of the excess water collected *in* that area, opened to a fissure or crack approximately fifteen (15) feet long and fifteen (15) inches wide at a point North and slightly East of the intersection of 40th Street and Lupine Avenue.

In any event, pursuant to specific recommendations of Dr. Troy L. Pewe, a Ph.D. and registered geologist under Arizona Registration No, 6445, and of certain other-engineers and architects, including but not limited to the City Engineer for the City of Phoenix, certain precautions have or will be taken in an effort to preserve and protect any building or construction in the Round Hill Club and Townhomes planned area development which precautions include the following:

(a) Round Hill Club and Townhomes, a planned area development, has been replatted so that the existing fissure and crack is now wholly included in Tract "E" and the lots have been oriented so as to be clear of Tract "E" and the existing fissure or crack.

(b) The pavement in the streets and the water and sewer utility lines crossing the earth fissure or crack in Tract "E", or under the rights-of-way which cross the direct fissure or crack, have been specially engineered and/or strengthened to preserve and protect against possible additional stresses which may be imposed by such crack.

(c) The fissure and crack area in Tract "E" has been regraded to eliminate or minimize the low water-retention basin areas and to provide for quicker drainage away from the

fissure or crack area, and the portion of the existing crack described above has been trenched out and backfilled with compacted native material.

In addition to the above precautions, it is hereby declared that all stem walls within fifty (50) feet of the existing fissure or crack in Tract "E" are to be provided with additional reinforcing steel during construction and installation of such walls and no person-occupied or inhabited residential buildings or dwellings shall be constructed in or upon that portion of the Property designated as Tract "E" on the Plat as above described. The provisions of this Paragraph shall be a restriction (hereinafter referred to as the "Restriction") upon and affecting Tract "E" of the Round Hill Club and Townhomes as herein referred to and described.

The Restriction in the above paragraph may be enforced by the Association and any Owner of any Lot in the community hereafter. Violation of the said Restriction may be restrained or enforced by any court of competent jurisdiction and/or damages may be awarded against any person in violation of such Restriction and nothing herein shall be construed as meaning that damages constitute an adequate remedy where equitable relief is sought.

Each Owner by the acceptance of a Deed of conveyance of a Lot, and every person hereafter acquiring any right, title and/or interest in the Property, or any portion thereof, and all heirs, personal representatives, successors and assigns of each thereof, accepts the same subject to the Restriction, created, imposed or reserved by this Declaration, and, subject to any change, modification, termination or rescission as provided for in the Article of this Declaration governing Amendments, all such rights, benefits hereby created, reserved or declared, and all impositions and obligations, including the Restriction hereby imposed, shall be deemed and taken to be covenants running with the Property and shall bind any person having at any time any interest or estate in said Property, or any Lot or part thereof, and shall inure to the benefit of such Grantee or purchaser in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance, purchase contract, agreement of sale and/or other instrument transferring, conveying, encumbering or assigning any right, title or interest in and to the Property, or any Lot, part or portion thereof, including Tract "E".

### **ARTICLE XIII** **General Provisions**

Section 1. Binding Effect. The covenants, restrictions, reservations and conditions contained herein shall run with the land and shall be binding upon all persons purchasing, leasing, subleasing or occupying any Townhome on a Lot, their heirs, executors, administrators, successors, grantees and assigns. All instruments of conveyance of any interest of all or any part of a Lot shall contain reference to this Declaration and shall be subject to the covenants, conditions, reservations and restrictions herein as fully as though the terms and conditions of this Declaration were therein set forth in full, however, the terms and conditions of this Declaration shall be binding upon all persons affected by its terms, whether express reference is made to this Declaration or not.

Section 2. Enforcement. The Community Documents may be enforced by the Association, through its Board of Directors, which shall have the right, but not the duty, to expend

Association monies in pursuance thereof, and also may be enforced by any Owner, except no Owner shall have the right to enforce the obligation to pay Assessments. This right of enforcement shall be in any manner provided for in this Declaration or by law or in equity, including, but not limited to, imposition of reasonable monetary penalties, commencing an action to obtain an injunction to compel removal of any Improvements constructed or altered in violation of this Declaration or to otherwise compel compliance with the Community Documents. Nothing herein shall be construed as meaning that damages are an adequate remedy where equitable relief is sought. Each remedy provided by this Declaration is cumulative and not exclusive.

