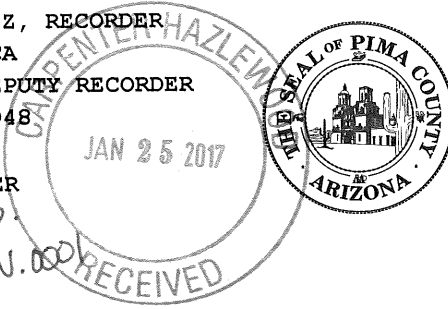


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AMENDED AND RESTATED  
DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
HACIENDAS DEL CONDE ASSOCIATION

Preamble

Haciendas del Conde Association Inc., an Arizona nonprofit corporation, hereinafter referred to as "Haciendas" together with its members, is the owner of certain real property known as Haciendas Catalina del Rey, as subdivision, hereinafter known as "the subdivision," as shown on that certain recorded plat recorded in the Office of the County Recorder of Pima County; Arizona, in Book 27 of Maps at page 53, hereinafter referred to as the "recorded plat." It was the desire of Haciendas del Conde Association, Inc., to impose upon said real property and subdivision mutual and beneficial covenants, conditions, and restrictions under a general plan or scheme of improvements for the benefit of the subdivision and the future owners of the various parts of it and it therefore promulgated a Declaration of Covenants, Conditions and Restrictions dated the 20th day of August, 1981, and recorded on the 16th day of November, 1981, in the Office of the Pima County Recorder in Docket 6657 at Pages 874 to 885.

WHEREAS, the Association passed an Amended Declaration of Covenants, Conditions, and Restrictions for Haciendas Del Conde Association recorded on April 6, 1989, in the Office of the Pima County Recorder in Docket 8310, Page 1378.

WHEREAS, the Association passed an Amendment to the Declaration of Covenants, Conditions, and Restrictions for Haciendas del

Conde Association Inc., recorded on July 22, 1993, in the Office of the Pima County Recorder at Docket 9589, Page 1333.

WHEREAS, the Association now intends to incorporate the above-referenced amendments as well as several other amendments that were approved by at least fifty-one percent (51%) of all the members by written consent without an Association meeting into one document entitled the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Haciendas del Conde Association.

NOW THEREFORE, Haciendas hereby declares that all the subdivision is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to the following amended limitations, covenants, conditions, and restrictions, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement, and sale of said premises and are established and agreed upon for the purpose of enhancing and protecting the value, desirability, and attractiveness of the subdivision and every part of it. All of the limitations, covenants, conditions and restrictions shall run with the land and shall be binding on all parties having or acquiring any right, title, or interest in the subdivision or any part thereof.

It is further the desire of Haciendas del Conde that this Amended Declaration of Covenants, Conditions and Restrictions for Haciendas del Conde shall not apply in any way to the following areas as reflected on the recorded plat:

1. Common areas 180 and 181.
2. Lots 115 through 151 inclusive, otherwise known as townhouse area 1.
3. Lots 152 through 174 inclusive, otherwise known as townhouse area 2.

Lots 1 through 12 inclusive, as shown on the recorded plat are herein sometimes referred to as "ranchettes." Lots 38 through 57 inclusive, as shown on the recorded plat are herein sometimes collectively referred to as "townhouse area 3." The individual lots in townhouse area 3 are hereinafter sometimes referred to as "townhouses." Lots 13 through 37 inclusive, and

lots 58 through 114 inclusive, as shown on the recorded plat are sometimes collectively referred to as "homesites." This amended declaration hereby establishes a plan for the individual ownership of lots 1 through 114 inclusive, and the improvements contained therein, together with ownership by a non-profit corporation of those common areas designated upon the recorded plat, as enumerated above, including all improvements thereon. Referenced herein to various common areas and various lots are in reference to such areas and are depicted on the recorded plat. Such amended covenants, conditions and restrictions are as follows:

1. No livestock, animals or poultry of any kind shall be kept on any townhouse or homesite lot that will disturb the peace and quiet of the remaining members or owners, and each owner shall be responsible for his or her pets. Ownership of pets under this paragraph allowed shall be limited strictly to dogs, cats, caged birds or fish in proper receptacles or tanks. In no event shall more than two (2) dogs or two (2) cats more than ten (10) weeks old be permitted on any one lot. All dogs shall be kept in an enclosed area except when accompanied on a leash. All provisions of this paragraph 1, with the except of the provisions that all dogs shall be kept in an enclosed area except when accompanied on a leash, shall not apply to ranchettes except as may be provided by applicable ordinances and governmental regulations.

2. Said lots 1 through 114 inclusive, are hereby restricted to dwellings for residential use Owner or Resident residing in any lot may conduct business activities so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the lot; (b) the business activity conforms to all zoning requirements; (c) the business activity does not involve any person conducting such business who does not reside in the Association or door-to-door solicitation of residents of the Association; (d) the existence or operation of the business does not increase the lots use of Common Areas over that which is standard for a single family residence; (e) the existence or operation of the business does not require customers or delivery trucks to visit the residence; and (f) the business activity does not constitute a nuisance, or a hazardous or offensive use, or cause the owners to violate any other provisions of this Declaration, or threaten the security or safety of other residents of the

Association, as may be determined in the sole discretion of the Board. Leasing the lot is not considered a business activity.

3. All buildings or structures erected on said lots shall be of new construction, and no buildings or structure shall be moved from other locations onto said lots.

4. No sign of any kind shall be visible from any lot except as minimally required by A.R.S. § 33-1808, or as it may be amended from time to time.

5. No unsightly object or nuisance shall be erected, placed or permitted to remain on any lot. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood or which may endanger the health or unreasonably disturb the holder of any lot. Included within the meaning of such annoyance or nuisance are any lights constructed or maintained by a lot owner which reasonably disturb any of the holders of other lots.

6. All clothes lines, equipment, garbage cans, incinerators, service yards, woodpiles or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring lots, common areas and streets. All rubbish, trash, or garbage shall be removed from the premises and shall not be allowed to accumulate thereon.

7. No vehicle or structure such as a trailer, basement, tent, shack, garage, barn, mobile home, or other outbuilding of a temporary nature shall be used at any time as a residence regardless of the duration of such use. In addition, no such vehicle or structure shall be placed upon a lot without advance written permission of the Board of Directors.

8. No trees or other plants which would grow to such size as to extend outside the boundary of a lot shall be planted by a homeowner without the advance written permission of the Board of Directors.

9. No vehicle of any kind or nature shall be placed or parked upon any lot except as may be entirely within an enclosed garage, except for

automobiles, vans, or other non-commercial vehicles regularly used on a daily basis for the transportation of residents. No boat, boat trailer, camper, travel trailer, motor home, recreational vehicle, or other similar vehicle or equipment may be stored or parked upon a lot except those which are kept entirely within an enclosed garage. Temporary storage or parking of such vehicles or equipment must not exceed one (1) week unless previously approved by the Board of Directors in writing. No vehicle of any kind which is inoperable, abandoned, dismantled, or in any stage of repair shall be stored or kept on any lot within the subdivision as to be seen from any other lot, from the common areas, or from the street.

10. Long term storage containers must receive prior written approval from the Board of Directors if such storage exceeds ninety (90) days. If storage exceeds ninety (90) days, renewal is possible upon another written approval from the Board of Directors.

11. No white, near-white, glaring, or reflective ground cover, roof, or roofing material shall be used on any lot if visible from the street or adjacent lot without the prior written approval of the Board of Directors as provided in Paragraph 21(k).

12. No planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon any individual lots contained in townhouse area 3, except (1) such as are installed in accordance with the initial construction of the improvements located thereon, or (2) as approved by the Board of Directors or its designated representatives, or (3) within areas entirely enclosed by patio walls and/or dwelling units.

13. Easements to permit the placing of sewer lines, electrical and television cables and natural gas pipelines along, under, around, adjacent to, and across the common areas which are subject to those restrictions are hereby granted and established; this shall include the right to excavate said sewer line or lines, electrical and television cables and natural gas pipelines in a workmanlike manner. This right shall be exercised in such manner as to preserve the greatest amount of the then existing landscaping. The location of this easement upon any common area shall be determined by the

Board of Directors, provided the location meets the approval of any public agency requesting such easements.

14. An Owner or resident may install any of the following antenna or satellite dish on a Lot: (a) an antenna or satellite dish designed for over-the-air reception of signals from direct broadcast satellites (DBS) that is 1 meter or less in diameter, (b) an antenna or satellite dish designed for multi-channel multi-point distribution (wireless cable) providers (MMDS) that is 1 meter or less in diameter, or (c) antennas designed to receive television broadcast signals (TVBS) regardless of size ("Covered Antenna"), together with their associated mounting hardware and mast, if applicable ("Antenna System").

An attempt should first be made to ground mount an Antenna System in the rear yard of a lot, set back at least 8 feet from all lot lines. If rear yard installation is not feasible, then the Owner may install the Antenna System on the residence. When installing the Antenna System on a residence, placement of the Antenna System must be in a location least visible from the front and sides of the residence unless said installation will (a) preclude reception of an acceptable quality signal, (b) unreasonably increase the cost of installation, maintenance, or use, or (c) unreasonably delay or prevent installation, maintenance or use of the Antenna System.

Masts extending 12 feet or less beyond the roofline may be installed on a residence, subject to notification to the Board of Directors. Masts that extend more than 12 feet above the roofline or are installed nearer to the lot line than the total height of the mast and Covered Antenna must be approved by the Board of Directors prior to installation due to safety concerns posed by wind loads and the risk of falling. Any application for a mast higher than 12 feet must include a description of the mast and Covered Antenna, the location of mast and Covered Antenna, a description of the means and method of installation, including any manufacturer specifications, and an explanation of the necessity for a mast higher than 12 feet.

Any antenna other than a Covered Antenna, must be approved by the Board of Directors prior to installation, including, without limitation, antennas used for AM/FM radio, amateur ("ham") radio, CB radio, Digital Audio

Radio Services ("DARS") and antennas used as part of a hub to relay signals among multiple locations.

15. The native growth on each ranchette, if any, including but not limited to cacti, mesquite trees, palo verde trees, shall not be destroyed or removed by any of the lot owners, except such native growth as may be necessary for the construction and maintenance of roads, driveways, residences, garages and other outbuildings and/or walled in service yards and patios, which native growth shall not be removed prior to commencement of construction, and unless written permission be first had and obtained from the Board of Directors. In the event such growth is removed, except as stated above, the Association may require the replanting or replacement of same, the cost thereof to be borne by the lot owner. Anything which is dead, unhealthy, detrimental to the remaining growth, or otherwise undesirable for the maintenance of a healthy and attractive desert growth shall be removed at the owner's expense. However, nothing shall be done which will change the general character of those areas where native growth is required to be maintained.

16. No native growth nor other landscaping upon any common area shall be permitted to be destroyed or removed except as approved by the Association. In the event that such growth is removed, except as stated above, the Association may require the replacing or replanting of same, the cost thereof to be borne by the one who removed it.

17. All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead.

18. No personal planting or growing of any type of vegetation is permitted on common areas without the prior written approval of the Board of Directors.

19. Private swimming pools are allowed provided written approval is first obtained from the Board of Directors, subject to all local, state and federal government regulations. Construction or maintenance of the private swimming pool shall not relieve an owner from liability for his pro rata share of the assessments on common swimming pools, and for all other

common areas. In the event construction of such a swimming pool requires an extension or other alterations of any common patio wall, prior written consent shall also be required from the adjoining owners as provided in paragraph 25(d) hereof.

20. No chainlink, woven metal, wood or other similar fencing material or wall shall be permitted or installed on any lot without the prior written approval of the Board of Directors.

21. Ownership of individual lots will be evidenced by deed. Any action necessary or appropriate to the proper maintenance, safety, control and upkeep of all or any of the common areas, and any action necessary or appropriate to the maintaining, if provided, television antenna and cable systems to the lots, or security and guard services for the premises or any portion thereof, shall be taken through the Haciendas del Conde Association, a non-profit corporation, organized under the laws of Arizona. Except for the purposes of filling vacancies in the Board of Directors, a majority of the whole Board shall constitute a quorum for the transaction of business at any meeting. Any act of the directors present at any meeting at which a quorum shall be present shall be the act of the Board. In the absence of a quorum, a majority of the directors present may adjourn a meeting from time to time until a quorum be had. Notice of any adjourned meeting need not be given, other than by announcement at the meeting at which adjournment shall be taken. The Board may hold its meeting at such place or places within Pima County as the Board from time to time may determine or as shall be specified or fixed in the respective notices or waivers of notice thereof. The rights and obligations existing between the Association and its members shall be as follows:

- a. The owner of each lot within the subdivision must be a member of Haciendas del Condo Association. One (1) membership in Haciendas del Conde Association shall be assigned to the owner of record of each lots 1 to 114 inclusive, and shall entitle such owner to one vote in the Association. The term "owner of record" shall include a purchaser having the right to possession under a recorded agreement of sale. In the event any such lot is owned by two or more persons, a single membership shall be assigned in the



names of all and they shall designate to the Association, in writing, one of the number who shall have the power to vote. In the absence of such designation and until such designation is made, the Board of Directors of the Association shall make such designation.

- b. The Association shall be liable for and shall maintain, manage and provide for the safety and control of the common areas, sidewalks, walkways, private drives, together with any other areas which may be required by the Association and set aside for the use, enjoyment, or convenience of the lot owners. The Association shall also maintain the front yards and front yard landscaping for the townhouse lots 26 through 57 inclusive.
- c. The Association shall pay all ad valorem taxes which may be assessed against the common areas and improvement thereon. The Association is also empowered to provide, maintain and operate a street lighting system, television antenna or cable system, and security or guard services either directly, under contract with a municipality, utility company, management company or other company, or through other means.
- d. The owner or owners of each of said lots 1 to 114 inclusive, shall be subject to all of the provisions of the Association's Articles of Incorporation, By-Laws, Management Agreement (if any), these restrictions as now in effect or duly adopted and amended, and reasonable rules and regulations adopted by the Board of Directors. Each such lot will be subject to assessments as follows:
  - 1. In addition to all other charges provided for herein, the owner of each of lots 26 through 57 inclusive shall pay a pro rata share of the cost to the Association of all taxes, hazard and building insurance premiums, repairs, maintenance, or other expenses for common areas 179, including but not

limited to the maintenance of sidewalks and walkways.

2. In addition to all other charges provided for herein, the owner of each lot in townhouse area 3 and the owner of each of lots 26 through 57 inclusive, shall pay a pro rata share of the actual cost to the Association of all taxes, hazard insurance premiums, building insurance and repair, maintenance, safety and control of that certain private drive shown upon the recorded plat as Placita del Conde.
3. The owner of each of the townhouses shall pay a pro rata share of the expenses incurred in maintaining the front yards of all townhouses, including, but not limited to the cost of utilities and the maintenance of water and sprinkler systems.
4. The owner of each lot (1 through 114 inclusive) shall pay a pro rata share of maintaining all of the common areas (except as provided in 1) and 2) of this article 21(d), including, but not limited to maintenance of walkways, sidewalks, care of lawns and landscaping, and common areas, painting of recreational and other facilities, maintenance of water and sprinkling systems within the common areas, swimming pools, tennis courts, recreational buildings and other charges required by this Declaration of Restrictions.
5. Except as provided in 1) and 2) of this Article 21(d), the owner of each lot (1 through 114 inclusive) shall pay a pro rata share of the actual cost to the Association of such recreational facilities, television antenna or cable antennas; and security or guard services as may from time to time be provided by the Association.

6. The owner of each lot (1 through 114 inclusive) shall pay such lot's pro rata share of such sum as the Board of Directors of the Association shall determine to be fair and prudent for the establishment and maintenance of a reserve for repair, maintenance, taxes and other charges as specified herein, including fire and other hazard insurance premiums as hereinafter, provided, and a liability policy in the face amount of not less than \$500,000.00 which policy, in addition to public liability, shall cover repair and construction work to all of the assets and property owned by or to be maintained by the Association. The disposition of liability insurance proceeds shall be made upon majority vote of the Board of Directors but in all events shall be used to and for the purpose of the Association.
- e. The amount to be prorated among the members of the Association pursuant to the foregoing paragraphs shall be established periodically by the Board of Directors. An annual report prepared in accordance with an annual review by an independent third party shall be mailed or delivered on or before March 31 of each year to each member. Such report shall show the Association's income and expenses for the preceding year. All assessments shall be the same for every lot in townhouse area 3. All assessments shall be the same for lots 26 through 37 inclusive. The assessments shall be the same for all lots other than townhouse area 3 and lots 26 through 37 inclusive.
  - f. The owner or owners shall pay to the Association upon closing of escrow for the purchase of a lot, or upon taking possession of same if acquired without use of an escrow, a sum equal to 12 times the monthly charges then in effect by the Association applicable to said lot. This sum shall be applied as advance payment against charges next becoming

due to the Association until such time as the entire amount shall have been so applied. The amount required to be paid pursuant to the terms of this paragraph may be reduced in any single transaction, at any time, and in such amount as the Board of Directors may direct.

- g. Each lot owner shall become liable for said assessments commencing with the first calendar month after the closing date of the escrow regarding the purchase of a lot in the subdivision. The Board of Directors may determine the due date for all assessment and may permit payment of assessments in monthly installments.

All charges not paid pursuant to paragraph 21(f) above, shall be paid on or before the date specified by the Board of Directors, and, if permitted to be paid monthly shall be paid by each member to the association or its designated agent, and if not paid by the first day of the following month, the amount of such assessments shall be deemed delinquent.

Each lot owner shall be deemed to covenant and agree to pay to the Association the assessments provided for herein and agrees to the enforcement of the assessment in the manner herein specified. All delinquent assessments shall bear interest at twelve percent (12%) per annum, and late payments shall first be credited toward assessments first due, then towards interest. In the event the Association employs an attorney for collection of any assessments, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, each lot owner agrees to pay reasonable attorney's fees and costs thereby incurred, in addition to any other amount due or any other relief or remedy obtained against said lot owner. In the event of a default in payments of any such assessment when due, in which case the assessments shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in the manner provided by law or in equity, or

without any limitation to the foregoing, by either or both of the following procedures.

- (i) The Board may cause a suit at law to be commenced and maintained in the name of the Association against a lot owner to enforce each such assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency until paid, court costs, and reasonable attorney's fees in such amount as the Court may adjudge against the delinquent lot owner.
  
- (ii) There is hereby created a right of claim of lien on each and every lot to secure payment to the Association of any and all assessments levied against any and all lot owners together with interest thereon from the date of delinquency until paid, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorney's fees. Each default shall constitute a separate basis for a claim of lien but any number of defaults may be included within a single claim of lien. With or without written demand to the delinquent lot owner, the Association may elect to file a claim of lien on behalf of the Association against the lot of the defaulting lot owner. Such a claim of lien shall be executed and acknowledged by any officer of the Association, and shall contain substantially the following information:
  - (1) the name of the delinquent lot owner,
  - (2) The legal description of the lot Against which claim of lien is made;
  - (3) The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and reasonable attorney's fees.
  - (4) That the claim of lien is made by the Association pursuant to this Declaration;

- (5) That a lien is claimed against said lot in an equal amount to the amount stated;
- (6) That the claim of lien will also extend to all assessments which became due but were not paid from the date of the filing of the claim of lien to the date of payment of all amounts set forth therein (including interest thereon, reasonable attorney's fees, costs of collection), and that the claim of lien will only be deemed satisfied and released when the owner is current in the payment of all such amounts.

Upon recordation of a duly executed original or copy of such a claim of lien, and the mailing of a copy thereof to said lot owner, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the lot. Such a lien shall have priority over all claims of lien created subsequent to the recordation of the claim of lien thereof, except only tax liens for real property taxes on any lot, assessments on any lot in favor of any municipal or other governmental assessing unit, and the lien of any first mortgage. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a realty mortgage or trust deed as set forth by the laws of the State of Arizona, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other lot owners. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any lot. In the event such foreclosure is by action in court, reasonable attorney's fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each lot owner hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner.

- h. No owner of a lot may exempt himself from liability for his contribution toward the common expenses by waiver of the

use or enjoyment of any of the common elements or by the abandonment of his unit.

- i. Each owner hereby agrees to be bound by the terms and conditions of any management agreement. A copy of such management agreement entered into by the Association shall provide that said management agreement may be cancelled by on affirmative vote of a majority of the members of the Board. Any and all management agreements shall be made with a responsible party or parties having considerable experience with the management of a project of this type.
- j. The membership in the Association held by any owner of a lot shall not be transferred, pledged or alienated in any way, except upon the sale of such lot and then only to the purchaser, or by intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. Any attempt to make a prohibited transfer shall be void and will not be reflected upon the books and records of the Association. In the event the owner of any lot should fail or refuse to transfer the membership registered in his name to the purchaser of such lot, the Association shall have the right to record the transfer upon the books of the Association and issue a new membership to the purchaser, and thereupon the old membership outstanding in the name of the seller shall be null and void as though the same had been surrendered.
- k. No building, fence, wall, swimming pool, roof, or other structure of any kind or nature, and no landscaping visible from another lot or from any street shall be commenced, erected, or maintained until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, and such other information as is reasonably deemed relevant, including but not limited to the location and approximate cost of such structure or landscaping, shall have been submitted to and approved by the Board of Directors of the Association. Any subsequent addition to or change or alteration in any such building, structure, or landscaping shall also be subject

to prior approval of the Board. Each applicant shall submit to the Board the plans plus any and all other information for the use of the Board in such form as the Board may determine, and any such plans and information may at the discretion of the Board be maintained in a permanent file. In its consideration of any such application for approval, the Board shall consider among other matters, the suitability of the proposed building, structure, or landscaping and of the materials of which it is to be built; the harmony of the proposed building, structure, or landscaping with the surroundings; and the effect the proposed building, structure, or landscaping (as it is to be installed or as it may mature) upon the views of adjacent or neighboring lots. The Board may deny any application which it reasonably deems to be incomplete due to the insufficiency of or inadequacy of the plans submitted. The Board may not unreasonably withhold its consent to any such application; however, the Board is intended to have wide discretion implementing and enforcing the intent of this Declaration and so long as rational basis exists for its action, the Board may refuse to approve an application for any reason.

1. The Association's Board of Directors shall have the right to and power to provide for the construction of new or additional recreational and other common facilities from time to time, as in its discretion appears to be in the best interest of the Association. Any such construction, improvement, or addition that will require a disbursement by the Association in excess of \$10,000.00 in any one calendar year must be authorized by an affirmative vote of two-thirds (2/3) of the members of the Association who vote. For purposes of this authorization, at least a majority of the members must vote in person or by proxy.
  
- m. Notwithstanding anything else set forth in the Covenants, Conditions and Restrictions, as amended, or otherwise permitted under applicable zoning or other laws, no building, roof, ramada, gazebo or other structure of any kind or nature,



except a patio wall, will be permitted within ten (10) feet of any side or back property line on Lots 13-37 and 58-114 or within forty (40) feet of any side or back property line on Lots 1-12, Haciendas Catalina del Rey, a subdivision of Pima County, Arizona.

22. If a special assessment is made by the Board or authorized by the members pursuant to the provisions of the paragraphs 21(l) or 24, such special assessment shall be paid when and in such manner as may be required by the Board of Directors and if not so paid within the time specified, the amount of such assessment may be collected by means of the procedure set forth in paragraph 21(g) above.

23. The Board may permit any group of owners to improve any portion of the common areas with the condition that the Board approve all plans and specifications for such improvement and the group of owners agree, in such form as is satisfactory to the Board of Directors, to bear all costs of creating and maintaining such improvement.

24. In addition to the assessment previously referred to in this Declaration, the Association may levy, at any time, a special assessment for the purpose of defraying in whole or in part, the cost of any re-construction, repair or replacement of a capital improvement upon any common area. Any such cost that will require the disbursement by the Association in excess of \$10,000.00 in any one calendar year, whether the funds are raised by special assessment or are already on hand, must be authorized by an affirmative vote of two-thirds (2/3) of the members of the Association who vote. For purposes of this authorization, at least a majority of the members must vote in person or by proxy.

25. The rights and duties of the owners of lots with respect to party walls shall be governed by the following:

- a. Each wall which is constructed as a part of the original construction and part of which is placed on a dividing line between separate lots or within twelve (12) inches of the lot line and substantially parallel thereto, shall constitute a party wall, and 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, general rules of law, regarding party walls shall be applied thereto.

- b. In the event any such party wall is damaged or destroyed through the act of one adjoining owner or any of his agents or guests, or members of his family (whether or not such act is negligent or otherwise culpable) so as to deprive the other adjoining owner of the full use and enjoyment of such wall, then the first of such owners shall forthwith proceed to rebuild or repair the same to as good condition as formerly without cost to the adjoining owner.
- c. In the event any such party wall is damaged or destroyed by some cause other than the act of one of the adjoining owners, his agents, guests, or family (including ordinary wear and tear and deterioration from lapse of time), then both such adjoining owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense.
- d. In addition to meeting the other requirements of these restrictive covenants and of any building code or similar regulations or ordinances, any owner proposing to modify, make additions to, or rebuild his residence in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining owner and of the Board of Directors, which consent shall not be unreasonably withheld.
- e. In the event of a dispute between owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, upon written request of one of such owners addressed to the Association, the matter shall be submitted to arbitration under such rules as may be adopted by the Association. If no such rules have been adopted, then the matter shall be submitted to arbitration in accordance with the procedures set forth in Arizona Revised Statutes Sec.12-

1501 et. seq. (as amended). The expense of arbitration shall be borne equally between the parties.

- f. These covenants shall remain in full force and effect until modified or abrogated as to any particular party wall (with the exception of provision (d) above) by the agreement of all persons then having an interest therein.
- g. Notwithstanding any other provision of this article an owner who by his negligent or willful act causes any party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.
- h. The right of any owner to contribution from any other owner under this article shall be appurtenant to the land and shall pass to such owner's successors in title.
- i. These covenants shall be binding upon the heirs and assigns of any owner except as otherwise provided for the expenses of arbitration in Section (e) above. No person shall be liable for any act or omission with respect to party walls except for those acts or omissions that took place while an individual was the owner.

26. In the event any common element or storage facility is damaged or destroyed through the negligent or culpable act of any owner or any of his guests, agents or members of his family, such owner does hereby irrevocably authorize the Association to repair said damaged element or storage facility, and the Association shall so repair said damaged element or storage facility. The owner shall then repay the Association in the amount actually expended for said repairs, to the extent not paid by insurance. Each owner further agrees that these charges for repairs if not paid within ten (10) days after completion of the work; shall become a lien upon said owner's lot and shall continue to be such lien until fully paid. The amount owed by said owner to the Association shall be a debt, and shall be collectible by any lawful procedure allowed by the laws of the State of Arizona. Each such owner, by his acceptance of a deed to a parcel, hereby expressly vests in the Association or its agents the right and power to bring

all actions against such owner for the collection of such 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 said lien. In the event the Association fails to record or foreclose such a lien within ten (10) days of the expiration of the time permitted by law to do so, any individual member may pursue such remedy on behalf of the Association at the sole expense of the member recording such lien and filing such action.

27. Responsibility for maintenance of electricity, plumbing, and other utilities, shall remain with the owners of lots in the same manner as is normal and customary with owners of single family residences, except for those utilities utilized for the care and maintenance of front yards in townhouse area 3. Such electricity, plumbing, and other utilities required for the care and maintenance of front yards, in the townhouse area shall be the responsibility of the Association.

28. The Board of Directors, or its duly authorized agent, shall obtain insurance for all the common buildings and other insurable 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 areas. Premiums for such insurance shall be common expenses, but the Board of Directors may require each lot owners pro rate share of the premiums for this insurance be collected by any agent it designates including without limitation the carrier of any master policy of fire and casualty insurance for all or any portion of the lot owners. Such insurance coverage shall be written in the name of the Association. In the event of damage or destruction to any of the common area by fire or other casualty, the Board of Directors shall, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the common areas to as good condition as before the fire or other casualty. All such insurance proceeds shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a Federal governmental agency, with the provision 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 Board of Directors, or by an agent duly authorized by the Board of Directors. The

Board of Directors 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. Premiums applicable to common area 179 only shall be pro rata among the owners of lots in townhouse area 3 only. Premiums applicable only to insurance on that private drive on the recorded plat as Placita del Conde shall be pro rated among the owners of lots in townhouse area 3 and the owners of lots 26 through 37 inclusive. Premiums for all other such insurance shall be common expenses to be borne by owners of all lots. In the event the insurance proceeds are insufficient to pay all the costs of repairing or rebuilding to the same condition as formerly, the Board of Directors shall levy a special assessment. If additional funds are necessary to repair or rebuild any portion of common area 179, such special assessment shall be against all owners of lots in townhouse area 3 so as to make up any deficiency. If additional funds are necessary to repair or rebuild any portion of said Placita del Conde such special assessment shall be against all owners of lots in townhouse area 3 and lots 26 through 31 inclusive. Except as otherwise provided in this Paragraph 28, in the event the insurance proceeds are insufficient to pay all the said costs of repairing or rebuilding any of the common areas or improvements thereon, the Board of Directors shall levy a special assessment against all owners to make up any deficiency.

29. Common area 179 shall be maintained and made available for the exclusive use of the owners in townhouse area 3 and the guests thereof. All common areas with the exception of common areas 179, shall be maintained for the use and benefit of owners of all lots and their guests.

30. The Board of Directors may require that each lot owner in the townhouse areas purchase and maintain fire and extended coverage insurance on his lot and the improvements thereon under a master insurance policy or policies to be issued by an insurance carrier or carriers. Each lot owner shall be liable to pay the premium for such insurance on his lot and improvements when required to do so under the applicable master policy or policies. If he fails to do so, the Association may pay those premiums for the account and at the expense of the lot owner, and the lot owner shall reimburse the Association on account thereof upon demand, plus interest at the rate of ten percent (10%) per annum. The amount of any such premiums

not paid by a lot owner shall become a lien in the manner provided in subparagraph 21(g) set forth above.

