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AMENDED AND RESTATED

DECLARATION OF COVENANTS, CONDITIONS, AND

RESTRICTIONS FOR

VILLA CATALINA APARTMENT HOMES

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1 **AMENDED AND RESTATED DECLARATION OF**
2 **COVENANTS, CONDITIONS AND RESTRICTIONS FOR**
3 **VILLA CATALINA APARTMENT HOMES**
4

5 THIS AMENDED AND RESTATED DECLARATION OF COVENANTS,
6 CONDITIONS, AND RESTRICTIONS FOR VILLA CATALINA APARTMENT HOMES
7 (this "Declaration") is made this 3rd day of September, 2018, by the owners (the
8 "Owners") of the real property described as follows:

9
10 See legal description in Exhibit "A" and depiction in Exhibit "B," both of
11 which are attached hereto and incorporated herein by this reference.
12

13 **RECITALS**
14

15 WHEREAS, each Owner in Villa Catalina Apartment Homes ("Villa Catalina" or
16 the "Property") holds title to the Apartment designated in his/her Deed with exclusive
17 right to occupy and use said Apartment and its appurtenances and shares a Percentage
18 Share in the Common Elements; and
19

20 WHEREAS, the original Declaration of Covenants, Conditions, and Restrictions
21 for Villa Catalina Cooperatives (originally known as Villa Catalina Unit One and Villa
22 Catalina Unit Two, but subsequently consolidated into a single unit for operation and
23 management) was recorded on March 24, 1958, in Book 1244, beginning on page 512,
24 in the office of the Pima County Recorder; and
25

26 WHEREAS, the legal description of the real property known as Villa Catalina Unit
27 One, as incorporated into the original Deeds of individual owners, was recorded on
28 March 24, 1958 in Book 1244, beginning at page 512, in the public records in the Office
29 of the Pima County Recorder, State of Arizona;
30

31 WHEREAS, the legal description of the real property known as Villa Catalina Unit
32 Two, as incorporated into the original Deeds of individual Owners, was recorded on
33 August 23, 1960, in Book 1659, beginning at page 276, in the public records in the
34 Office of the Pima County Recorder, State of Arizona;
35

36 WHEREAS, the only Amendment to the original Declaration was recorded on
37 December 11, 1986, in Book 7929, beginning at Page 1534, in the office of the Pima
38 County Recorder; and
39

1
2
3 WHEREAS, the Restated Master Declaration of Covenants, Conditions and
4 Restrictions for Villa Catalina Apartment Homes was recorded on June 15, 1990, in
5 Book 8810, beginning on page 685, in the office of the Pima County Recorder; and
6

7 WHEREAS, Amendments to the Master Declaration of Villa Catalina Apartment
8 Homes was recorded on January 31, 1994, in Book 9719, at page 798, in the office of
9 the Pima County Recorder, and
10

11 WHEREAS, Amendments to the Master Declaration of Villa Catalina Apartment
12 Homes was recorded on January 6, 1995, in Book 9954 at page 408, in the office of the
13 Pima County Recorder; and
14

15 WHEREAS, this Declaration, upon recordation, supersedes and revokes the
16 previous Declaration and amendments thereto; and
17

18 WHEREAS, at least sixty-seven percent (67%) of the Owners have approved in
19 writing to amend and restate all applicable covenants, conditions and restrictions of
20 record affecting the Property.
21

22 **NOW THEREFORE**, the Owners hereby declare that the Property is and shall be
23 held, conveyed, encumbered, leased, and used subject to the following covenants,
24 conditions, uses, restrictions, limitations, obligations, easements, equitable servitudes,
25 charges and liens (hereinafter collectively referred to as the "Restrictions"), all of which
26 are for the purpose of enhancing and protecting the value, desirability and
27 attractiveness of the Property. The Restrictions set forth herein shall run with the
28 Property, shall be binding upon all Persons having or acquiring any right, title or interest
29 therein, and shall inure to the benefit of, be binding upon and enforceable by all
30 Owners, the Association and their successors and assigns in interest.

31 The content of this Declaration is based upon the express covenants and other
32 provisions stated in the Deed of each Owner, the implied powers and policies of said
33 covenants and other provisions, and the traditions and practices which have been
34 established over the last approximately sixty (60) years of operation.
35

36 **ARTICLE I: DEFINITIONS**
37

38 **1.1. "Apartment"** shall mean that portion of the Property situated within a
39 Building which is designated for the exclusive occupancy and use by the holder of a
40 properly executed and recorded Deed and which consists of one or more rooms for

1 independent use as permitted hereunder. The location and description of Apartments
2 within the Property are depicted on the Plat.

3
4 Each Apartment's horizontal boundaries shall be the underside of the finished but
5 undecorated ceiling and the top of the finished but undecorated floor. Each Apartment's
6 vertical boundaries shall be the interior surfaces of the unfinished perimeter walls.

7
8 Each Apartment includes the surfaces so described and the portions of the
9 Buildings and Improvements lying within said boundaries, including the following:
10 plaster, paint, wallpaper and the like; and floor covering. Each Apartment also shall
11 include the following: all the walls and partitions and all household appliances lying
12 within said boundaries and/or appurtenant areas. Additionally, each Apartment shall
13 include the exterior doors and windows and the frames thereof.

14
15 In interpreting Deeds, Plats, Plans, and this Declaration, the existing physical
16 boundaries of an Apartment (or of an Apartment reconstructed in substantial
17 accordance with the original Plans thereof) shall be conclusively presumed to be its
18 boundaries rather than the description expressed in the Deed, Plat, Plan, or this
19 Declaration, regardless of settling or lateral movement of a Building, and regardless of
20 minor variance between the boundaries as shown on the Plan or Plat or in the Deed
21 and this Declaration and those of a Building. Each Apartment in each Building shall be
22 deemed to be a separate and distinct Apartment.

23
24 As generally used in this Declaration, the term "Apartment" shall refer not only to
25 the space (air space) and the structures and objects located therein as defined above
26 but also to (a) the appurtenant garage, and patio or balcony designated in each Owner's
27 Deed or assigned herein, (b) the Undivided Interest each Owner has in the Property and
28 in the General Common Elements thereof, and (c) the appurtenant interest an Owner
29 may have in the Limited Common Elements. In addition, each Owner of an Apartment
30 shall be a Member of Villa Catalina Homeowners' Association, Inc.

31
32 **1.2. "Articles"** shall mean the Articles of Incorporation of the Association,
33 which are filed in the office of the Arizona Corporation Commission, as said Articles may
34 be amended from time to time.

35
36 **1.3. "Assessments"** shall mean those charges which are a lien on an
37 Apartment and which, by acceptance of a Deed thereto, an Owner agrees to pay, and
38 shall include but not be limited to Annual Assessments for the improvement,
39 maintenance and operation of the Common Elements and for the establishment of

1 reserve funds; Special Assessments for capital improvements and other purposes.
2 Assessments; and Reimbursement Assessments as described in Article VIII.

3
4 **1.4. "Association"** shall mean Villa Catalina Homeowners' Association, Inc.,
5 an Arizona nonprofit corporation, which has been formed for the purposes described in
6 Article VI of this Declaration.

7
8 **1.5. "Board"** shall mean the Board of Directors of the Association.

9
10 **1.6. "Building"** shall mean a structure surrounding the Apartments or a
11 mechanical or other common structure shown on the Plat.

12
13 **1.7. "Bylaws"** shall mean the Bylaws of the Association and any amendments
14 thereto.

15
16 **1.8. "Common Elements"** shall mean all portions of Villa Catalina excluding
17 the Apartments together with the following as defined below and as may be indicated on
18 the Plat:

19
20 a. **"General Common Elements"**: all those parts of the Property which are for
21 the use or enjoyment of all Owners.

22
23 b. **"Exclusive Use Common Elements"**: those parts of the Common Elements
24 which are restricted to the exclusive use of the Owners of individual Apartments.

25
26 c. **"Limited Common Elements"**: those parts of the Property which are
27 reserved for the use of certain Owners to the exclusion of other Owners.

28
29 The Common Elements are more fully discussed in Article II below.

30
31 **1.9. "Declaration"** shall mean this Amended and Restated Declaration of
32 Covenants, Conditions, and Restrictions, and any amendments thereto.

33
34 **1.10. "Deed"** shall mean the legal and recorded document conveying title to the
35 real property precisely described therein from one party to another. Technically, Deeds
36 to the Property known as Villa Catalina convey to the deed holder (a) an Undivided
37 Percentage Interest in all of either Villa Catalina Unit One or Villa Catalina Unit Two, (b)
38 the exclusive right to occupy and use the Apartment, garage, and balcony or patio
39 designated therein, and (c) the right of ingress and egress into and through the

1 Property. Deeds to the Property confer upon each deed holder membership in Villa
2 Catalina Homeowners' Association, Inc.

3
4 **1.11. "Easement"** shall mean an interest in land which entitles the holder of the
5 Easement to a specific and limited use or enjoyment thereof, especially the Easement
6 granted to public utilities for the installation, repair, and maintenance of gas, water,
7 electric, telephone, and cable television lines.

8
9 **1.12. "First Mortgage"** shall mean the holder of a first priority lien, such as a
10 first mortgage, first deed of trust, or other equivalent security interest. Accordingly, "first
11 mortgagee" shall connote and include a first deed of trust or equivalent security interest.

12
13 **1.13. "Governing Documents"** shall mean this Declaration and all other
14 regulatory documents (including the Articles of Incorporation, Bylaws, and Rules)
15 governing the Property.

16
17 **1.14. "Improvements"** shall mean all physical structures, including but not
18 limited to buildings, patios, porches, balconies, swimming pools, barbecue pits, parking
19 areas, fences and walls, walkways and driveways, and all landscaping including but not
20 limited to hedges, plantings, trees, and shrubs of every type and kind.

21
22 **1.15. "Lien"** shall mean the charge or encumbrance placed upon property in
23 order to secure payment of a debt or performance of an obligation. Liens are more fully
24 discussed in Article VIII herein.

25
26 **1.16. "Member"** shall mean any person, corporation, partnership, joint venture,
27 or other legal entity who or which is a member of the Association and an Owner in Villa
28 Catalina.

29
30 **1.17. "Owner"** shall mean (a) the record holder, whether one or more persons
31 or entities, of equitable or beneficial title, or legal title if the same has merged, of any
32 interest in Villa Catalina; (b) the holder of a Deed granting said holder the exclusive right
33 to occupy and use the Apartment designated therein, together with its appurtenant
34 garage and patio or balcony; or (c) the purchaser of any interest in Villa Catalina under
35 a recorded executory contract for the sale of real property.

36
37 The foregoing does not include persons or entities holding an interest in the
38 Property merely as security for the performance of an obligation or a purchaser (or
39 vendee) under an executory contract of sale which has not been "closed" and/or
40 recorded in the Office of the Pima County Recorder.

1
2 **1.18. "Ownership Interest"** shall mean the interest each Owner (as defined in
3 Section 1.17) has (a) in using and occupying that "Apartment" and the garage and
4 balcony or patio appurtenant thereto as designated in his/her Deed (as defined in
5 Section 1.10), (b) in using and enjoying the Common Elements (as defined in Section
6 1.8), and (c) in holding an Undivided Interest in the Property as defined in Section 1.21
7 and the General Common Element (as defined in Section 1.8), and (d) in being a
8 Member of the Association and in exercising the voting rights attached to membership
9 (as defined in Article V herein and as more fully discussed in the Association's Bylaws).

10
11 **1.19. "Percentage Share in the Common Elements"** shall mean the
12 percentage assigned to each Apartment on the basis of square footage and used by the
13 Board in computing the amount each Owner shall pay in the form of Annual or Special
14 Assessments as his/her contribution to the Common Expenses of the Association (see
15 Section 8.2). The Table of Percentage Shares is attached to this Declaration as Exhibit
16 B.

17
18 **1.20 "The Plat"** shall mean the map or other representation of Villa Catalina on
19 which is indicated (a) the location and boundaries of the subdivision of which Villa
20 Catalina is a part, (b) the location of each of the individual Apartments, together with
21 their porches, outdoor stairways, and patios or balconies, (c) the location of the General
22 and Limited Common Elements, (d) the location of the garages, laundry rooms, rest
23 rooms, and mechanical and maintenance shop, (e) all Easements in said Property, and
24 (f) a table indicating the garage and percentage share of Common Expenses assigned
25 to each Apartment. The Plat is attached hereto, and is recorded in the Office of the
26 Pima County Recorder. A copy of it is also kept on file in the Association Office.

27
28 **1.21. "The Property"** shall mean (a) the land, Buildings, and facilities of Villa
29 Catalina, (b) all Improvements thereon and thereto, and (c) all Easements, rights, and
30 appurtenances belonging thereto.

31
32 **1.22. "The Rules"** shall mean the rules and procedures adopted by the Board
33 pursuant to this Declaration and the Bylaws.

34
35 **1.23. "Undivided Interest"** shall mean the interest, stated in terms of a
36 percentage, which each Owner holds in the Property. Undivided interest is more fully
37 discussed in Section 2.1.

1 **ARTICLE II: OWNERSHIP, USE, AND MANAGEMENT OF THE COMMON**
2 **ELEMENTS**
3

4 **2.1. Owners' Interests.** Each Owner, as stated in his/her Deed, shall have a
5 specified Undivided Interest in the Common Elements of Villa Catalina. Said Interest,
6 stated as a Percentage Share of the Common Expenses, is set forth in Exhibit "B"
7 attached to this Declaration. Title to said Interest shall include both the Apartment and
8 the respective Undivided Interest in the Common Elements. Said Undivided Interest
9 shall be deemed to be conveyed or encumbered with its respective Apartment, even
10 though the description in the instrument of conveyance or encumbrance may refer only
11 to the title of an Apartment. Any attempt to separate the title to an Apartment from the
12 Undivided Interest in the Common Elements appurtenant to each Apartment shall be
13 null and void.

14
15 **2.2. Conditional Use of General Common Elements.** Every Owner and his/her
16 family, invitees, tenants, or lessees shall have a right to use and enjoy the General
17 Common Elements subject to the following provisions:
18

- 19 a. **Fees:** The Association shall have the right to charge reasonable fees for
20 the use of any facility situated upon the General Common Elements and to
21 make assessments for the maintenance of such facilities and General
22 Common Elements.
23
- 24 b. **Penalties:** An Owner's voting rights shall be suspended, and his/her right to
25 use the common recreational facilities may be suspended: (1) for any period
26 during which an Assessment against his/her Apartment remains unpaid, (2)
27 for any period during which any continuing violations of these Restrictions
28 exist, and (3) for a reasonable period not to exceed sixty (60) days for any
29 other noncontinuing infraction of this Declaration. (Collection of unpaid
30 Assessments, however, shall proceed in accordance with the provisions of
31 Section 8.9 herein.)
32
- 33 c. **Rules and Procedures:** The Board may adopt reasonable rules and
34 procedures to govern and restrict the use of the Common Elements and to
35 impose penalties or fines for violations thereof.
36
- 37 d. **General Common Elements:** The Board may designate certain areas, as
38 shown on the Plat, as General Common Elements.
39

40 **2.3. Description of General Common Elements.** The General Common
41 Elements of Villa Catalina shall include without limitation the following:
42

- 43 a. the land;
44

- 1 b. all the Buildings in which the individual Apartments are located, the garages,
2 laundries and rest rooms, and all other structures erected on the Property,
3 together with any improvements thereto;
4
- 5 c. the structural components of the Buildings in which the Apartments are
6 located, including without limitation the bearing walls, columns, vertical
7 supports, floors, roofs, foundations, porches, outside stairways, patio walls,
8 and balcony railings;
9
- 10 d. all pipes, ducts, flues, conduits, wires, and shafts which are not part of the
11 interior of the individual Apartments;
12
- 13 e. heating and air conditioning equipment including, without limitation, blower
14 motor and controls;
15
- 16 f. public or other utility lines, facilities, or installations, wherever located, except
17 the outlets thereof when located within an Apartment;
18
- 19 g. all Easements which have been or shall be properly authorized by the
20 Association;
21
- 22 h. the parking lot, the lawns (including grass, flowers, shrubs, and trees),
23 walkways and driveways, outdoor lighting, swimming pools, barbeque pits,
24 putting green; shuffle board court; laundry and rest rooms; and
25
- 26 i. all equipment and other objects owned by the Association and used for the
27 maintenance of the Common Elements.
28

29 **2.4. Use of General Common Elements.** The General Common Elements shall
30 be maintained, improved, and used primarily for the following purposes:
31

- 32 a. Pedestrian movement within the area and passage of vehicles to and from
33 garages and the parking areas designated and approved by the Board;
34
- 35 b. Recreational and social use by Owners, residents, and guests subject to the
36 Rules,
37
- 38 c. Beautification and provision of privacy to the residents through landscaping
39 and such other means as the Board shall deem appropriate; and
40
- 41 d. Parking of passenger vehicles in areas provided therefor as designated and
42 approved by the Board.
43
44
45
46

1 **2.5. Limitations on Use of General Common Elements.**
2

- 3 a. Except as otherwise provided in this Article and in Article V herein, no
4 Owner shall make any alteration or improvement to the General Common
5 Elements, or remove any planting, structure, furnishing, or other
6 Improvement therefrom, except with the written permission of the Board.
7
8 b. Each Owner shall be liable to the Association for all damages to the
9 General Common Elements or to any Improvement thereon caused by
10 such Owner or his/her guest or by any approved occupant of his/her
11 Apartment. Such damages shall be due within thirty (30) days from the
12 delivery of an invoice from the Association and shall become a
13 Reimbursement Assessment if unpaid.
14
15 c. Nothing herein stated shall be deemed to allow persons other than the
16 Owners or their licensees to enjoy use of the General Common Elements.
17

18 **2.6. Delegation of Use of Common Elements.** Any Owner may authorize or
19 permit, in accordance with this Declaration, his/her right of use and enjoyment to the
20 Common Elements and facilities to the members of his/her family, his/her tenants, or
21 his/her guests or invitees. However, such delegation shall never relieve an Owner of
22 his/her obligations hereunder.
23

24 **2.7. Management of Common Elements.** The Association shall control,
25 maintain, manage, and improve the Common Elements as provided in the Governing
26 Documents. Such right and power of control and management shall be exclusive. In
27 managing the Common Elements, the Association hereby accepts all responsibility for
28 the control, maintenance, safety, and liability for the Common Elements, except as
29 otherwise provided herein. Notwithstanding the foregoing, for the mutual benefit of all
30 Owners and to assure the continuing value of the Property, and all parts thereof, the
31 Association shall hire for such periods and on such terms as it shall determine, in its
32 discretion, a manager or a real property management company for the purpose of
33 carrying out the duties of the Association with respect to management and maintenance
34 of the Property. Costs of such service shall be set forth in a written contract between the
35 Association and the manager or management company.
36

37 **2.8. Damages to Common Elements.** Each Owner shall be liable to the
38 Association for any damage to the Common Elements which may be sustained by
39 reason of the negligence or willful misconduct of said Owner or of his/her family and
40 guests, both minor and adult. In the case of common ownership: the liability of such
41 owners shall be joint and several. The amount of such damage shall be a
42 Reimbursement Assessment against the Owner or Owners and may be collected as
43 provided in Article VIII.
44

45 **2.9. Easement for Encroachments.** If any portion of the Common Elements
46 shall encroach upon any Apartment, or if any Apartment shall encroach upon any other

1 Apartment or upon any portion of the Common Elements, as a result of the settling or
2 shifting of any Building or as a result of any cause other than the purposeful or negligent
3 act or omission of the Owner of the encroaching Apartment, or of the Association in
4 case of encroachments by the Common Elements, an Easement appurtenant to the
5 encroaching Apartment or Common Elements for the encroachment and the
6 maintenance of the same shall exist so long as the encroachment shall exist. In the
7 event that any Building is partially or totally destroyed and is then rebuilt,
8 encroachments of parts of the Common Elements upon any Apartment which do not
9 substantially interfere with the use and enjoyment of said Apartment, or encroachments
10 of any Apartment upon any other Apartment or upon any portion of the Common
11 Elements which do not substantially interfere with the use and enjoyment of the
12 Apartment or the Common Elements encroached upon, due to such rebuilding, shall be
13 permitted; and valid Easements appurtenant to the encroaching Apartment or Common
14 Elements for such encroachments, and the maintenance thereof, shall exist so long as
15 the encroachments shall exist. Said Common Elements shall run with the land and inure
16 to the benefit of, and be binding upon, each Owner, the Association, and each
17 mortgagee, lessee, or other person having any interest In any Apartment and the
18 Common Elements.

19
20 **2.10. Management and Use of the Exclusive Use Common Elements.**

- 21
- 22 a. The Association may restrict certain areas, as designated on the Plat, for
23 exclusive use by a certain Owner and in connection with a certain
24 Apartment, to the exclusion of all other Owners. Such areas are herein
25 referred to as Exclusive Use Common Elements.
26
 - 27 b. The Exclusive Use Common Elements of Villa Catalina shall consist of:
28 (1) the designated Apartment, (2) the porches, outside stairways, and
29 balconies or patios appurtenant to such Apartments, and (3) the garage
30 spaces and adjacent storage compartments allocated to the exclusive
31 use of individual Owners.
32
 - 33 c. At least one (1) garage space and adjacent storage compartment shall be
34 appurtenant to and allocated to each Apartment. The exclusive use of
35 said space shall be conveyed with the title to the Apartment. An Owner
36 may not transfer or convey Exclusive Use Common Elements
37 independent of conveyance of his/her Apartment.
38
 - 39 d. Each Owner may place patio furniture and potted plants upon any
40 balcony or patio area which the Owner has the exclusive right to use.
41 However, nothing contained herein shall give any Owner the right to
42 paint, remodel, or alter any outside Exclusive Use Common Element
43 without prior approval of the Architectural Review Committee.
44
 - 45 e. Except as otherwise provided in this Article and in Article IV herein,
46 expenses for the maintenance, repair, or preservation of the structural

1 portions of the porches, outside stairways, balconies and patios shall be
2 part of the Common Expenses of the Association. However, should said
3 maintenance, repair, or replacement be caused by the negligence of or
4 misuse by an Owner or his/her family, guests, or invitees, said Owner
5 shall be responsible therefor, and the Association may levy a
6 Reimbursement Assessment. (Maintenance, repair, and replacement are
7 more fully discussed in Article IV.)
8

- 9 f. Further, the Owner of the Apartment to which an Exclusive Use Common
10 Element is appurtenant shall be obliged to keep such area clean and free
11 of debris or clutter of any kind.
12
13 g. The automobile parking area is not designated as an Exclusive Use
14 Common Element and is to be available without discrimination to Owners
15 and their guests and invitees.
16

17 **2.11. Management and Use of the Limited Common Elements.**
18

- 19 a. The Association may restrict certain areas of the Property, shown and
20 located on the Plat, for the use of certain Owners to the exclusion of other
21 Owners. Such areas are herein referred to as Limited Common Elements.
22
23 b. The Limited Common Elements of Villa Catalina shall consist of: (1) the
24 windows and exterior doors of all Apartments; (2) the hallways, stairways,
25 inclinators, intercoms, and door releases appurtenant to second floor
26 Apartments; and (3) the doors and interior walls of the garages.
27

28 **ARTICLE III: USE RESTRICTIONS**
29

30 **3.1. Age Restrictions.** It is intended that the Property shall be considered as
31 housing for older persons as defined in the Fair Housing Amendments Act of 1988 and
32 all subsequent applicable amendments to the Federal Fair Housing Act.
33

- 34 a. Unless otherwise provided in this Section 3.1, each Apartment shall be
35 occupied by at least one person fifty-five (55) years of age or older.
36
37 b. No person who has not yet reached his/her eighteenth (18th) birthday
38 shall reside permanently in the Property. However, this restriction shall
39 not apply to individuals that are merely visiting for a temporary period of
40 time, not to exceed 30 days during any calendar year. For purposes
41 hereof, "permanent residence" shall mean occupancy of an Apartment for
42 thirty (30) days or more during one calendar year.
43
44 c. It is acknowledged that, despite the foregoing restriction prohibiting
45 minors from living in the Property, children may from time to time be born
to adults duly living in the Property. Accordingly, in the event a child is

1 born to any person duly residing in the Property, such person or persons
2 and the child shall vacate the Apartment within nine (9) months after the
3 date of birth of the child.
4

5 d. The occupancy regulations of this Section 3.1 pertaining to minimum age
6 restrictions and the prohibition of minors apply to all occupants, whether
7 Owners or tenants; and the Board has the exclusive right to determine
8 who is a resident or occupant for the purposes of determining compliance
9 with this Section 3.1.
10

11 e. It is acknowledged that, despite the foregoing restrictions, it may happen
12 that, as a result of the death of a resident aged fifty-five (55) or older, or
13 due to some other uncontrollable or unforeseen event or circumstance, a
14 person may be occupying an Apartment in violation of this restriction.
15 Accordingly, it is provided that in such an event, such person or persons
16 shall vacate the Apartment within nine (9) months after the event giving
17 rise to the violation. However, if a person aged fifty-five (55) or older dies
18 or ceases to be a resident but leaves at least one occupant aged forty-
19 five (45) or older, such remaining occupant(s) shall not be required to
20 vacate the Apartment.
21

22 f. Upon request of an occupant, the Board may determine in its sole and
23 absolute discretion that the nine-month period for vacating an Apartment
24 as set forth in Section 3.1(e) should be extended because of financial or
25 other hardship, then the Board may extend the period of vacation for a
26 reasonable time but not in excess of six (6) months. Such determination
27 by the Board shall be final and binding on all parties concerned.
28

29 g. Neither the Association, nor any Owner, nor any resident of the Property
30 shall be liable to any person, including any minor child, for any expense,
31 inconvenience, or any other damage arising in any manner as a result of
32 mandated vacation per this Section 3.1.
33

34 h. The Association shall have the right to verify date of birth of Apartment
35 occupants.

36 i. The Board may establish additional procedures to insure compliance with
37 the State and Federal Fair Housing Acts, and any other legislation or
38 governing regulations pertaining to this Section 3.1.
39

40 **3.2. Animals.** Except for birds kept in cages, no animals or pets of any kind
41 shall be raised, bred, or kept in any Apartment or in any other part of the Property,

1 except as may be required by the State or Federal Fair Housing Acts. The Board may
2 adopt reasonable rules pertaining to such permitted animals.

3 **3.3. Antennas and Exterior Additions.** Except in Exclusive Use Common
4 Elements, no exterior antennas or other devices for the transmission or reception of
5 radio or television signals shall be erected or maintained without prior written
6 authorization of the Board acting upon the recommendation of the Architectural Review
7 Committee. Further, no exterior devices or additions shall be constructed on the exterior
8 of any Building (including the roof) without prior written authorization of the Board acting
9 upon the recommendation of the Architectural Review Committee.

10
11 **3.4. Business Activities.** All Apartments shall be used for residential
12 purposes only. The following applies with respect to home business activities within the
13 Property:

- 14
15 a. **Criteria for Home Business.** No trade or business may be conducted in or
16 from any Apartment, except that an Owner or occupant residing in any
17 Apartment may conduct business activities within the Apartment so long
18 as (1) the existence or operation of the business activity is not apparent
19 or detectable by sight, sound or smell from outside the Apartment; (2) the
20 business activity conforms to all zoning requirements and any other
21 governmental requirements for the Property; (3) the business activity
22 does not involve any person conducting such business who does not
23 reside in the Apartment or door-to-door solicitation of residents of the
24 Property; (4) the existence or operation of the business does not require
25 more than a reasonable number of customers or delivery trucks to visit
26 the Apartment; and (5) the business activity does not constitute a
27 nuisance, or a hazardous or offensive use, or cause the Owners to violate
28 any other provisions of this Declaration, or threaten the security or safety
29 of other residents of the Property, as may be determined in the sole
30 discretion of the Board.
31
32 b. **Pertinent Definitions.** The terms "business" and "trade," as used in this
33 provision, shall be construed to have their ordinary, generally-accepted
34 meanings.
35

36 **3.5. Nuisance, Pests, Unsightly Objects and Personal Conduct.**

- 37 a. **Nuisance.** No rubbish or debris of any kind shall be placed or permitted
38 to accumulate outside or adjacent to any Apartment or other area within
39 the Property; and no odors shall be permitted to arise therefrom, so as to
40 render any Apartment or other portion of the Property unsanitary,

1 unsightly, offensive, or detrimental to any other Apartment or portion of
2 the Property in the vicinity thereof or to its occupants. No Owner or
3 occupant shall act in such manner as to obstruct, interfere with, or annoy
4 other Owners or occupants in the enjoyment of their Apartments or the
5 Common Elements. Without limiting the generality of any of the
6 foregoing, no exterior speakers, horns, whistles, bells, or other sound
7 devices, except security devices used exclusively for security purposes,
8 shall be located, used, or placed in or on the Property. Said security
9 devices shall contain timed automatic shutoffs. The Board, in its sole
10 discretion, may determine the existence of any such nuisance.

11
12 b. Unsightly Objects. No unsightly objects shall be permitted to remain so as
13 to be visible from neighboring property, adjoining Apartments, or from the
14 street or public way. Grass, shrub, or tree clippings and all clotheslines,
15 machinery, storage piles, and wood piles shall be kept within an enclosed
16 structure or appropriately screened from view of neighboring property or
17 from adjoining streets or public ways.

18
19 c. Insects or Pests. No Owner or occupant of any Apartment shall permit
20 any thing or condition to exist within his/her Apartment or anywhere on
21 the Property which shall induce, breed, or harbor infectious plant
22 diseases or noxious insects or pests.

23
24 d. Insurance. No Owner or occupant shall use his/her Apartment or the
25 Common Elements in such manner as shall (1) cause the Property to be
26 uninsurable against loss by fire or the perils insured against by an
27 extended coverage endorsement or (2) cause any policy or policies
28 representing such insurance to be cancelled or suspended or the
29 company issuing same to increase the premium therefor or to refuse
30 renewal thereof.

31
32 e. Hobby and Carpenter Equipment. No power equipment, hobby shops, or
33 carpenter shops shall be maintained on the Property except with the prior
34 approval of the Board.

35
36 f. Use of Common Facilities. Each Owner or occupant agrees to use the
37 swimming pools, other recreational facilities, and the laundry facilities in
38 accordance with the Rules issued by the Board.

39
40 **3.6. Rentals.** Rental of an Apartment to a tenant for private, single-family
41 residential use, subject to all provisions of this Declaration, including the age restrictions
42 in Section 3.1 hereof and the following:

43
44 a. Apartments for lease will be limited to 10% (i.e. 8) of the total Apartments
45 and the number of rentals will be monitored by Management.

- 1
2 b. The term of any Apartment rental shall be for no more than one (1) year
3 nor less than ninety (90) days.
4
5 c. No less than an entire Apartment (no portion of an Apartment) may be
6 rented.
7
8 d. All rentals shall be pursuant to a lawful, written rental agreement (lease).
9 The Owner shall make a copy of such agreement (lease) available for
10 inspection by the Board, upon reasonable notice from the Board.
11
12 e. The lease shall provide that the tenant and his/her invitees are subject to
13 this Declaration and all other regulations governing residence within the
14 Property.
15
16 f. Each Owner shall be obligated at his/her own expense to provide the
17 tenant with copies of the Governing Documents.
18

19 **3.7. Sale of Apartment.** Before "closing" any sale of an Apartment, the Owner
20 shall notify the Board, in writing, of the impending sale, the names and addresses of
21 prospective owners, and any financial arrangements that might affect the Association.
22

23 **3.8. Signs.** No sign of any kind shall be erected on the Property unless the
24 sign, the nature, number and location of which have been approved by the Board acting
25 upon the recommendation of the Architectural Review Committee, except:

- 26 a. Signs or other postings which may be required by legal proceeding.
27
28 b. "Open House" signs which are in place not more than two hours before and
29 after the time of the event. The placement of any sign shall not obstruct
sidewalks or any other area of public access.
30
31 c. One commercially-produced "For Sale" or "For Rent" sign of industry
32 standard size (18" x 24") may be placed in accordance with the Rules.
33 Said sign shall be removed within one week after close of escrow. The
34 sign shall be the standard type used by real estate professionals without
35 additional advertising or adornment, except one sign rider that does not
exceed 6" x 24".
36
37 d. Political signs are not allowed.

1 **3.9. No Further Subdivision.** No Apartment shall be further subdivided or
2 separated into smaller Apartments by any Owner; and no portion less than all of any
3 Apartment, nor any Easement or other interest therein, shall be conveyed or transferred
4 by any Owner.

5
6 **3.10. Temporary Occupancy Prohibited.** No temporary buildings or
7 structure of any kind shall be used at any time for a residence on any Property within
8 the Property.

9
10 **3.11. Trash Containers.** No garbage or trash shall be placed or kept on the
11 Property except in covered containers of a type, size, and style which have been
12 approved by the Board. All such containers shall be screened and concealed from
13 public view. All rubbish, trash, or garbage shall be promptly removed from the
14 Apartments and shall not be allowed to accumulate therein. Garbage or trash
15 containers shall be kept within an enclosed structure or appropriately screened from
16 view of neighboring property or from adjoining streets or public ways, except when
17 necessary to make it available for collection, and then only for the shortest time
18 reasonably necessary to effect such collection.

19
20 **3.12. Abandoned or Inoperable Vehicles.** Except for trucks on service calls
21 and the vehicles of overnight guests, which are permitted temporarily to use the parking
22 area of the Property, there shall be no outside (1) parking or storage of commercial
23 vehicles, boats, trailers, campers, motor coaches, mobile homes, or house trailers of
24 any type on the Property; or (2) storage of motor vehicles in any stage of construction,
25 reconstruction, modification, or rebuilding of parts of motor vehicles such as frames,
26 bodies, engines, or other parts or accessories.

27
28 **ARTICLE IV: MAINTENANCE, ALTERATIONS, AND COMMON WALLS**

29
30 **4.1. Apartments and Exclusive Use Common Elements.** Each Owner
31 shall maintain, repair, replace, and restore, at his/her own expense, all portions of
32 his/her Apartment, including appliances, windows, doors, and screens serving his/her
33 Apartment. Each Owner shall maintain, at his/her expense, the interior portions of
34 his/her Apartment's attached private patio or balcony, if any, including all plants and
35 plantings within the area. Because such patios and balconies are Exclusive Use
36 Common Elements and because the appearance of such private patios and balconies is
37 important to the orderly maintenance and enjoyment of the Common Elements and to
38 the health, safety, convenience, and welfare of all the Owners, plants and plantings
39 (landscaping) within the area of the patios and balconies shall be maintained in a
40 manner satisfactory to the Board and the Architectural Review Committee.

41
42 **4.2. Interior Alterations.** Each Owner, being responsible for the maintenance
43 and decoration of his/her Apartment, may, at his/her sole cost and expense, paint,
44 paper, panel, plaster, tile, and finish the interior surfaces of the ceilings, floors, window
45 and door frames, trim, and perimeter walls of his/her Apartment and the surfaces of the
46 bearing walls and partitions located within said Apartment. Each Owner also shall have

1 the right, at his/her sole cost and expense, to substitute new finished surfaces in place
2 of those existing on said ceilings, floors, and walls. However, any replacement of
3 flooring or floor covering in second floor Apartments, except for kitchens, bathrooms,
4 and storage rooms, requires the prior approval of the Architectural Review Committee.
5

6 **4.3. Windows, Doors and Hallways.** The maintenance, repair, or
7 replacement of the windows and exterior doors appurtenant to an Apartment shall be
8 paid for by the Owner except for the painting and associated preparation work of the
9 outside surfaces of exterior doors and window frames. The maintenance, repair or
10 replacement of the hallways, stairways, inclimators, and door releases appurtenant to
11 second floor Apartments shall be paid for by the Owners of said Apartments. However,
12 should said maintenance, repair, or replacement be caused by the negligence of or
13 misuse by an Owner or his/her family, guests, invitees, or licensees, said Owner shall
14 be responsible therefor, and the Association may levy a Reimbursement Assessment
15 against said Owner for the cost of repair or restoration.
16

17 **4.4. Garages.** The Owner to whom the use of a garage space and adjacent
18 storage compartment is granted shall be solely responsible, at his/her own cost and
19 expense, for the interior maintenance of the area including, without limitation, the
20 interior walls and the door, and excepting utility line maintenance and repair and termite
21 treatment, which are the Association's responsibility.
22

23 **4.5. Maintenance by the Association.** The Association shall have the
24 duty and the power to expend money from its funds to maintain, repair and make
25 necessary improvements to the General Common Elements and the Improvements
26 thereon. This includes but is not limited to: common facilities and Improvements;
27 common landscaping and drainage facilities; swimming pools and any other recreational
28 facilities; corrective architectural, landscaping, and repair work; common facilities for
29 provision of utilities; and private roadways, parking areas, walks, and other means of
30 ingress and egress within the Property.
31

32 The Association also shall maintain, repair, and make necessary improvements
33 to the exterior portions of the Apartments; the Buildings, except for inside the
34 Apartments; the land upon which the Buildings are located; structural portions of the
35 halls and stairways leading to second floor Apartments; all bearing walls, columns,
36 floors, roofs, slabs, foundations, and storage spaces; all waste, water, sewer and gas
37 pipes: all ducts, chutes, conduits, and wires; and all other utility installations of the
38 Buildings, wherever located, except the outlets thereof when located within the
39 Apartments. The Association also shall have control of the air space above the
40 Property.
41

42 The Association is further empowered with the right and duty to periodically
43 inspect all Common Elements in order that minimum standards of repair, design, color,
44 and landscaping is maintained for the beauty, harmony, and conservation of the entire
45 Property.
46

1 **4.6. General Maintenance.** In event that the Board or the Association
2 determines that the exterior, porches, outside stairways, patios, or balconies of any
3 Building on the Property or that any portion of the General Common Elements are in
4 need of repair, restoration, or painting; or that the landscaping is in need of installation,
5 repair, or restoration; then the Association shall undertake to remedy such condition. If
6 the cost thereof cannot be covered by budgeted funds, the additional costs may be
7 covered by a Special Assessment, apportioned among all the Owners according to their
8 designated Percentage Shares of the Common Elements, and levied and collected in
9 accordance with Article VIII of this Declaration.

10
11 The Association shall have a limited right of entry in and upon all the Common
12 Elements referred to above. It also shall have the right to inspect the interior of all
13 Apartments for the purpose of taking whatever corrective action it deems necessary or
14 proper.

15
16 **4.7. Association's Right of Entry.** It is hereby acknowledged that an Owner
17 shall grant the right of entry into his/her Apartment to the Association's authorized
18 representatives, any other Owners or any other persons, in case of an emergency
19 originating in or threatening his/her Apartment, whether the Owner is present or not. In
20 so doing said persons shall not be deemed liable for or guilty of trespass.

21
22 Further, the Association's representatives, agents or contractors may enter any
23 Apartment when necessary to do so in order to install, alter, or repair the mechanical or
24 electrical services, public utilities such as water and sewer, or a common television
25 system. However, entry under these conditions shall be preceded by reasonable notice
26 to the Owner or occupant of said Apartment and shall be exercised in such manner as
27 to inconvenience the Owner or occupant as little as possible.

28
29 Nothing in this Section 4.5 shall in any manner limit the right of each Owner to
30 exclusive control over the interior of his/her Apartment.

31
32 **4.8. Repair Necessitated by Owner.**

- 33
34 a. No Owner shall in any way change, damage or destroy any part of the
35 General Common Elements or interfere with the activities of the
36 Association in connection therewith.
37
38 b. In the event that the Board determines that, due to the fault of an Owner
39 (or an Owner's tenant, guest or other invitee for whose actions the Owner
40 is responsible), a portion of the General Common Elements is in need of
41 repair, restoration, or painting, or that landscaping is in need of repair or
42 restoration, or that there has been interference with the activities of the
43 Association, the Board shall give the responsible Owner written notice of
44 the condition or violation complained of.
45

- 1 c. The responsible Owner shall have a reasonable opportunity to remedy
2 the condition or violation, and the Board shall set a reasonable time for
3 the Owner to submit to it written corrective plans which are acceptable to
4 the Board, and a reasonable period of time thereafter in which to
5 implement such plans.
6
7 d. If the Owner fails to remedy the condition or violation complained of, the
8 Board shall proceed to remedy such condition or violation. Any cost
9 incurred by the Association by reason of any such damage, destruction or
10 interference shall be paid by said Owner, upon demand, to the
11 Association; and the Association may enforce collection of same as a
12 Reimbursement Assessment, as provided in Article VIII of this
13 Declaration.
14

15 **4.9. Determination of the Board.** In exercising its rights and authority as
16 provided in this Article, the Board shall have the sole right to determine whether any
17 costs incurred by the Association shall be deemed related to "General Maintenance" or
18 "Repair Necessitated by an Owner," and the determination of the Board shall be final
19 and binding on an Owner.
20

21 **4.10. Common Walls.** The rights and duties of Owners with respect to
22 Common Walls, including floors and ceilings, shall be as follows:
23

- 24 a. The Owners of contiguous Apartments having a Common Wall shall both
25 equally have the right to use such wall provided that such use by one
26 Owner does not interfere with the use and enjoyment of same by the
27 other Owner.
28
29 b. In the event that any Common Wall is damaged or destroyed through the
30 act of an Owner or any of his/her tenants, agents, guests or members of
31 his/her family (whether such act is or is not negligent or otherwise
32 culpable), it shall be the obligation of such Owner to rebuild and repair the
33 Common Wall without cost to the other adjoining Owner or owners.
34
35 c. In the event any such Common Wall is destroyed or damaged (including
36 deterioration from ordinary wear and tear and lapse of time), other than
37 by the act of an adjoining Owner, his/her tenants, agents, guests, or
38 family members, it shall be the obligation of the Association to rebuild and
39 repair such wall.
40
41 d. Notwithstanding anything to the contrary herein contained, there shall be
42 no impairment of the structural integrity of any Common Wall without the
43 prior consent of the Board acting on the recommendation of the
44 Architectural Review Committee.
45

1 e. In the event of a dispute between Owners with respect to the
2 construction, repair, or rebuilding of a Common Wall, or with respect to
3 the allocation of the cost thereof, the Owners shall submit the dispute to
4 the Board for determination. The decision of the Board shall be final and
5 binding on all Owners.
6

7 **4.11. Easements.** There is hereby created a blanket Easement upon, across,
8 over, and under the Property for ingress and egress, installation, replacement, repair,
9 and maintenance of all utility and service lines and systems, including but not limited to
10 water, sewer, gas, telephone, electricity, television cable or communication lines and
11 systems, etc. By virtue of this Easement, it shall be expressly permissible for the
12 providing utility or service company or the Association or their agents to install and
13 maintain facilities and equipment on said Property and to affix and maintain wires,
14 circuits, and conduits on, in, and under the roofs and exterior walls of any Building. Not-
15 withstanding anything to the contrary contained in this Section 4.8, no sewer, electrical
16 lines, water lines, or other utilities or service lines may be installed or relocated on said
17 Property except as initially designed and installed or as thereafter approved by the
18 Board. This Easement shall in no way affect any other recorded Easements on said
19 Property. There also shall be an access Easement for the delivery and collection of
20 United States mail and for package delivery services.
21

22 The Association is authorized and empowered to grant such licenses,
23 Easements, and rights-of-way for sewer lines, water lines, underground conduits, storm
24 drains, and other public utility purposes as may be necessary and appropriate for the
25 orderly maintenance, preservation, and enjoyment of the Common Elements or for the
26 preservation of the health, safety, convenience, and welfare of the Owners, provided
27 that any damage to an Apartment resulting from such grant shall be repaired by the
28 Association at its expense.
29

30 **ARTICLE V: ARCHITECTURAL AND LANDSCAPING PROVISIONS**

31
32 **5.1. Architectural Review Committee.** The Board shall have the power to
33 appoint an Architectural Review Committee ("ARC"). The ARC shall have the right and
34 duty to establish reasonable standards, against which to examine any request made
35 pursuant to this Article, in order to insure that any proposed plans conform
36 harmoniously to the exterior design and existing materials of the Buildings in the
37 Property. The findings and recommendations of the ARC with respect to approval or
38 disapproval of proposed plans shall be referred to the Board whose decisions regarding
39 said plans or proposals shall be final.
40

41 **5.2. Required Approval for Improvements and Alterations.** Except for the
42 interior of the Apartments, no replacement, addition, or alteration of a Building,
43 structure, fence, drainage facility, landscaping, or planting in the Property, or any other
44 alteration of the exterior appearance of any portion of the Property shall be undertaken
45 until the plans, specifications, and plot plan showing the location and nature of such
46 replacement, addition, alteration, or removal have been submitted to the ARC for its

1 review and is subsequently approved by the Board. Nor shall any exterior painting or
2 decorative alteration be commenced until the ARC has reviewed and the Board has
3 approved the plans therefor, including the color scheme, design, and the quality of the
4 materials to be used.

5
6 **5.3. Landscaping on Common Elements.** No Owner may install plants or
7 trees in the Common Elements. If an Owner was granted permission in the past to
8 install plants or trees in the Common Elements, said plants or trees shall be maintained
9 and managed by the Association and shall become part of the Common Elements.

10
11 **5.4. Preparation and Submission of Plans.** All plans, specifications, and plot
12 plans submitted to the ARC by an Owner shall be prepared in sufficient detail to enable
13 the Committee and the Board to adequately review same. Plans and resubmittals
14 thereof shall be approved or disapproved by the ARC and the Board within thirty (30)
15 days of their receipt by the Association. Failure of the ARC and the Board to respond to
16 a submittal or resubmittal of plans within said period shall be deemed to constitute
17 approval of the plans as submitted or resubmitted.

18
19 **5.5. Violations and Waiver.** If improvements are constructed and maintained
20 upon the Common Elements otherwise than in accordance with plans approved by the
21 Board, such alteration, erection, and maintenance thereof shall be deemed to have
22 been undertaken without the approval required by this Declaration. Thereupon, any
23 member of the Board may execute a notice of noncompliance or noncompletion and
24 have same recorded in the Office of the Pima County Recorder, State of Arizona; or the
25 Association may institute legal proceedings against the offending party to enforce
26 compliance with this Declaration. If, however, said notice is not filed and recorded, or if
27 legal proceedings are not instituted against the offending party, then, after the expiration
28 of one (1) year from the date of completion of any such improvement, addition, or
29 alteration, said improvement shall, in favor of purchasers and encumbrancer, in good
30 faith and for value, be deemed to comply with all of the provisions hereof.

31
32 The ARC's review and the Board's approval of plans and specifications, as
33 submitted, shall be conclusive grounds for presuming that the design, location, and
34 height of any building, structure, or improvement meets the provisions of this
35 Declaration. The Board's approval of any plans or specifications submitted for approval
36 as herein specified for use on any Common Elements shall not be deemed to be a
37 waiver by the Board of its specifications, if or when the same features or elements are
38 embodied in any subsequent plans and specifications submitted for approval as herein
39 provided for use elsewhere on the Property.

40 **ARTICLE VI: THE ASSOCIATION**

41 **6.1. Organization.**

- 42
43
44
45 a. **The Association.** The Association is an Arizona nonprofit corporation
46 which has been formed to provide (1) for the maintenance, management,

1 care, and preservation of the Buildings, grounds, and Improvements
2 thereon which comprise Villa Catalina; and (2) for the benefit of and the
3 good relationship among the Owners and residents of Villa Catalina. The
4 Association is charged with the rights and duties and invested with the
5 powers granted to nonprofit corporations under the laws of the State of
6 Arizona (Arizona Revised Statutes, Sections 10-3101 et. seq.) and set
7 forth in this Declaration, the Articles, and the Bylaws.
8

- 9 b. Board of Directors and Officers. The affairs of the Association shall be
10 conducted by a Board of Directors and such Officers and Committees as
11 the Directors may elect or appoint in accordance with this Declaration and
12 the Bylaws, as same may be amended from time to time.
13

14 **6.2. Powers and Duties of the Association.** Among the powers of the
15 Association necessary for its good governance and operation are the following:
16

- 17 a. adopting and amending the Governing Documents;
18
19 b. electing the Directors and the Officers of the Association;
20
21 c. adopting and amending the Association's annual budget;
22
23 d. establishing, levying, and collecting Assessments and determining their
24 use;
25
26 e. insuring the Property and securing appropriate insurance coverages;
27
28 f. regulating the use, maintenance, repair, replacement, or modification of
29 the Common Elements;
30
31 g. establishing and maintaining reserve funds;
32
33 h. making contracts and incurring liabilities on behalf of the Association;
34
35 i. contracting with a manager or management company for the management
36 and maintenance of Villa Catalina and its facilities and Property;
37
38 j. granting Easements in the Property;
39
40 k. filing federal and state income tax returns for the Association; and
41
42 l. preparing and distributing semi-annual and annual financial reports to the
43 Association Members.
44

45 The Bylaws may delegate the exercise of some or all of these powers to the
46 Board and the Officers.

1
2 Notwithstanding any other standards set hereunder or under the Bylaws or Rules
3 for control of funds, the Association shall establish an account or accounts in a federally
4 insured bank: (1) for the deposit and disbursement of funds collected primarily for
5 making capital improvements to the Property and for reserves; and (2) for the deposit
6 and disbursement of funds collected to pay the operating expenses of the Association.
7

8 **6.3. Association Rules.** The Board, by majority vote, may draw up and adopt
9 rules and procedures which are reasonable and consistent with the Articles, this
10 Declaration, and the Bylaws; and the Board may from time to time repeal or amend
11 same. Said Rules may restrict and govern the use of any area by any Owner or
12 occupant of an Apartment, by such person's family and guests, and by any licensee or
13 lessee of any Owner. Said Rules may authorize the Board to impose fines in case any
14 of the Rules are breached provided procedures concordant with due process are
15 followed. A copy of the Rules, together with any changes thereto, shall be mailed or
16 otherwise delivered to each Owner and/or occupant of any Apartment in Villa Catalina.
17

18 **6.4. Personal Liability.** Except to the extent permitted by law, no member of
19 the Board or of any Committee of the Association and no Officer or employee of the
20 Association, including the Manager, shall be personally liable to any Owner or to any
21 other party, including the Association, for any damage, loss, or prejudice suffered or
22 claimed because of any act, omission, error, or negligence of the Association, the
23 Board, any Officer of the Association, the Manager, or any other representative or
24 employee of the Association, or any member of a Committee of the Association,
25 provided that such person has, upon the basis of such information as he or she may
26 have possessed, acted in good faith, without willful or intentional misconduct, and in
27 accord with sound business practice.
28

29 **ARTICLE VII: MEMBERSHIP AND VOTING RIGHTS**
30

31 **7.1. Membership.** The Association shall have one (1) class of membership.
32 Each Owner of an Apartment shall be a Member of the Association. Membership shall
33 be appurtenant to, and may not be separated from, ownership of an Apartment.
34

35 **7.2. Votes and Voting.** Each Owner, whether a person or entity, shall be entitled
36 to one (1) vote for each Apartment owned. When more than one (1) person or entity
37 holds an ownership interest in any Apartment, such persons shall be Members;
38 however, Co-owners together shall cast only one (1) vote.
39

40 The vote for each such Apartment must be sent as a single vote. Fractional votes
41 shall not be allowed. In the event that Co-Owners are unable to agree among
42 themselves as to how to cast their vote, they shall lose their right to vote on the matter
43 in question. If any Owner or Owners cast a vote representing a certain Apartment, it will
44 thereafter be conclusively presumed for all purposes that such person was acting with
45 the authority and consent of all other Owners of the same Apartment. In the event that

1 more than one (1) vote is cast for a particular Apartment, none of said votes shall be
2 counted as said votes shall be deemed void.

3
4 There shall be no cumulative voting. Votes may be cast in person or by proxy.

5
6 **7.3. Rights, Duties, and Obligations.** Each Member shall have such rights,
7 duties, and obligations as are set forth in this Declaration, the Bylaws, and any
8 amendments thereto, including the right to vote for members of the Board and on issues
9 submitted by the Board for decision by the Members of the Association.

10
11 **7.4. Transfer of Membership.** The rights and obligations of an Owner and
12 membership in the Association shall not be assigned, transferred, pledged, conveyed,
13 or alienated in any way except upon transfer of ownership of an Apartment, or by
14 intestate succession, testamentary disposition, foreclosure of a mortgage of record,
15 exercise of a power of sale under a deed of trust, or such other legal process as is now
16 in effect or as may hereafter be established under or pursuant to the laws of the State of
17 Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of
18 ownership of an Apartment shall operate to transfer membership to the new Owner
19 thereof.

20
21 **ARTICLE VIII: COVENANT FOR ASSESSMENTS**

22
23 **8.1. Creation of the Lien and Personal Obligation For Assessments.** Each
24 Owner of an Apartment, by acceptance of a Deed therefor, whether or not it shall be so
25 expressed in such Deed, is deemed to covenant and agree to pay to the Association (a)
26 Annual Assessments or charges; (b) Special Assessments; and (c) Reimbursement
27 Assessments. Such Assessments shall be established and collected as provided in this
28 Declaration and in the Bylaws. The Annual, Special and Reimbursement Assessments,
29 together with interest, costs, and reasonable attorney's fees, shall be a lien on the
30 Apartment and the associated Common Elements as created by this Declaration. Each
31 such Assessment, together with interest, costs, and reasonable attorney's fees, also
32 shall be the personal obligation of the person who was the Owner of such Apartment at
33 the time when the Assessment was levied.

34
35 **8.2. Purpose of Assessments.** The Assessments levied by the Association
36 shall be used exclusively for the following expenses (the "Common Expenses") to (a)
37 promote the health, safety, recreation, and welfare of the residents in Villa Catalina, (b)
38 improve and maintain the Common Elements, (c) pay for such expenses including but
39 not limited to insurance premiums, property taxes, maintenance repairs, replacement of
40 Common Elements, and charges for water and other utilities, and (d) establish reserve
41 funds for capital expenditures and contingencies.

42
43 **8.3. Maximum Annual Assessment.** Each year the Board shall set the
44 amount of the Annual Assessment. It may do so without a vote of the membership if the
45 amount to be levied, exclusive of property taxes, is less than or remains the same as for
46 the previous year, or if the amount is to be increased by no more than the percentage

1 increase last reported by the national Consumer-Price Index (or its successor index) or
2 five percent (5%), whichever is the greater. If the Board proposes to levy an amount,
3 exclusive of property taxes, exceeding this percentage, it shall call a special meeting of
4 the membership. At such special meeting, approval of the amount in excess of said
5 Index or five percent (5%), whichever is the greater, shall require a majority vote of
6 Members present in person or by proxy, provided a quorum is present.