(a) Notice of Violation. Notwithstanding the generality of the foregoing, 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 Community Documents. The notice shall be executed by an officer of the Association and shall contain substantially the following information: (i) the name of the Owner or resident violating, or responsible for the violation of, the Community 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; and (v) a statement of the specific steps which must be taken by the Owner or occupant to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner and resident(s), and any subsequent purchaser of 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 shall record a notice of compliance which 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 did not exist.

(b) Costs of Enforcement. In the event the Association acts to enforce the Community Documents, regardless of whether suit is filed, the Association shall be entitled to recover, in addition to any other remedy, reimbursement for attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith including but not limited to the Association's administrative costs and fees. Said attorneys' fees, costs and expenses shall be imposed as an Individual Assessment. If, however, a lawsuit is filed, and the Owner is the prevailing party in such lawsuit, the Owner shall not be required to pay the Association's attorneys' fees, court costs, costs of investigation and other related expenses incurred therewith. If any lawsuit is filed by any Owner to enforce the Community Documents, the prevailing party in such action shall be entitled to recover from the other party all attorneys' fees incurred by the prevailing party in the action.

Section 3. Term; 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 by a vote or the consent or a combination of both of not less than sixty-six percent (66%) of the Owners of the Lots. Any amendment must be recorded.

Section 4. Attorneys' Fees in Administrative Actions. In the event the Association incurs legal expenses and costs, including, but not limited to, attorney's fees, in bringing claims

against Owners or defending claims brought by Owners in an administrative action or proceeding, including but not limited to, proceedings before an Administrative Law Judge, the Association shall be entitled to recover its attorney's fees and costs from the Owner involved in the administrative proceeding if the Association is the prevailing party.

Section 5. Severability. The invalidity of any one or more phrases, sentences, clauses, paragraphs, or sections hereof shall not affect the remaining portions of this Declaration 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 Declaration 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 6. Gender. The singular, wherever 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 case fully expressed.

Section 7. Topical Headings. The marginal or topical headings of the Articles and Sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Articles and Sections or of this Declaration.

Section 8. Construction. In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Articles, the Bylaws or the Rules, the provisions of this Declaration shall prevail.

Section 9. Interpretation. Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and Properties benefited or bound by this Declaration.

Section 10. Survival of Liability. The termination of membership in the Association shall not relieve or release any such former Owner or Member from any liability or obligation incurred under, or in any way connected with, the Association during the period of such ownership or membership, or impair any rights or remedies which the Association may have against such former Owner or Member arising out of, or in any way connected with, such ownership or membership and the covenants and obligations incident thereto.

Section 11. Joint and Several Liability. In the case of joint ownership of a Lot, the liabilities and obligations of each of the joint Owners set forth in, or imposed by, the Community Documents shall be joint and several.

Section 12. Guests and Tenants. Each Owner shall, to the extent permitted by Arizona law, be responsible for compliance by his agents, tenants, lessees, guests, invitees, licensees and their respective agents and employees with the provisions of the Community Documents. An

Owner's failure to ensure compliance by such persons shall be grounds for the same action available to the Association or any other Owner by reason of such Owner's own noncompliance.

**CERTIFICATION**

IN WITNESS WHEREOF, the President of the Association hereby certifies that the provisions contained with this Declaration have been approved by Owners of the required percentage of Lots.

DATED this 21<sup>st</sup> day of September, 2018.

ROUND HILL CLUB OWNERS ASSOCIATION  
an Arizona non-profit corporation

By *Slobhan C. Becker*  
Its: President

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

On this 21<sup>st</sup> day of SEPTEMBER, 2018, before me personally appeared SLOBHAN BECKER, whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document, and who acknowledged that he/she signed this document.

*Rebecca Anders*  
Notary Public

Notary Seal:

