AMENDED AND RESTATED BYLAWS OF

VILLA CATALINA HOMEOWNERS' ASSOCIATION, INC.

an Arizona non-profit corporation

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VILLA CATALINA HOMEOWNERS' ASSOCIATION. INC. 1 2 AMENDED AND RESTATED BYLAWS 3 4 ARTICLE I. NAME 5 6 The name of the corporation shall be VILLA CATALINA HOMEOWNERS' ASSOCIATION, 7 INC. (the "Association"). 8 9 **ARTICLE II. NATURE AND APPLICABILITY** 10 11 2.1: Applicability to Owners and Others: The provisions of these Bylaws shall be applicable to VILLA CATALINA APARTMENT HOMES ("VILLA CATALINA" or the "Property") and 12 to all present and future Owners therein. The acquisition of an Apartment will signify that the 13 Bylaws are accepted, ratified, and will be adhered to by the Owner. Any other persons who might 14 use the Property in any manner are also subject to these Bylaws and any Rules and Procedures 15 promulgated hereunder. 16 17 18 Purpose of the Association: The Association has been formed to provide (a) for the maintenance, management, care, and preservation of the buildings, grounds, and 19 improvements thereon which comprise VILLA CATALINA; and (b) for the benefit of and the good 20 21 relationship between all the Owners and residents in VILLA CATALINA. 22 23 Replacement of Earlier Bylaws: These Bylaws shall supersede and replace all earlier Bylaws and all Amendments to them. However, prior acts and actions taken in accordance 24 25 with prior Bylaws are hereby validated and saved following adoption of these Bylaws. 26 reference herein made to the Association's Bylaws will be deemed to refer to these Bylaws. 27 28 **ARTICLE III. DEFINITIONS** 29 The words used in these Bylaws shall be given their normal, commonly understood 30 definitions. Capitalized terms shall have the same meaning as set forth in the Amended and 31 Restated Declaration of Covenants, Conditions, Restrictions for Villa Catalina Apartment Homes, 32 as it may be further amended (the "Declaration"), unless the context indicates otherwise. The 33 term "Governing Documents" shall refer to the Declaration, the Articles, the Bylaws and the Rules. 34 35 36 ARTICLE IV. SUPREMACY OF THE DECLARATION 37 Nothing in these Bylaws is intended to conflict with or supersede in any way the 38 Declaration or the Articles of VILLA CATALINA. If any question or dispute arises concerning a 39 conflict of meaning between these Bylaws and the Declaration or the Articles, then the conflict or 40 dispute shall be resolved in favor of the Declaration first, and then the Articles. 41 42 43

ARTICLE V. ADMINISTRATION

The Association shall have the responsibility for managing, maintaining, and administering the Property, determining and approving an annual budget, establishing and collecting Assessments, and enforcing the Declaration together with such other responsibilities as are set forth in the Governing Documents. In general, the Association shall be the representative of each Owner for every problem which affects commonly held property or more than one (1) Apartment.

ARTICLE VI. MEMBERSHIP AND VOTING RIGHTS

6.1: Eligibility: Each Owner in VILLA CATALINA shall be a Member of the Association with full voting rights, except as said voting rights may be abridged under Section 6.2 below. Votes in Association matters shall be limited to one (1) for each Apartment. If any individual owns more than one (1) Apartment, that Owner shall have as many votes as the number of Apartments owned. Persons or entities holding an interest in an Apartment merely as security for the performance of an obligation shall not be eligible for Membership. Membership shall be determined by the deeds as recorded in the Office of the Pima County Recorder.

6.2: Delinquencies: A Member who is delinquent in paying Assessments or other charges due to the Association or who otherwise violates conditions and restrictions set forth in the Declaration or the Rules may have his or her voting rights and his or her right to use the common recreational facilities suspended until that delinquency or violation has been corrected. In case of non-continuing infractions, suspension of the above-mentioned rights shall not exceed sixty (60) days. Any Member who has his rights suspending is not an "eligible Member." All Members who are eligible to vote are referred to herein as "eligible Members".