7
8 **8.4. Special Assessments.** In addition to the Annual Assessments authorized
9 above, the Association may levy, in any assessment year, a Special Assessment
10 applicable to that year only for the purpose of defraying in whole or in part (a) the costs
11 of any special maintenance or operational expense, (b) the cost of any construction,
12 reconstruction, repair, or replacement of a capital improvement of the Common
13 Elements, including fixtures and personal property related thereto, or (c) any other
14 exceptional expenditure the Board deems necessary and appropriate, provided that any
15 such Special Assessment shall have the assent of two-thirds (2/3) of the votes of
16 Members who are voting in person or by proxy at a special meeting of the Association
17 duly called for this purpose, provided a quorum is present.

18
19 **8.5. Notice and Quorum for a Special Assessment.** Written notice of a
20 special meeting called for the purpose of taking action authorized under Section 8.4
21 shall be sent to all Members not less than ten (10) nor more than sixty (60) days in
22 advance of the meeting. At the first such meeting called, the presence of Member or
23 proxies entitled to cast sixty percent (60%) of all the votes of the membership shall
24 constitute a quorum. If the required quorum is not present, another meeting may be
25 called subject to the same notice requirement; and the required quorum at the
26 subsequent meeting shall be one-half (1/2) of the required quorum at the preceding
27 meeting. No such subsequent meeting shall be held more than sixty (60) days following
28 the preceding meeting.

29
30 **8.6. Reimbursement Assessments.** The Association may levy a
31 Reimbursement Assessment if: (A) Any Owner, his/her family member, tenant, guest or
32 invitee, has failed to comply with this Declaration or the Rules, which failure has
33 necessitated an expenditure of money by the Association to correct the violation or a
34 monetary penalty imposed against such Owner; or (B) Any Owner, his family member,
35 tenant, guest or invitee has caused damage to the Common Elements. A
36 Reimbursement Assessment shall not be levied by the Association until notice and an
37 opportunity for a hearing has been given to the pertinent Owner. Reimbursement
38 Assessments may be enforced in the same manner as Annual and Special
39 Assessments.

40
41 **8.7. Basis for Assessment Rates.** The amounts of both Annual and Special
42 Assessments shall be based on the respective Percentage Share as designated for
43 each Apartment.

44
45 **8.8. Due Date of Annual Assessment and Mode of Payment.** The Board
46 shall set the amount of the Annual Assessment for each Apartment at least thirty (30)

1 days in advance of each annual assessment period. Written notice of said assessment
2 shall be sent to every Owner subject thereto together with the due date established by
3 the Board. Said assessment shall be paid in advance on a monthly, quarterly, semi-
4 annual, or annual basis. In the case of new Owners, the Annual Assessment provided
5 for herein shall commence on the first day of the month following the conveyance of an
6 Apartment to the new Owner. The Board shall, upon demand and for a reasonable
7 charge, furnish a certificate signed by an Officer of the Association, or its designee,
8 setting forth whether or not the Assessments on a specific Apartment have been paid.

9
10 **8.9. Remedies for Nonpayment of Assessments.** Each Owner in Villa Catalina
11 shall be deemed to covenant and agree to pay to the Association the Assessments
12 provided for herein, together with any late charges incurred thereon. Each Owner also
13 agrees to the manner of enforcement of the Assessments prescribed herein.

14
15 In the event of default in payment of an Assessment when due, the Assessment
16 shall be deemed delinquent and the Board may impose a late charge which shall be
17 added to the amount of the unpaid assessment. The late charge shall be determined by
18 the Board from time to time.

19
20 In addition to any other remedies cited herein or provided by law, the
21 Association, in dealing with delinquent Assessments, may enforce each such obligation
22 in any manner provided by law or in equity, or without any limitation of the foregoing, by
23 either or both of the following procedures.

- 24
25 a. Enforcement by Suit. The Board may cause a suit of law to be
26 commenced and maintained in the name of the Association against any
27 delinquent Owner. Any judgment awarded to the Association in any such
28 action shall include the amount of the delinquency, together with interest
29 thereon from the date of delinquency until paid, plus court costs and
30 reasonable attorney's fees.
- 31
32 b. Enforcement by Lien. There is hereby created, under authority of this
33 Declaration, a right of claim of lien, with power of sale, on each and every
34 Apartment within Villa Catalina to secure payment to the Association of
35 any and all unpaid Assessments levied against any Owner of such
36 Apartment, together with interest thereon (at the rate stated above in the
37 second paragraph of this Section 8.9) from the date of delinquency until
38 paid, plus all costs of collection which may be paid or incurred by the
39 Association in connection therewith, including reasonable attorney's fees.
40 At any time within thirty (30) days after the occurrence of any default in the
41 payment of any such Assessment, the Association, or any representative
42 on its behalf, may, but need not, send a written demand for payment to the
43 defaulting owner. Said demand shall state the date and amount of the
44 delinquency. Each default shall constitute a separate basis for a demand
45 or claim of lien or a lien, but any number of defaults may be included
46 within a single demand or claim of lien. If such delinquency is not paid

1 within ten (10) days after delivery of such a demand or even without such
2 a written demand, the Association's attorney or a certified document
3 preparer may file such a claim of lien on behalf of the Association against
4 the Apartment of the defaulting Owner. Such a claim of lien shall contain
5 substantially the following:

- 6 (1) the name of the delinquent Owner,
- 7 (2) the legal description of the Apartment against which the
8 claim of lien, is made, and
- 9 (3) the total amount claimed to be due and owing, including the
10 amount of the delinquency, interest thereon, collection costs,
11 and reasonable attorney's fees (with any proper offset
12 allowed),
13
14
15
16

17 Upon recordation of a duly executed original or copy of such a claim of
18 lien and after mailing a copy thereof to said Owner, the lien claimed therein shall
19 immediately attach and become effective in favor of the Association as a lien
20 upon the Apartment and the Common Elements and the rights appurtenant to the
21 Apartment against which such Assessment was levied under authority of this
22 Declaration. Such a lien shall have priority over all liens or claims created
23 subsequent to the recordation of the claim of lien thereof, except only for the
24 following: tax liens for real property taxes on any Apartment, assessments on any
25 Apartment in favor of any municipal or other governmental assessing body, and
26 the liens specifically described in Section 8.10. Any such lien may be foreclosed
27 by appropriate action in Court or in the manner provided by law for the
28 foreclosure of a realty mortgage or deed of trust as set forth by the laws of the
29 State of Arizona. The lien shall be for the benefit of all other Owners. The
30 Association shall have the power to bid at any foreclosure sale and to purchase,
31 acquire, hold, lease, mortgage, and convey any such Apartment. In the event
32 such foreclosure is by action in Court, reasonable attorney's fees, court costs,
33 title search fees, interest, and all other costs and expenses incurred by the
34 Association in maintaining the action shall be allowed to the extent permitted by
35 law. Each Owner, by becoming an Owner of an Apartment in Villa Catalina,
36 hereby expressly waives any objection to the enforcement and foreclosure of this
37 lien in this manner.
38

39 In the event that the delinquent Assessment and all other Assessments
40 which have become due and payable with respect to said Apartment, together
41 with all costs, including attorney's fees, interest, etc., are fully paid or otherwise
42 satisfied prior to completion of any sale held to foreclose the aforesaid lien, the
43 Board shall record a further notice, similarly signed, stating the satisfaction of
44 said lien and releasing same.
45

1 **8.10. Subordination of Lien to Mortgages.** The Assessment lien
2 provided for herein shall be subordinate to the lien of any first mortgage, first
3 deed of trust, or similar first priority security instrument. Sale or transfer of an
4 Apartment shall not affect the Assessment lien. However, the sale or transfer of
5 an Apartment pursuant to mortgage foreclosure, or any proceeding in lieu
6 thereof, shall extinguish the lien of such Assessment as to payments which
7 became due prior to such sale or transfer. Further, no sale or transfer shall
8 relieve such Apartment's Owner from personal liability for any Assessments
9 thereafter becoming due or from the lien thereof.

10
11 **8.11. Mortgage Protection and Additional Assessments as Common**
12 **Expenses.** Notwithstanding and prevailing over any other provisions of this
13 Declaration, or of the Association's Articles, Bylaws, or Rules, the following
14 provisions shall apply to and benefit each First Mortgagee upon an Apartment:
15

- 16 a. The First Mortgagee shall not in any case or manner be personally liable
17 for the payment of any Assessment or charge, nor for the observance or
18 performance of any Covenant, Restriction, Regulation, Rule, Article, or
19 Bylaw, except for those matters which are enforceable by injunctive or
20 other equitable actions not requiring the payment of money, except as
21 hereinafter provided.
- 22
23 b. During the pendency of any proceeding to foreclose the First Mortgage,
24 including any period of redemption, the First Mortgagee (or receiver
25 appointed in such action) may, but need not, exercise any or all of the
26 rights and privileges of the Owner of the mortgaged Apartment, including
27 but not limited to the right to vote as a Member of the Association to the
28 exclusion of the Owner's exercise of such rights and privileges.
- 29
30 c. At such time as the First Mortgagee shall become the record Owner of an
31 Apartment, said First Mortgagee shall be subject to all of the terms and
32 conditions of these Restrictions, including but not limited to the obligation
33 to pay all Assessments and charges accruing thereafter, in the same
34 manner as any Owner.
- 35
36 d. The First Mortgagee, or any other party acquiring title to a mortgaged
37 Apartment through suit of foreclosure or through any equivalent
38 proceeding (such as, but not limited to, the taking of a deed in lieu of
39 foreclosure), shall acquire title to the mortgaged Apartment. Such title
40 shall be free and clear of any lien authorized by or arising out of any of
41 those provisions of this Declaration which secure the payment of any
42 Assessment or charges accrued prior to the final conclusion of any such
43 suit of foreclosure, or equivalent proceeding, including the expiration date
44 of any period of redemption, except for the following proviso: Any such
45 unpaid Assessment or charge against the foreclosed Apartment may be
46 treated as an expense common to all Owners and, as such, may be

1 collected by a pro rata assessment against each of the Owners, including
2 the Owner of the Apartment foreclosed against. In addition, this pro rata
3 assessment may be enforced as a lien against each Apartment in the
4 manner provided for other Assessments authorized in this Declaration.
5

6 Any such unpaid Assessment shall, nevertheless, continue to exist as the
7 personal obligation of the defaulting Owner of the respective Apartment to
8 the Association; and the Board shall undertake reasonable efforts to
9 collect the same from the Owner even after he or she is no longer a
10 Member of the Association.
11

12 There shall be a lien upon the interests of the First Mortgagee or other
13 party acquiring title to an Apartment by suit of foreclosure, or by an
14 equivalent procedure, for all Assessments authorized by this Declaration
15 or the Bylaws which accrue and are assessed after the date the acquiring
16 party has acquired title to the Apartment free and clear of any right of
17 redemption.
18

19 e. Any holder or insurer of a First Mortgage ("Eligible Mortgage Holder"),
20 upon written request to the Association (such request shall state the name
21 and address of such holder or insurer and the Apartment number), will be
22 entitled to timely written notice of:
23

24 (1) Any proposed amendment of the Association instruments effecting a
25 change in (a) the boundaries of any Apartment, (b) the Undivided
26 Interest in the Common Elements appertaining to any Apartment or
27 the liability for Common Expenses appertaining thereto, (c) the
28 number of votes in the Owner's Association appertaining to any
29 Apartment, or (d) the uses or purposes to which any Apartment or the
30 Common Elements are restricted,
31

32 (2) Any proposed termination of the existing property regime,
33

34 (3) Any condemnation or eminent domain proceeding affecting the
35 Property or any portion thereof,
36

37 (4) Any significant change or destruction to the Common Elements,
38

39 (5) Any default under this Declaration or Bylaws which gives rise to a
40 cause of action against the Owner of an Apartment subject to the
41 mortgage of such holder or insurer where the default has not been
42 cured within sixty (60) days,
43

44 (6) Any proposed termination by the Association of professional
45 management of the Property with concomitant self-assumption of
46 management by the Association, and

1
2 (7) All meetings of-the Association for which the holder or insurer may
3 designate a representative to attend.
4

5 f. The holder and insurer of the First Mortgage on an Apartment shall be
6 entitled, upon request, to: (1) inspect the books and records of the
7 Owners' Association during normal business hours; and (2) require the
8 preparation of and receive an annual audited financial statement of the
9 Owners' Association for the immediately preceding fiscal year, if available,
10 except that such statement need not be furnished earlier than ninety (90)
11 days following the end of each fiscal year.
12

13 **ARTICLE IX: INSURANCE**

14
15 **9.1. Types of Insurance Required.** The Board shall obtain and continue in
16 effect comprehensive general liability insurance and all-risk insurance in an amount as
17 near as possible to the full replacement cost of all the Property (including the
18 Apartments as well at the other Common Elements) and all Improvements thereon--
19 excluding the personal property of Apartment Owners or fixtures or improvements
20 added by them--without deduction for depreciation. Such insurance shall be maintained
21 by the Board for the benefit of the Association, the Owners, and the encumbrancers of
22 the Property or any part thereof, as their interests may appear as the named insureds,
23 subject however to such loss payment requirements as are set forth herein.
24
25

26 The Board may, as it deems necessary and proper, purchase additional
27 coverage to insure the Association and its Directors, Officers, and Members (a) against
28 public liability for damage or injury, including that within the Common Elements and that
29 due to the fault of the Association or any of its Directors, Officers, agents, or employees,
30 and (b) against exposure to liability for any other cause including, without limitation,
31 errors and omissions of the Directors and Officers of the Corporation. In addition, the
32 Board may purchase additional coverage at its discretion. The Board must also obtain
33 and maintain fidelity bond coverage, in an amount not less than twice the average
34 monthly receipts, for any person or entity handling Association funds, including (but not
35 limited to) the manager or employees of the Association's professional management
36 agent.
37

38 **9.2. Insurance Premiums.** Premiums for the comprehensive general liability
39 insurance coverage, the all-risk property coverage, the fidelity coverage obtained by the
40 Association, and for any other insurance coverage deemed necessary by the Board,
41 shall be a Common Expense to be included in the Annual Assessments levied by the
42 Association and collected from the Owners.
43

44 **9.3. Rights and Duty of Owners to Insure.** Each Owner is hereby advised to
45 provide insurance on his/her personal property and upon all other property and
46 improvements within his/her Apartment. Nothing herein shall preclude any Owner from

1 carrying such public liability insurance as deemed desirable to cover his/her individual
2 liability for damage or injury to persons or property occurring within his/her Apartment or
3 elsewhere within Villa Catalina. Any other policies carried by Owners shall contain
4 waivers of subrogation of claims against the Association, the Board, Officers of the
5 Association, members of the Architectural Review Committee, and all other Owners.
6 Such other policies shall not adversely affect or diminish any liability under any
7 insurance obtained by the Association.