31. The covenants, conditions and restrictions contained herein shall run with the land and shall be binding upon all persons purchasing, leasing, subleasing or occupying any lot or lots after the date on which this instrument is recorded. These covenants, conditions and restrictions may be enforced by the owner of any lot in Haciendas Catalina del Rey Subdivision, Haciendas del Conde Association, or its assigns, or by anyone or more of said individuals and corporations, provided, however, that any breach of said covenants, conditions and restrictions, shall not defeat or affect the lien of any mortgage, or deed of trust made in good faith for value upon said land, but except as hereinafter provided, each and all of said covenants, conditions and restrictions shall be binding upon and effective against any owner of said premises whose title thereto is acquired by foreclosure, trustee's sale or otherwise and provided, also, that the breach of any of said covenants, conditions, and restrictions may be enjoining, abated or remedied by appropriate proceedings, notwithstanding the lien or existence of any such deed of trust or mortgage. All instruments of conveyance of any interest in all or any part of the premises shall contain reference to this instrument and shall be subject to the covenants, conditions and restrictions herein fully as though the terms and conditions of this instrument were therein set forth in full; provided, however, that the terms and conditions of this instrument shall be binding upon all persons affected by its terms, whether express reference is made to this instrument or not.

32. If anyone or more of said lots 1 to 114 inclusive is subjected to a mortgage, the first mortgage, or any other party acquiring title to a mortgaged lot and improvements thereon through suit to foreclose a first mortgage or through any equivalent proceedings such as, but not limited to, the taking of a deed in lieu of foreclosure, and the successors in interest to said purchasers shall, except as provided below in this paragraph, acquire title to the mortgaged lot and improvements thereon free and clear of any lien authorized by or arising out of any of the provisions of this Declaration which secures the payment of any assessment for charges accrued prior to the final conclusion of any such foreclosure suit or equivalent proceedings, including the expiration date of any period of redemption. Any such unpaid

assessment shall nevertheless continue to exist as the personal obligation of the defaulting owner of the respective lot to the Association, and the Board of Directors may use reasonable efforts to collect the same from the owner even after he is no longer a member of the Association.

33. The owner of each lot, by his acceptance of a deed of that lot, hereby expressly agrees that if any portion of a dwelling unit on an adjacent lot encroaches on his lot, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist. Each owner of a lot similarly gives and grants to each adjoining lot owner an easement of any encroachment of any portion of the adjoining lot owner's dwelling unit upon a dwelling unit of said lot owner, it being agreed by each owner that an easement is hereby given for any variation, if any, between the legally described lot and the dwelling unit as actually laid out on the real property. If the walls surrounding a dwelling unit are partially or totally destroyed and rebuilt, the owners of the lots and adjacent thereto similarly agree that minor encroachments of part of the elements and facilities or of one dwelling unit to the adjacent one, due to construction or reconstruction, shall be permitted and that valid easements for said encroachment and for the maintenance thereof shall exist.

34. Invalidation of anyone of these covenants, conditions or restrictions by judgment or court order shall in no way affect the validity of any at the other provisions and the same shall remain in full force and effect.

35. The covenants, conditions, and restrictions of this Declaration may be amended by an instrument in writing, signed and acknowledged by the President and Secretary of the Association, certifying that such amendment has been approved by the affirmative vote or written consent, with or without an Association meeting, of the then owners of not less than fifty-one per cent (51%) of all the members of the Association.

36. All provisions hereof shall be subject to the subdivision regulations and ordinances of Pima County, Arizona, as they exist or as they may be amended.

DATED this 8<sup>th</sup> day of January, 2017.

**Haciendas del Conde Association**

By: *Bradley Johns*  
Bradley Johns – President

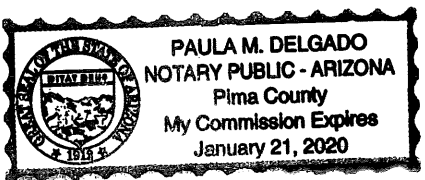
By: *Phil Worcester*  
Phil Worcester – Secretary

STATE OF ARIZONA     )  
  )ss.  
COUNTY OF PIMA     )

The foregoing instrument was acknowledged before me this \_\_\_ day of January, 2017, by Bradley Johns, President of Haciendas del Conde Association Inc., a non-profit corporation in Pima County, Arizona on behalf of the corporation.

*Paula M Delgado*  
Notary Public

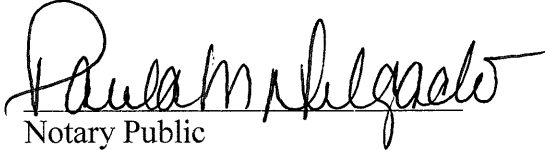
My Commission Expires: 1-21-2020





STATE OF ARIZONA     )  
  )ss.  
COUNTY OF PIMA     )

The foregoing instrument was acknowledged before me this \_\_\_ day of January, 2017, by Phil Worcester, Secretary of Haciendas del Conde Association Inc., a non-profit corporation in Pima County, Arizona on behalf of the corporation.

  
Notary Public

My Commission Expires: 1-21-2020