6.3: Voting in Person or by Proxy: Eligible Members may exercise their voting rights in person, by proxy, or by power of attorney at any annual or special meeting of the Association. However, the proxy or power of attorney must be filed with the Secretary in advance and must be certified by the Secretary at or prior to any such meeting. The right to vote may not be severed or separated from the ownership of an Apartment.

<u>6.4: Voting by Written Ballot</u>: Any action that may be taken at any annual or special meeting of the Association may be taken by written ballot without a meeting in accordance with A.R.S. §10-3708, Arizona Non-Profit Corporation Act.

<u>6.5: Transfer of Membership</u>: Membership shall be transferred from one Owner to another upon the completed sale of an Apartment. Any other mode of transfer shall be permitted only as provided by the laws of the State of Arizona.

ARTICLE VII. MEETINGS

7.1: Date of Annual Meeting: The annual meeting of the Association shall be held at 10:00 A.M. on the first Monday in December at a site selected by the Board of Directors.

<u>7.2: Special Meetings</u>: A special meeting of the Association may be called by the Chairman of the Association on his or her own initiative, upon the written request of a majority of the members of the Board, or upon a petition signed by forty percent (40%) of the eligible Members stating the purpose of the special meeting.

7.3: Notice of Meetings: Notices giving the date, hour, location, and agenda for the annual meeting shall be mailed or delivered by the Secretary to all Members not later than thirty (30) days in advance of such meeting. Notices for a special meeting of the Association shall be mailed or delivered by the Secretary to all Members not less than ten (10) nor more than thirty (30) days in advance of such meeting and shall clearly state the purpose of the meeting as well as the date, hour, and location.

<u>7.4:</u> Presiding Officer: The Chairman or the Vice Chairman of the Association shall preside at Board and Association meetings. However, if at any meeting of the Board or of the Association, both the Chairman and the Vice Chairman are absent, a temporary Chairman shall be chosen by majority vote from among the eligible Members present to preside at such meeting of the Board or of the Association.

 <u>7.5:</u> <u>Quorum</u>: A quorum at any annual or any special meeting of the Association, except for a special meeting called to vote on a proposed special assessment, shall consist of fifty-one percent (51%) of the eligible Members, including proxies. However, for a special meeting called to vote on a proposed special assessment, the quorum shall consist of sixty percent (60%) of the eligible Members, including proxies. If the required quorum is not present at such annual or special meeting, another meeting may be called subject to the same notice requirements, but the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days after the preceding meeting.

7.6: Meetings of the Board: A meeting of the Board of Directors shall be held immediately following each annual meeting of the Association. At this meeting the Board shall elect its Officers and shall set up a schedule for its regular meetings. In addition, the Chairman may call a special meeting of the Board at any time and must call a special meeting upon the written request of any three (3) Directors. At least two (2) days before each regular or special meeting, a notice, preferably in writing, shall be given each member of the Board. In the event of an emergency, however, the Chairman may take appropriate action after consulting with as many Board members as he or she is able to reach.

7.8: Right of Members to Attend Board Meetings: All Board meetings shall be open to any Member of the Association, except for those meetings or parts of meetings dealing with advice from an attorney, pending or contemplated litigation, enforcement matters, personnel or other employment matters. At such meetings, however, non-Board Members may participate in the proceedings only when asked to do so, or when a portion of the meeting has been specifically set aside for such participation.

ARTICLE VIII. THE BOARD OF DIRECTORS

8.1: Composition, Term of Office, and Re-election: The Board of Directors shall consist of five (5) or seven (7) eligible Members of the Association, as determined by the Board from time to time. Directors shall serve a two (2) year term, with four (4) Directors being chosen one year and three (3) the next (these numbers may be adjusted if there is a 5-member Board).. All terms of office shall begin on January 1st, and no Director shall be eligible for re-election after having served two consecutive terms until at least one full term shall have intervened since the expiration of his or her last term. The Directors shall hold office until their successors have been elected and qualified.

8.2: Qualifications for Election to the Board: Membership within the terms stated in Section 8.1 above shall be the basic qualification for election to the Board of Directors, with the exception that a resident who is a relative of a non-resident Owner and who holds such Owner's power of attorney shall also be eligible for election to the Board.

8.3: Nominations: Prior to each annual meeting of the Association, the Chairman of the Association shall appoint a Nominating Committee to select a slate of nominees for the Board. The slate of nominees shall be published concurrently with the call for the annual meeting. Nominations for the Board may also be made from the floor at the annual meeting.

8.4: Election to the Board; Vacancies: Election to the Board shall be by written ballot, including proxies, cast by eligible Members. The number of candidates equal to the number of open seats on the Board and who received the most votes shall be elected. Vacancies on the Board arising from death or resignation shall be filled until the next annual election by a majority vote of the remaining Board members. A Director appointed to the Board to fill a vacancy may serve two consecutive two-year terms in addition to the time served by appointment before having to wait for two years before serving on the Board again in accordance with Section 8.1

8.5: Quorum: The quorum needed for the Board to meet and transact business shall be four (4) members of the Board's total membership. Every act and decision of the Board, provided the meeting is duly called and the required quorum in present, shall be official.

8.6: Powers and Duties: The Board shall have all the powers and authority of an Arizona non-profit corporation, subject only to such limitations are expressly set forth in the Declaration, Articles, or these Bylaws. The Board shall have the power to do any and all lawful things which may be authorized, required, or permitted to be done by the Association under and by virtue of said Declaration, Articles, and Bylaws and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association. Without in any way limiting the generality of any of the foregoing provisions, the Board by majority vote shall have the power and authority at any time to do the following:

- a. to adopt an annual budget for the Association.
- b. to establish, levy, and collect annual, special and reimbursement assessments in accordance with the Declaration.
- c. to establish and maintain reserve funds for capital expenditures and contingencies.
- d. to procure and maintain comprehensive liability and all-risk property insurance as well as such other types and amounts of insurance as the Board in its business judgment deems appropriate.
- e. to file annual state and federal income tax returns for the Association.
- f. to pay out of the annual assessments and/or reserve funds specified amounts for:
 - (1) real estate taxes and assessments,
 - (2) all public utilities, except for the Owners' telephone and cable television,
 - (3) insurance premiums on the Common Elements and structure.
 - (4) repair and replacement of common facilities and equipment.
 - (5) maintenance of buildings and grounds, and
 - (6) other expenses as budgeted and approved.
- g. to provide for and establish the duties for an on-site manager or to contract with a management company to provide the necessary management services.
- h. to select, hire, supervise, pay, and dismiss employees.
- i. to contract for services.
- j. to render semi-annual and annual financial reports to all Association members.
- k. to draw up, publish, and enforce Association policies, rules, and procedures.
- I. to organize and elect from its members the Officers authorized in Section 9.1 below.
- m. to process such easements as have been authorized by the Association.

 8.7: Temporary Assistants: The Board may authorize the Chairman to appoint one or more temporary assistants, to approve the person or persons appointed, and to specify his, her, or their duties.

8.8: Handling Cases of Delinquency and/or Breach: The Board shall handle most cases of delinquency and/or breach of any provision of the Declaration, the Bylaws, or the Rules. In doing so, the Board shall follow the policies and procedures in the Declaration and any Board policy in order to provide fairness and due process for all parties.

8.9: Removal by Recall: Any member of the Board may be removed, with or without cause, by a majority vote of the eligible Members of the Association via a recall election. To recall one or more members of the Board, a recall petition signed by at least thirty percent (30%) of all eligible Members must be presented to the Chairman of the Association. Within thirty (30) days of receiving a valid recall petition, there shall be a special meeting of the Members to conduct the recall election. If at such a meeting, a quorum is present in person or by proxy and a majority of the votes are cast in favor of recall, then the designated member (or members) of the Board is (are) recalled. If one (1) or two (2) members of the Board are recalled, then the remaining Board members shall by majority vote choose the new member (or members) to fill out the term (or terms) of the recalled person (or persons). But if three or more members of the Board are recalled, then the Membership of the Association shall nominate and elect replacements at the same meeting at which the recalls occurred. The candidates receiving the most votes up to the number of seats to be filled shall be elected.

- **8.10:** Compensation Prohibited; Reimbursement Allowed: Members of the Board shall receive no compensation for their services as Directors. However, at the discretion of the Board, any Director may be reimbursed for actual expenses incurred in the performance of his or her duties.
- **8.11:** Action Taken without a Meeting: The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written consent of a majority of the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Board.
- 8.12: Waiver of Notice of Meeting: Any member of the Board may, at any time either before or after any meeting, waive notice of any meeting of the Board. Such waiver shall be deemed equivalent for all purposes to the giving of notice of such meeting. Attendance by a Director at any such meeting shall constitute a waiver of notice of such meeting except where a Director attends for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all members of the Board are present at any meeting of the Board, no notice shall be required, and any business may be transacted at such meeting.
- **8.13:** Nonliability of Board Members: No member of the Board shall be personally liable to any Owner or to the Association for any damage, loss, or prejudice suffered or claimed on account of an act or omission of the Association or its representatives or employees, provided that such Board member has, upon the basis of such information as he or she may have possessed, acted in good faith and in accordance with his or her best business judgment.

ARTICLE IX. OFFICERS AND THEIR DUTIES

9.1: Enumeration of Officers: The Officers of the Association shall be a Chairman, a Vice Chairman, a Secretary, and a Treasurer. The Board may elect such other Officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may from time to time determine.

- <u>9.2:</u> Election and Term of Office: The Officers of this Association shall be elected annually by the Board at its meeting which immediately follows the annual meeting. Each Officer shall hold office for one (1) year unless he or she shall sooner die, resign, be removed, or be otherwise disqualified to serve; and shall be eligible for reelection.
- 9.3: Removal from Office and Filling Vacancies: Upon an affirmative vote of a majority of the members of the Board, any Officer may be removed, with or without cause. The removed Officer's successor may be elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose. A vacancy in any Office shall be filled by election by the Board. The Officer elected to such vacancy shall serve for the remainder of the term of the Officer he or she replaces.
- 9.4: The Chairman and Duties: The Chairman shall be the chief executive officer of the Association. He or she shall (a) preside at all meetings of the Board and of the Association at which he or she is present, (b) appoint members to all Committees, (c) appoint and describe the duties of such temporary assistants as the Board may authorize and approve, (d) serve as the official agent or representative of the Association, and, as such, sign all legal documents and/or contracts on behalf of the Association, and (e) have all of the general powers and duties which are usually vested in the Office of Chairman of a corporation.
- 9.5: The Vice Chairman and Duties: The Vice Chairman shall (a) exercise the powers and duties of the Chairman in the absence of the Chairman, and (b) be an ex officio member of all standing Committees.
- 9.6: The Secretary and Duties: The Secretary or his or her designee shall (a) keep records of all meetings and proceedings of both the Board and the Association, (b) keep on file copies of all reports and other documents of the Board and of the Association, (c) receive, certify, and record all proxies and/or powers of attorney, (d) publish and circulate to all members notices of Association meetings, notify Directors of Board meetings, and post on community bulletin boards notices of Board meetings for the information of all other members of the Association, (e) maintain membership rosters, and (f) perform all other duties normally associated with this office. In the Secretary's absence, the Chairman shall appoint some other Board member or any member of the Association to serve as Secretary pro tem for that meeting. If the Association employs and defines the specific responsibilities of a Manager or a management firm, the person or persons keeping the records and performing other ministerial or administrative functions shall report to and be responsible to the Secretary.
- 9.7: The Treasurer and Duties: The Treasurer shall oversee and be responsible for all the financial matters of the Association. If the Association employs and defines the specific responsibilities of a Manager or a management firm, the person or persons keeping the financial records shall report to and be responsible to the Treasurer. General duties of the Treasurer shall include, but shall not be limited, to: (a) maintaining all financial records of the Association, (b) collecting, issuing receipts for, and depositing all funds in such accounts as the Board may direct,