8
9 **9.4. Waiver of Claims.** As to all the insurance policies maintained by the
10 Association and the Owners, the Association and Owners hereby waive and release all
11 claims against one another, the Board, and the Architectural Review Committee to the
12 extent of the insurance proceeds available, whether or not the insurable damage or
13 injury is caused by the negligence of any of the said persons or by their breach of any
14 agreement.

15
16 **9.5. Notice of Expiration Requirement.** Except for the personal property
17 insurance policies obtained by the Owners, all the insurance policies described herein
18 shall contain a provision that said policy or policies shall not be cancelled or terminated,
19 or expired by their terms, without ninety (90) days' prior written notice to the Board,
20 Owners, and their respective First Mortgagees (provided that such Owners and their
21 respective First Mortgagees have filed written requests with the insurance carrier for
22 such notice), and every other person in interest who shall have requested such notice
23 from the insurer.

24
25 **9.6. Trustee for Policies.** The Association, acting through its Board, is hereby
26 appointed and shall be deemed Trustee of the interests of all named insureds under
27 insurance policies purchased and maintained by the Association. All insurance
28 proceeds, under any such policies as provided for in Section 9.1, shall be paid to the
29 Board as Trustee. The Board shall have full power to receive and to receipt for the
30 proceeds and to use said proceeds for the repair or replacement of the property for
31 which the insurance was carried.

32
33 **9.7. Actions as Trustee.** Except as otherwise specifically provided in this
34 Declaration, the Board, acting on behalf of the Association and all the Owners, shall
35 have the exclusive right as Trustee to bind such parties in respect to all matters
36 affecting (a) any insurance carried by the Association, (b) the settlement of a loss claim,
37 and (c) the surrender, cancellation, and/or modification of all such insurance. In these
38 matters, however, the action of the Board must satisfy seventy-five percent (75%) of the
39 First Mortgagees who have filed requests to be notified under Section 9.5. Any two (2)
40 Directors of the Association may sign a loss claim form and a release form in
41 connection with the settlement of a loss claim, and such signatures shall be binding on
42 all the named insureds. Duplicate originals or certificates of all policies of fire and
43 casualty insurance carried by the Association and of all renewals thereof, together with
44 proof of payment of premiums, shall be delivered by the Association to all mortgagees
45 who have requested the same in writing.

1 **9.8. Annual Insurance Review.** The Board shall review the insurance carried
2 by the Association at least annually for the purpose of determining the amount of the all-
3 risk property insurance referred to in Section 9.1.

4
5 **9.9. Damage Insurance Waiver.** All Association insurance policies covering
6 physical damage insurance shall provide for waiver of the following rights, to the extent
7 that the respective insurers would have the rights without such waivers:

- 8
- 9 a. subrogation of claims against the tenants or Owners,
- 10
- 11 b. any defense based on co-insurance,
- 12
- 13 c. any right to require any assignment of any mortgage to the insurer,
- 14
- 15 d. any right of set-off, counterclaim, apportionment, proration, or contribution
16 by any reason of other insurance not carried by the Association,
- 17
- 18 e. any invalidity, other adverse effect or defense arising from any breach of
19 warranty or condition caused by the Association, any Owner, or any tenant
20 of any Owner, or arising from any act, neglect, or omission of any named
21 insured or of the respective agents, contractors, or employees of any
22 insured,
- 23
- 24 f. any right of the insurer to repair, rebuild, or replace, and, in the event the
25 improvement is not repaired, rebuilt, or replaced following loss, any right to
26 pay under the insurance an amount less than the replacement value of the
27 improvements insured or the fair market value thereof, and
- 28
- 29 g. notice of the assignment by any Owner of his/her interest in the insurance
30 by virtue of a conveyance of any Apartment.
- 31

32 **ARTICLE X: CONDEMNATION**

33

34 **10.1. Award.** If a portion of the Property is taken by exercise of the power of
35 eminent domain or if the Property is transferred and conveyed to a condemning
36 authority in anticipation of such exercise, an Award shall be made in compensation
37 therefor. From the entire Award made in compensation for such an action (including, but
38 without limitation, any amount awarded in severance damages) or from the entire
39 amount received and paid in anticipation of such an act, there shall be deducted, in
40 each case, the following: reasonable and necessary costs and expenses including (but
41 without limitation) attorneys' fees, appraisers' fees, and court costs. The net amount
42 remaining after such deductions have been made—hereafter in this Article referred to
43 as the "Award"—shall be paid to the Association as Trustee for all Owners and for
44 holders of first mortgages and deeds of trust then encumbering any Apartments.

1 If the portion of the Property taken or conveyed shall not be comprised of, or
2 include, all or any part of an Apartment, or if a majority of the Owners elects to restore
3 or replace an Apartment under Section 10.2 below, the Association shall, as soon as
4 practicable, cause the Award to be utilized for the purpose of repairing, replacing, and
5 restoring the affected area, including, if the Association deems it necessary or desirable,
6 the replacement of any Common Element Improvements so taken or conveyed.
7

8 **10.2. Determination by the Association.** Except as hereafter provided in this
9 Section 10.2, if the portion of the Property taken or conveyed is comprised of, or
10 includes, all or any part of an Apartment, the Board shall call a special meeting of the
11 Members of the Association to convene within thirty (30) days after its receipt of the
12 Award, to determine whether and, if so, in what manner, such Apartment shall be
13 restored, reconstituted, or replaced. If, by a majority of the votes entitled to be cast at
14 such special meeting, Association Members determine not to restore, reconstitute, or
15 replace any such Apartment and related Improvements, the Association shall distribute
16 the portion of the Award relating to any such Apartment to the Owner thereof or to the
17 holder, if any, of a mortgage or deed of trust upon such Apartment, with the remainder,
18 if any, to the Owner thereof. At such time as such Award has been so distributed, any
19 Owner, who has lost his/her Apartment by such taking or conveyance, shall no longer
20 possess any interest in the Property; and the interest of the remaining Owners in the
21 Common Elements shall automatically be adjusted accordingly. Any remaining portion
22 of the Award shall than be subject to Section 10.1, and any remaining portion of the
23 Award not used pursuant to said Section shall be divided into as many shares as there
24 are remaining Apartments. Such shares shall be in the same proportion as the Owners'
25 respective Percentage Shares in the Common Elements after such taking or
26 conveyance, and such shares shall be distributed to the Owners and to the holders of
27 any mortgage or deed of trust on any applicable Apartment, as their interests appear.
28

29 **10.3. Special Assessments.** If the cost of any repair and restoration shall
30 exceed the amount of the Award, a Special Assessment shall be levied to make up
31 such deficiency. Such assessment shall be levied against all the Owners in the same
32 proportion as their Percentage Shares in the Common Elements after such taking or
33 conveyance. The Special Assessment shall be secured and enforceable pursuant to the
34 terms set forth in Article VIII of this Declaration.
35

36 **ARTICLE XI: DAMAGE AND DESTRUCTION**

37
38 In the event that the Property, or any portion of it, is damaged or destroyed by
39 fire or other casualty, the following provisions shall apply:
40

41 **11.1. Partial Destruction.**

42 43 a. **Required Repair and Rebuilding**

44
45 (1) **Adequate Insurance Proceeds in Case of Loss Less than \$100,000.** If
46 such damage or destruction extends to fewer than one-half (1/2) of the

1 Apartments--rendering less than one-half (1/2) of the Apartments
2 uninhabitable—and or extends to any of the Common Elements; and if the
3 insurance proceeds derived by the Association from such loss amount to
4 One Hundred Thousand Dollars (\$100,000) or less; and if the proceeds
5 are sufficient to cover the cost of the damages; then the Board shall
6 contract with a licensed contractor or contractors to repair and rebuild
7 such damaged or destroyed portions of the Property in conformance with
8 the original plans and specifications.
9

10 However, if the Board determines that adherence to such original plans
11 and specifications is impracticable or is not in conformance with applicable
12 laws, ordinances, building codes, or other governmental rules and
13 regulations then in effect, then such repair or rebuilding shall be of a kind
14 and quality substantially equivalent to the original construction of such
15 damaged or destroyed portions of the Property.

16 The contract with the licensed contractor or contractors shall be for a
17 specified maximum sum for the performance and execution of the work
18 described therein. The Board may employ a licensed architect or other
19 professional to supervise the repair and rebuilding in order to insure that
20 all work, services, and supplies are in conformity with the requirements of
21 the construction contract.
22

23 (2) Adequate Insurance Proceeds in Case of Loss over \$100,000. If such
24 damage or destruction extends to fewer than one-half (1/2) of the
25 Apartments – rendering less than one-half (1/2) of the Apartments
26 uninhabitable – and it extends to any of the Common Elements; and if the
27 insurance proceeds received by the Association from such loss amount to
28 more than One Hundred Thousand Dollars (\$100,000); and if the
29 proceeds are sufficient to cover the cost of the damages; then all such
30 insurance proceeds shall be paid directly to the bank which the Board has
31 designated to receive such proceeds. Said bank must be located in Pima
32 County, Arizona, and its accounts must be insured by the Federal Deposit
33 Insurance Corporation or its successor agency. Said bank shall serve as
34 Trustee (hereinafter called the “Insurance Trustee”) for all Owners of
35 Apartments and also for the holders of first mortgages and the trustees
36 and beneficiaries under first deeds of trust with respect to any Apartments,
37 as their interest may then appear.
38

39 Such proceeds shall be received, held, and administered by the Insurance
40 Trustee subject to the provisions of an insurance trust agreement which
41 shall be consistent with the provisions of this Declaration and which shall
42 be entered into between the Insurance Trustee and the Board.
43

44 Disbursement of funds shall be made only upon the signatures of two (2)
45 members of the Board and upon terms and conditions provided in this
46 subsection. As soon as practicable after the Insurance Trustee has

1 notified the Board that the insurance proceeds have been received, the
2 Board shall contract with a licensed contractor or contractors to repair or
3 rebuild all of the damaged or destroyed portions of the Property in
4 conformance with the original plans and specifications.
5

6 However, if the Board determines that adherence to the original plans and
7 specifications is impracticable or is not in conformity with applicable
8 statutes, ordinances, building codes, or other governmental rules and
9 regulations then in effect, then the repair and rebuilding shall be of a kind
10 and quality substantially equivalent to the original construction of such
11 damaged or destroyed portions of the Property.
12

13 The contract with such licensed contractor or contractors shall be for a
14 specified maximum sum for the performance and execution of the work
15 therein described. Such contract shall have provisions for periodic
16 disbursement of funds by the Insurance Trustee; and such provisions shall
17 be consistent with procedures then followed by prudent lending institutions
18 doing business in Pima County, Arizona.
19

20 Such periodic disbursement of funds shall be for specific dollar amounts
21 and shall not be paid until the contractor or contractors engaged by the
22 Board shall have furnished to the Board before the commencement of
23 construction, a full performance and lien payment bond written by a good
24 and responsible corporate surety. Further, disbursements to the contractor
25 or contractors shall be made subject to the prior presentation of the
26 certificate of an architect (or other supervisory agent appointed by the
27 Board) containing such provisions as may be appropriate in the
28 circumstances and deemed suitable by the Board. The Board may employ
29 a licensed architect or other professional to supervise the repair and
30 rebuilding in order to insure that all work, services, and supplies are in
31 conformity with the requirements of the construction contract.
32

33 (3) Distribution of Surplus Insurance Proceeds. If, with reference to the
34 conditions stated in Paragraphs (1) and (2) above in this Section 11.1(a),
35 the insurance proceeds derived by the Association exceed the costs of
36 repair and rebuilding of the damaged or destroyed portions of the
37 Property, then, following the completion of such repair and rebuilding, the
38 excess amount shall be paid over to the Owners and to the holders of first
39 mortgages and their trustees and beneficiaries under first deeds of trust,
40 as their respective interests may appear, in proportion to the Owners'
41 respective Percentage Shares in the Common Elements.
42

43 b. Optional Repair and Rebuilding.