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(c) paying bills as authorized by the Board or in accordance with authorized procedures, (d) preparing budgets for submission to the Board, (e) submitting all account records for professional audit or review as directed by the Board, and (f) serving as an ex officio member of the Finance Committee.

ARTICLE X. COMMITTEES

- 10.1: Advisory Nature: All Committees shall be advisory, and their reports and recommendations shall be made to the Board for its action.
- 10.2: Standing Committees and Term of Service: There shall be five (5) Standing Committees whose members shall be appointed by the Chairman to serve for one (1) year and who shall be eligible for reappointment. The Standing Committees are as follows:
 - a. <u>Finance Committee</u>: The Finance Committee shall: (1) present to the Board a proposed annual operating budget to include funds for maintenance, contingencies, and reserves; (2) oversee all the Association's financial matters; and (3) make such additional financial recommendations as the Board may request or the Committee may deem appropriate. After the Board has adopted or modified the Committee's proposed budget, the Board shall send a copy of it to every Member of the Association. The Treasurer shall be a Finance Committee member.
 - b. <u>Architectural Review Committee</u>: The Architectural Review Committee, as authorized in the Declaration, shall carefully examine and make written recommendations to the Board regarding any and all proposed plans for any structural or decorative changes in the buildings, including balconies, of VILLA CATALINA. The concern of the Committee shall focus on the quality of the proposed changes and their overall harmony with the existing structures and decor.
 - c. <u>Landscaping Committee</u>: The Landscaping Committee shall: (1) oversee the work of the contracted landscaping crew and provide direction on new plantings, etc.; (2) ensure all Landscaping related contracts are up-to-date; (3) ensure landscaping meets requirements to maintain historical status; (4) oversee all special landscaping projects, e.g. irrigation; and (5) make recommendations to the Board on additional expertise that may be required to ensure the short and long-term health of Villa Catalina landscaping (e.g. arborist, irrigation specialists, etc.).
 - d. <u>Facilities Committee</u>. The Facilities Committee shall: (1) lead the development of ongoing reserve studies and project annual capital expense requirements; (2) advise the Board on scheduling capital maintenance and improvement projects, including scheduling projects recommended by the Reserve Study; (3) review bids and bid specifications developed by the Community Manager and recommend action on such matters for Board consideration; and (4) report to the Board on facilities issues requiring action and follow through.

e. <u>Nominating Committee</u>: The Nominating Committee shall, prior to November 1st of each year, prepare and present to the Board a slate of candidates in sufficient number to fill all Board positions. The Secretary shall send this slate of candidates to every Member of the Association in advance of the annual meeting as provided in Section 8.3 above.

<u>10.3: Other Committees</u>: There shall be such other Committees as the Board may authorize, whether permanent or temporary.

10.4: Committee Minutes and Committee Reports: Each Committee shall keep minutes of its meetings and shall submit its reports and recommendations, preferably in writing, to the Board. Such reports and recommendations shall be kept on file by the Secretary or the Manager.

ARTICLE XI. FINANCES

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<u>11.1:</u> Annual Assessments: The Association shall be financed by assessments fixed on an annual basis by the Board. Such assessments, expressed in terms of a single sum, and based on each Owner's Percentage Share in the Common Elements, shall be payable monthly on the first day of each month. However, the Board may also designate advance quarterly, semi-annual, or annual payments.

11.2: Use of Annual Assessments: The annual assessments shall be used to meet operating expenses, to provide for capital repairs, replacements, and improvements, and to pay for such other expenses as the Board determines to be necessary and appropriate and in accord with approved budgetary procedures.

11.3: Levying a Special Assessment: The Board shall also have the power, with the assent of the Members as provided in the Declaration to levy a special assessment upon each Member as a one-time payment or with payment made on a monthly, quarterly, semi-annual, or annual basis. Such funds shall be used only for the specific purpose or purposes for which they are levied.

11.4: Annual Financial Reports and Availability of Association Documents: At its sole discretion, the Board, as a Common Expense, shall obtain an annual audit, review or compilation of the Association's finances. During normal business hours, or under other reasonable circumstances, the Association shall make available for inspection by Owners, prospective purchasers of Apartments, and lenders who have financed or may reasonably be expected to finance the purchase of an Apartment or Apartments in the Property, current copies of the Governing Documents. Owner may review the books and records of the Association in accordance with the pertinent provisions in the Arizona Non-Profit Corporations Act.

11.5: Fiscal Year: The fiscal year of the Association shall run from January 1st through December 31st.

11.6: Borrowing Authority: The Board of Directors may borrow money on behalf of the Association for maintenance or improvement of the Property and to mortgage, pledge, or hypothecate any or all of the Association's real or personal property as security for money borrowed or debts incurred. This authority is subject to the prior approval of any loan transaction by a majority of the eligible Members.

ARTICLE XII. USE OF INCOME

No part of the net earnings of the Association shall be used (except to provide for the management, maintenance, and care of the Property and except as a rebate of excess assessments) to the benefit of any Officer, Director, Member, or other private individual. Nevertheless, the Association shall be empowered to pay said person or persons reasonable compensation for services rendered in furtherance of its corporate purposes.

ARTICLE XIII. INTERPRETATION

The provisions of these Bylaws shall be liberally construed in order to accomplish their purpose of creating a uniform plan for the operation of the Association. The failure to seek enforcement of any provision hereof, by any or all parties entitled to enforce the same, shall not constitute a waiver of the right to enforce said provision or any other provisions hereof. These Bylaws shall be enforceable in the same manner and to the same extent as the provisions of the Declaration are enforceable.

ARTICLE XIV. SEVERABILITY

The provisions of these Bylaws shall be deemed independent and severable, and the invalidity or unenforceability of any single provision or portion hereof shall not affect the validity or enforceability of any other provision hereof

ARTICLE XV. AMENDMENT

These Bylaws may be amended by a majority vote of the eligible Members of the Association at any annual or special meeting or by written ballot of the Association provided that proper notice shall have been given as required under Section 7.3 above.

CERTIFICATION

The undersigned Chairman of VILLA CATALINA HOMEOWNERS' ASSOCIATION, INC., an Arizona non-profit corporation does hereby certify that the foregoing Bylaws constitute the official Bylaws of the Association, as duly adopted by the affirmative vote of at least a majority of the eligible Members, effective on the 3rd day of September, 2018.

VILLA CATALINA HOMEOWNERS' ASSOCIATION, INC., an Arizona non-profit corporation

By: Manager David Updegraff, Chairman

ATTEST:

By: Mary Weice Mary Kay Pierce, Secretary

STATE OF ARIZONA)

- ss:

County of Pima

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this (12)1113 day of September, 2018, by David Updegraff, Chairman of VILLA CATALINA HOMEOWNERS' ASSOCIATION, INC., an Arizona non-profit corporation, on behalf of the corporation.

STATE OF ARIZONA)

SS:

County of Pima

LINDA M STAITI Notary Public - Arizona Pima County My Comm. Expires Nov 21, 2018

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this day of September, 2018, by Mary Kay Pierce, Secretary of VILLA CATALINA HOMEOWNERS' ASSOCIATION, INC., an Arizona non-profit corporation, on behalf of the corporation.

Sinda M. Ala OPARY PUBLIC

LINDA M STAITI
Notary Public - Arizona
Pima County
My Comm. Expires Nov 21, 2018