44
45 (1) In Case of Inadequate Insurance Proceeds. If such damage or
46 destruction extends to fewer than one-half (1/2) of the Apartments--

1 rendering less than one-half (1/2) of the Apartments uninhabitable--and/or
2 extends to any of the Common Elements, and if the insurance proceeds
3 derived by the Association are insufficient to pay all costs of repair and
4 rebuilding, the following procedure shall be followed:
5

6 A special meeting of the Members of the Association shall be duly called
7 to consider the question of repair and rebuilding the affected portions of
8 the Property, and shall be held prior to the commencement of any such
9 repair or rebuilding. The affected Property shall be repaired and rebuilt if
10 two-thirds (2/3) of the Owners [as contrasted to two-thirds (2/3) of the
11 Owners present and voting at said meeting] vote to do so. If the vote is
12 not to repair and rebuild, any excess insurance proceeds shall be
13 distributed in accordance with the procedures set forth in Paragraph (3)
14 above in Section 11.1(a)(3).
15

16 (2) Special Assessment in Case of Inadequate Insurance Proceeds. If, at
17 the meeting referred to in the preceding paragraph, the decision of the
18 Members of the Association is to repair and rebuild the damaged or
19 destroyed portions of the Property even though the insurance proceeds
20 are insufficient, then the Board shall levy a Special Assessment to make
21 up any such deficiency. The vote of the Owners for the levy of this Special
22 Assessment is not required. Such Special Assessment shall be levied
23 against the Owners in proportion to their Percentage Shares in the
24 Common Elements. The Special Assessments provided for herein shall be
25 enforceable in accordance with the terms set forth in Article VIII of this
26 Declaration.
27

28 **11.2. Total Destruction.**

- 29
30 a. Role of Insurance Trustee. In the event that one-half (1/2) or more of the
31 Apartments are damaged or destroyed—rendering one-half (1/2) or more
32 of the Apartments uninhabitable—the resultant insurance proceeds shall
33 be paid directly to the Insurance Trustee, upon the same terms and
34 conditions as specified above in Section 11.1(a)(2). Such proceeds shall
35 be held in trust for the benefit of all Owners and, in the case of
36 encumbered Apartments, for the holders of first mortgages and the
37 trustees and beneficiaries under first deeds of trust, as their respective
38 interests shall then appear. Concurrently with the payment of any such
39 insurance proceeds to the Insurance Trustee, the Insurance Trustee, any
40 holder of a first mortgage, any trustee or beneficiary under a first deed of
41 trust, or the Board shall record in the Office of the Pima County Recorder
42 an affidavit which shall set forth the following:
43

- 44 (1) a statement that the destruction has occurred and the date
45 thereof;
46

1 (2) an identification of the Property by legal description or by
2 reference to the Plats
3

4 (3) a certification that the insurance proceeds have been paid to
5 the Insurance Trustee in accordance with this Declaration; and
6

7 (4) a certification to the affect that a copy of such affidavit has
8 been mailed to each of the Owners.
9

10 b. Decision to Repair or Rebuild and Consequences Thereof. At any time
11 within sixty (60) days after the recordation of such affidavit, a special
12 meeting of the Members of the Association shall be convened for the
13 purpose of determining whether or not the damaged or destroyed portions
14 of the Property shall be repaired or rebuilt and for the resolution of any
15 corollary business which may arise at such meeting. If, at such special
16 meeting, two-thirds (2/3) of all the Owners [as contrasted to two-thirds
17 (2/3) of the Owners present and voting] decide to repair or rebuild the
18 damaged or destroyed portions of the Property, then the Board, as soon
19 as practicable, shall enter into a contract for a specific maximum dollar
20 amount with a licensed contractor or contractors. Such repair or
21 rebuilding shall be accomplished pursuant to the terms of, and in the
22 same manner as provided in Section 11.1(a)(2).
23

24 Upon execution of such contract, an executed copy (or a memorandum
25 thereof) shall be recorded in the Office of the Pima County Recorder
26 within sixty (60) days immediately following the date of such execution
27 subject, however, to such extensions of time as may be granted by order
28 of the Superior Court of the State of Arizona upon applications filed or
29 made to said Court for such extensions by the Board as it, in its sole
30 discretion, may deem appropriate or necessary.
31

32 If such contract (or a memorandum thereof) is recorded within such
33 specified time, the Board shall levy a Special Assessment to make up
34 such deficiency, if any, as may exist between the total of available
35 insurance proceeds and the contract price for such repair or rebuilding.
36 The vote of the Owners for the levy of this Special Assessment is not
37 required. Such Special Assessment shall be levied against the Owners in
38 proportion to their Percentage Shares in the Common Elements. The
39 Special Assessments provided for herein shall be enforceable in
40 accordance with the terms set forth in Article VIII of this Declaration. All
41 insurance proceeds, including any portion thereof subject to the liens of
42 mortgages and/or to deeds of trust, shall be used for such repair or
43 rebuilding.
44

45 If the amount received by the Board or Insurance Trustee resulting from
46 such insurance proceeds and such Special Assessments shall exceed

1 the cost of repair and rebuilding, then following the completion of such
2 repair and rebuilding, the excess shall be paid over to the respective
3 Owners and to the holders of first mortgage liens and the trustees and
4 beneficiaries under first deeds of trust, as their respective interests
5 appear, in proportion to each Owner's respective Percentage Share in the
6 Common Elements.
7

- 8 c. Decision not to Repair or Rebuild and the Consequences thereof
9 including Termination. If, at such special meeting of the Members of the
10 Association provided for in the first paragraph of Section 11.2(b), two-
11 thirds (2/3) of all the Owners [as contrasted to two-thirds (2/3) of the
12 Owners present and voting] determine not to repair or rebuild, or if a copy
13 or memorandum of such construction contract is not recorded within said
14 specified time, as the same may have been extended, then the Insurance
15 Trustee shall divide the insurance proceeds in as many shares as there
16 are Apartments. Said shares shall be in the same proportion as the
17 Owners' respective Percentage Shares in the Common Elements.
18

19 The Insurance Trustee shall first apply each Owner's share of the
20 insurance proceeds to the payment and satisfaction of each mortgage,
21 deed of trust, or other encumbrance or lien of record with respect to any
22 Apartment. If the Insurance Trustee does not have adequate funds to pay
23 and satisfy each such mortgage, deed of trust, or other encumbrance or
24 lien on any Apartment, the deficiency shall be paid by the applicable
25 Owner but only in an amount that will be equal to the difference between
26 the insurance proceeds payable with respect to his/her Apartment and the
27 amount secured by the applicable mortgage, deed of trust, or other
28 encumbrance or lien. If any Owner shall fail to pay such deficiency, such
29 deficiency may be advanced by the Association (acting by and through
30 the Board). Interest at the prime rate, plus two percent (2%), as then set
31 by that bank doing business in Arizona which the Board designates for
32 this purpose, shall be due and payable by such Owner to the Association
33 upon demand, and payment thereof shall be secured by the lien provided
34 for in Article VIII of this Declaration.
35

36 After all the mortgages, deeds of trust, or other encumbrances or liens
37 shall have been fully satisfied and released of record, and after all deeds
38 of reconveyance shall have been executed and recorded, the Board shall
39 forthwith execute, acknowledge, and record, as attorney-in-fact for all
40 Owners, a declaration withdrawing the Property from the existing property
41 regime. Upon removal of the Property from said regime, the insurance
42 shares referred to above, or the remainder thereof, if any, shall be
43 distributed to the eligible Owners.
44

45 At this point, each Owner shall appoint, make, and constitute each
46 member of the Board, then in office, as attorney-in-fact for such Owner

1 with full power and authority to remove the Property from the existing
2 property regime under circumstances hereinabove set forth in Section
3 11.2(a). Such appointment and agency shall be irrevocable.
4

5 **ARTICLE XII: COMPLIANCE, ENFORCEMENT, AND NONWAIVER**
6

7 **12.1. Compliance.** All Owners and their families, tenants, lessees, and/or
8 invitees are subject to the provisions of the Governing Documents and the decisions
9 which the Board may from time to time issue. Each and every person by accepting a
10 Deed to an Apartment in Villa Catalina (or by signing a lease) signifies by such act
11 his/her acceptance and ratification of the Governing Documents.
12

13
14 **12.2. Relief for Noncompliance.** The Association, the Board, or any aggrieved
15 Owner may seek relief for any violation of or noncompliance with the Association's
16 governing documents. The Board, upon receipt of written complaints or reports of
17 alleged violations, shall in executive session seek to determine if there is probable
18 cause to believe the alleged violations occurred. If it so determined, the Board shall
19 proceed as follows:
20

- 21 a. **Informal Procedure.** The Board shall seek by informal means to find a
22 satisfactory solution to the problem.
23
24 b. **Formal Procedure.** If unable to resolve the issue informally, the Board shall
25 issue a written notice to the respondent for a hearing before the Board.
26 The notice shall clearly state the acts or omissions constituting the
27 alleged violation, the time and place of the hearing, and the right of the
28 respondent, if he or she so chooses, to be represented at the hearing by
29 legal counsel. The hearing shall be closed to all Members of the
30 Association unless the respondent requests an open hearing, and shall
31 be conducted in a manner conducive to fairness and in accordance with
32 due process. The minutes of the session shall record the results of the
33 hearing and the sanctions, if any, imposed.
34
35

36 **12.3. Remedies.** Except for nonpayment of Assessments, which shall be
37 handled as described in Article VIII, the Board shall proceed as indicated below:
38

- 39 a. **Emergency Action.** If the Board in its sole discretion determines that a
40 violation of the Governing Documents has resulted, or is likely to result in
41 injury to any person or in irreparable damage to property, the Board,
42 without giving prior notice, may:
43

- 44 (1) Seek by appropriate action, either at law or in equity, to enjoin or
45 abate the continuance of the violation, or
46

1 (2) Enter upon any Apartment or any portion of the Property to remove,
2 repair, or otherwise abate the condition or thing in violation. In so doing,
3 the Association, the Board or its representatives shall not be deemed
4 liable for or guilty of trespass.
5

6 b. Nonemergency Action. In nonemergency situations the Board shall act
7 only (1) after having given notice of and opportunity for a hearing, (2) after
8 having concluded that the alleged violation occurred (as a result of a
9 hearing or otherwise if the opportunity for a hearing was not taken), or (3)
10 after steps to end or cure the violation or violations have failed.
11

12 c. Action By the Board. Upon satisfaction of the above conditions, the
13 Board on behalf of the Association may take one or more of the following
14 actions:
15

16 (1) Issue cease and desist orders to the concerned party or parties;
17

18 (2) Enjoin, abate, or remedy by appropriate legal action the
19 continuance of any violation, with the attorney fees and costs incurred
20 being paid by the substantially prevailing party or parties;
21

22 (3) Enter upon any Apartment or part of the Property where a violation
23 has occurred in order to remove or otherwise abate the violation (In so
24 doing, the Association, the Board, or its representatives shall not be
25 deemed liable for or guilty of trespass);
26

27 (4) Suspend or condition the right to vote of any responsible Owner
28 and condition his/her use of common recreational facilities;
29

30 (5) File in the Office of the Pima County Recorder a notice of
31 noncompliance encumbering the Apartment of the responsible Owner; or
32

33 (6) Levy reasonable charges in the form of a fine or a Reimbursement
34 Assessment against any responsible Owner.
35

36 d. Arbitration. As an alternative to any action authorized by Section
37 12.3(c)(2), the Board may submit any violation or issue to arbitration by a
38 third party provided all parties agree to do so.
39

40 e. Remedies Cumulative. The remedies referred to in this Section 12.3 shall
41 be cumulative and not exclusive.
42

43 **12.4. Attorney Fees**. The Association may employ an attorney in order to
44 enforce compliance with or to compel the performance of the specific terms and
45 conditions set forth in this Declaration. If an attorney is employed for such purpose, the
46 Owners in violation shall pay the reasonable Attorney's fees and costs incurred by the

1 Association as well as to pay any other amounts arising from the pursuit of any relief or
2 remedy sought against the cited Owner.

3
4 **12.5. Nonwaiver.** Failure by the Association or the Board to enforce any
5 Covenant, Condition, Restriction, Rule, or Procedure contained in the Governing
6 Documents shall in no event be deemed a waiver of the right to do so thereafter.
7

8
9 **ARTICLE XIII: GENERAL PROVISIONS**

10
11 **13.1. Interpretation of Declaration.**

- 12
13 a. This Declaration and any Amendments thereto shall be subject to all
14 applicable governmental ordinances and regulations and shall be
15 governed by the laws of the State of Arizona. The violation of any state,
16 municipal, or local law, ordinance, or regulation pertaining to the
17 ownership, occupation, or use of any property within Villa Catalina is
18 hereby declared a violation of this Declaration and shall be subject to any
19 and all of the enforcement procedures set forth herein or in the Bylaws.
20
21 b. The provisions of this Declaration shall be liberally construed to achieve
22 their purpose of creating a uniform plan for the development and
23 operation of the Property. If there is any conflict among or between this
24 Declaration, the Articles, Bylaws, and/or the Rules and Procedures, the
25 provisions of this Declaration shall prevail; thereafter, priority shall be
26 given first to the Articles, then to the Bylaws, and last to the Rules and
27 Procedures.
28
29 c. Each of the provisions of this Declaration shall be deemed independent
30 and severable, and the invalidity or partial invalidity of any provision or
31 portion thereof, whether by Court order or judgment or otherwise, shall
32 not affect the validity or enforceability of any other provision.
33
34 d. All captions and titles used in this Declaration are intended solely for
35 convenience or reference purposes only and in no way define, limit, or
36 describe the true intent and meaning of the provision hereof.
37

38 **13.2. Annual Accounting.** The Association shall maintain books of account
39 listing all its receipts and expenditures, and the Board shall cause an audit, review or
40 compilation to be made annually by an independent public accountant as of the close of
41 each fiscal year, and shall deliver a copy of such accounting to each Owner upon
42 request within one hundred and eighty (180) days after the end of each fiscal year. In
43 addition, each Owner shall be entitled at reasonable times to inspect the books of the
44 Association and to have such books examined at such Owner's expense by an attorney
45 or accountant representing such Owner; and each Owner may make excerpts or copies

1 of such books or portions thereof, and at his/her own expense shall have the right to
2 have the books of account independently audited by a public accountant.

3
4 **13.3. Owner Bound.** No Owner may exempt himself or herself from liability for
5 his/her fair and equitable contribution towards the Common Expenses by waiver and
6 nonuse of the General Common Elements and common facilities or by the
7 abandonment of his/her Apartment.

8
9 **13.4. Binding Effect.** By acceptance of a Deed or by acquiring any ownership
10 interest in any of the Property included within this Declaration, each person or entity, for
11 himself (herself, or itself) and for his (her, or its) heirs, personal representatives,
12 successors, lessees, tenants, transferees, and assignees, binds himself (herself, or
13 itself), his (hers, or its) heirs, personal representatives, successors, lessees, tenants,
14 transferees, and assignees, to all of the provisions, covenants, conditions, restrictions,
15 rules, and procedures now or hereafter imposed by this Declaration and by any
16 Amendments thereto. In addition, each such person or entity by so doing hereby
17 acknowledges that this Declaration sets forth a general scheme for the governance and
18 use of the real property covered thereby and hereby evidences his (her, or its) interest
19 in seeing that all the covenants, conditions, restrictions, rules, and procedures
20 contained herein shall run with the land and be binding upon all subsequent and future
21 Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each
22 such person or entity fully understands and acknowledges that this Declaration shall be
23 mutually beneficial, prohibitive, and enforceable by and upon present and future
24 Owners.

25
26 **13.5. Delivery of Notices.** Unless otherwise required by applicable law, any
27 notice required or desired to be given under the authority of this Declaration shall be
28 made in writing and shall be deemed served upon hand-delivery or by electronic mail to
29 the addressee; or, if mailed, it shall be deemed delivered forty-eight (48) hours after
30 deposit (certified mail, return receipt requested) in a depository of the United States
31 Mail. Each Owner shall promptly notify the Secretary of the Association whenever
32 his/her address changes.

33
34 **13.6. Availability of Association Documents.** During normal business hours, or
35 under other reasonable circumstances, the Association shall make available for
36 inspection by Owners, prospective purchasers of Apartments, and lenders who have
37 financed or may reasonably be expected to finance the purchase of an Apartment or
38 Apartments in the Property, current copies of the Governing Documents. Owner may
39 review the books and records of the Association in accordance with the pertinent
40 provisions in the Arizona Non-Profit Corporations Act.

41
42 **13.7. Amendment.**

- 43
44 a. This Declaration may be amended at any time by the affirmative vote of at
45 least sixty-seven percent (67%) of the Owners and Eligible Mortgage
46 Holders as set forth in Section 8.11(e). Any amendment to this

1 Declaration shall be evidenced by a written document signed by the
2 President and Secretary of the Association, attesting that the requisite
3 number of Owners consented to such amendment; and shall become
4 effective on the date the amendment is recorded at the office of the
5 Recorder of Pima County, Arizona.
6

- 7 b. A process will be undertaken by the Board to correct the recorded
8 instruments allocating the use of garage spaces to designated
9 Apartments. After the necessary documents are executed and recorded,
10 the Board hereby is authorized to adopt and record a Certificate of
11 Amendment to this Declaration to revise all pertinent provisions pertaining
12 to garage allocations. The approval of the Owners shall not be required.
13

14 **13.8. Termination of Regime.** To terminate this property regime it shall be
15 necessary to obtain the written consent of at least eighty percent (80%) of all the
16 Owners in Villa Catalina as well as the written consent of at least fifty-one percent (51%)
17 of the Eligible Mortgage Holders.
18

19
20 **CERTIFICATION**
21

22 The undersigned, being the Chairman and Secretary of Villa Catalina
23 Homeowners' Association, Inc., do hereby certify that the foregoing Amended and
24 Restated Declaration of Covenants, Conditions, and Restrictions for Villa. Catalina
25 Apartment Homes has been approved by the affirmative written consent of sixty-seven
26 (67%) of the Owners and that there are no Eligible Mortgage Holders entitled to notice.
27

28 VILLA CATALINA HOMEOWNERS'
29 ASSOCIATION, INC., an Arizona non-profit
30 corporation
31

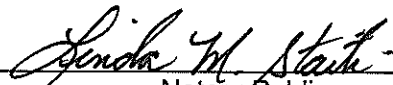
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33 By: 
34 David Updegraff, Chairman
35

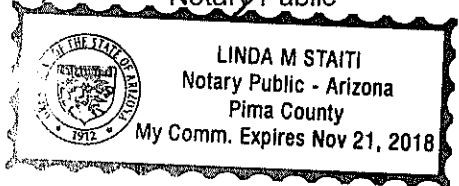
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37 By: 
38 Mary Kay Pierce, Secretary
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STATE OF ARIZONA)
 : ss.
County of Pima)


ACKNOWLEDGED before me this 14th day of September, 2018, by David Updegraff as Chairman of VILLA CATALINA HOMEOWNERS' ASSOCIATION, INC.

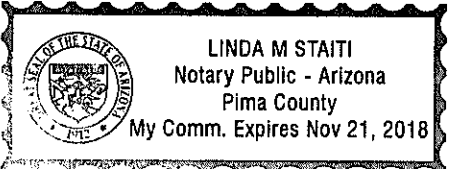


Notary Public


STATE OF ARIZONA)
 : ss.
County of Pima)

ACKNOWLEDGED before me this 14th day of September, 2018, by Mary Kay Pierce as Secretary of VILLA CATALINA HOMEOWNERS' ASSOCIATION, INC.



Notary Public


1
2
3
4 **EXHIBIT A**
5

6 Legal Description of the Property known as VILLA CATALINA, UNIT I:
7

8 The westerly part of Villa Catalina, being that portion of the northeast quarter of the
9 southeast quarter of Section 8, Township 14 South of Range 14 East G. & S. R. B. & M., Pima
10 County Arizona, described as follows, to-wit:

11
12 Beginning at a point in the southerly line of East 6th Street Extension, as the same was
13 established according to the road map of record in the office of the County Recorder of Pima
14 County, Arizona, in Book 1 of Road Maps at page 90, which point is distant 355.81 feet westerly
15 from the easterly line of said Section 8: run thence westerly along the said southerly line of East
16 6th Street, a distance of 325.71 feet to a point distant 7 feet westerly of the easterly line of that
17 certain 20 foot alley dedicated by deed recorded in Book 231 of Deeds at Page 80; thence
18 southerly, parallel to the easterly line of said alley, a distance of 305.5 feet, more or less, to a
19 point in the northerly line of Casas Bonitas Subdivision, according to the map or plat thereof, of
20 record in Book 8 of Maps and Plats at page 28;

21
22 thence easterly along the northerly line of said Casas Bonitas Sub-division, a distance of 325.79
23 feet, more or less, to a point distant 355.89 feet from the easterly line of said Section 8; thence
24 northerly a distance of 305.49 feet, more or less, to the point of beginning; also that certain
25 parcel measuring 40 feet by 52 feet EXCEPTED from the easterly part of Villa Catalina.
26

27 Property known as VILLA CATALINA, UNIT II, TO WIT:
28

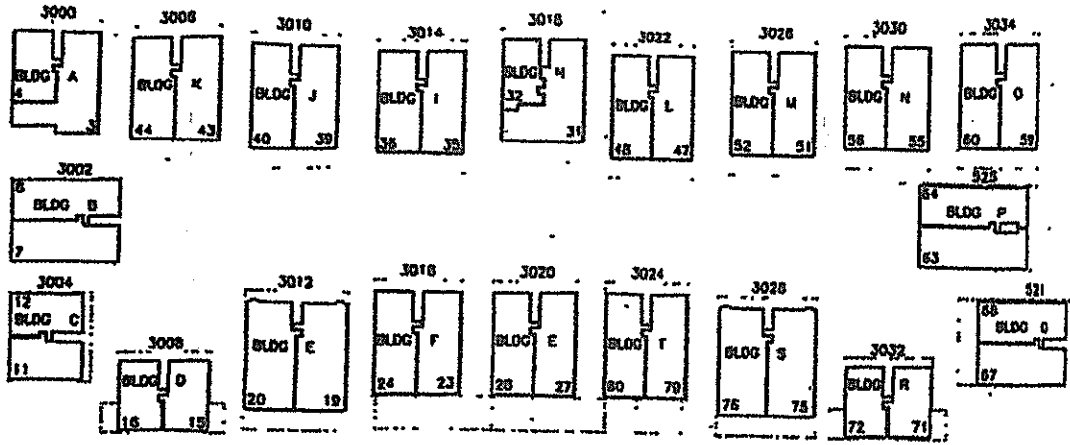
29 The easterly part of Villa Catalina, being that portion of the northeast Quarter of the
30 Southeast Quarter of Section 8, Township 14 South of Range 14 East, G. & S. R. B. & M., Pima
31 County, Arizona, described as follows, to-wit: Beginning at a point on the southerly line of East
32 Sixth Street extension as the same was established according to the road map recorded in the
33 office of the County Recorder of Pima, County, Arizona, , in Book 1 of Road Maps at page 90,
34 which point is distant 30 feet westerly from the easterly line of said Section 8; thence westerly
35 along the said southerly line of East Sixth Street, a distance of 325.81 feet to a point;
36

37 Thence southerly a distance of 305.49 feet, more or less, to a point in the northerly line
38 of Casas Bonitas Subdivision, according to the map or plat thereof of record to the Office of the
39 County Recorder of Pima county, Arizona, in Book 8 of Maps and Plats at page 28 thereof, said
40 point being 355.89 feet westerly from tie easterly line of said Section 8;
41

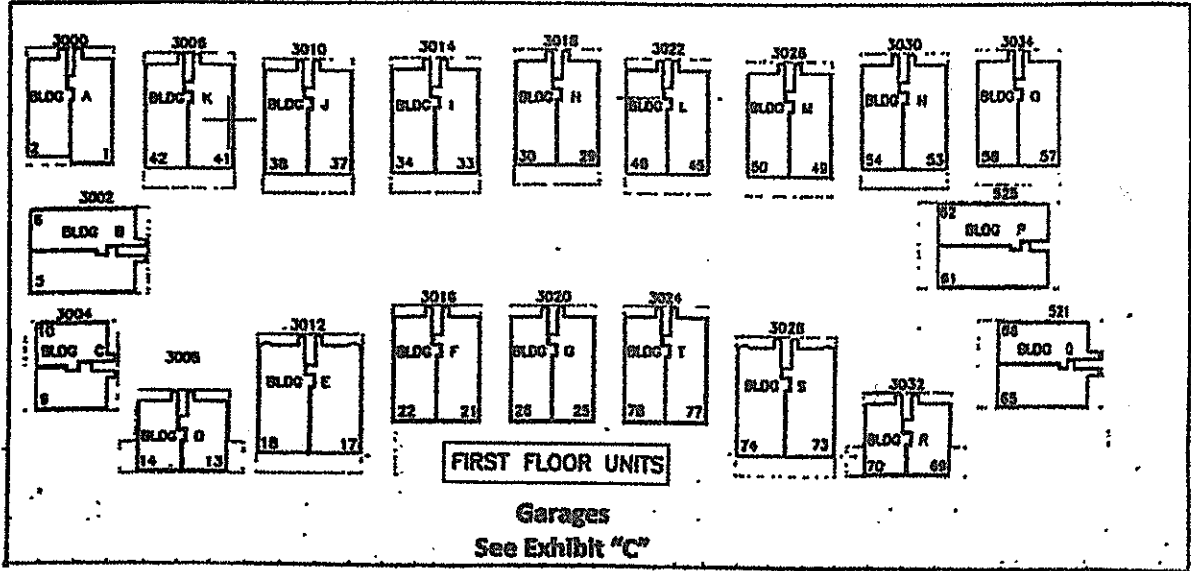
42 Thence easterly along the northerly line of said Casas Bonitas Subdivision, a distance of
43 325.89 feet to a point on the westerly Line of Country Club Road, said point being 30 feet
44 westerly from the easterly line of said Section 8; thence northerly a distance of 305.41 feet to
45 the point of beginning; EXCEPT the south 40 feet of the west 52 feet thereof.
46

**EXHIBIT B: PLAT OF VILLA CATALINA APARTMENT HOMES
WITH PERCENTAGE SHARE OF COMMON EXPENSES**

EXHIBIT B
RESTATE MASTER DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
VILLA CATALINA APARTMENT HOMES



SECOND FLOOR UNITS
EAST SIXTH STREET



NORTH COUNTRY CLUB ROAD

PERCENTAGE SHARE OF COMMON EXPENSES

Building	Unit	Percent	Building	Unit	Percent	Building	Unit	Percent	Building	Unit	Percent
3000 A	1	.012803	3016 F	21	.012803	3006 K	41	.012803	525 P	61	.013788
	2	.012015		22	.012803		42	.012803		62	.013788
	3	.015659		23	.012803		43	.012803		63	.013788
	4	.008962		24	.012803		44	.012803		64	.013788
3002 B	5	.012803	3020 G	25	.012803	3022 L	45	.012803	521 Q	65	.012803
	6	.012803		26	.012803		46	.012803		66	.012803
	7	.012803		27	.012803		47	.012803		67	.012803
	8	.012803		28	.012803		48	.012803		68	.012803
3004 C	9	.008962	3018 H	29	.012803	3026 M	49	.012803	3032 R	69	.008962
	10	.008962		30	.012803		50	.012803		70	.008962
	11	.008962		31	.017825		51	.012803		71	.008962
	12	.008962		32	.007780		52	.012803		72	.008962
3008 D	13	.008962	3014 I	33	.012803	3030 N	53	.012803	3028 S	73	.015265
	14	.008962		34	.012803		54	.012803		74	.015265
	15	.008962		35	.012803		55	.012803		75	.015265
	16	.008962		36	.012803		56	.012803		76	.015265
3012 E	17	.015265	3010 J	37	.012803	3034 O	57	.012803	3024 T	77	.012803
	18	.015265		38	.012803		58	.012803		78	.012803
	19	.015265		39	.012803		59	.012803		79	.012803
	20	.015265		40	.012803		60	.012803		80	.012803