

**AMENDED AND RESTATED BYLAWS  
OF  
COLONIA ENCANTADA HOMEOWNERS ASSOCIATION**

**ARTICLE I  
NAME AND LOCATION**

Section 1. Name.

The name of the corporation is:

COLONIA ENCANTADA HOMEOWNERS ASSOCIATION

hereafter referred to as the "Association."

Section 2. Location.

The principal office of the Corporation shall be located at 7500 McCormick Parkway, Scottsdale, Maricopa County, Arizona, 85258.

**ARTICLE II  
DEFINITIONS**

Section 1. Association.

"Association" shall mean and refer to Colonia Encantada Homeowners Association, an Arizona nonprofit corporation, its successors and assigns.

Section 2. Common Area.

"Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Homeowners.

Section 3. Declaration.

"Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Properties recorded in the Office of the County Recorder of Maricopa County, Arizona, as same may be amended from time to time.

Section 4. Lot.

"Lot" shall mean any separate parcel of real property shown upon any recorded subdivision map of the Properties, with the exception of the Common Area, the lots being numbered 1 through 79, inclusive. All of the Lots are presently improved so that "Lot" and "Unit" are synonymous. A Lot or Unit is deemed "Improved" when a single family residence has been completely constructed thereon. All of the Lots are presently improved.

Section 5. Unit.

“Unit” shall mean a single-family residence, numbered with the identical number of the lot upon which it is situated so that “Lot” and “Unit” are synonymous.

Section 6. Properties.

“Properties” shall mean and refer to that certain real property described in the Declaration of Covenants, Conditions and Restrictions, and such additions thereto as may hereafter be brought within the jurisdiction of the Association, which Properties include Common Areas and Lots.

Section 7. Homeowner, Member and Owner.

“Homeowner,” “Member,” and “Owner,” shall mean and refer to the record owner, whether one or more persons or entities, of equitable or beneficial title (or legal title if same as merged) of a Lot or Unit which is a part of the Properties including contract buyers, but excluding persons or entities who hold an interest in any Lot or Unit merely as security for the performance of an obligation and may be referred to in the masculine, feminine or neuter, any one of which shall be all inclusive of the others. Except as stated otherwise herein, “Homeowner” shall not include a lessee or tenant of a Unit.

### **ARTICLE III MEETING OF HOMEOWNERS**

Section 1. Annual Meeting.

An Annual Meeting of the Homeowners shall be held at 4:00 PM on the second or third Sunday of March of each year. A called meeting shall satisfy the requirement to hold an annual meeting, if a quorum shall not be present at the called meeting, in which case any called (or adjourned) meeting shall be adjourned for a time no later than the third Wednesday of the following month until a quorum shall be present or be represented. The Board of Directors may change the date of the annual meeting from time to time so long as each annual meeting is no later than thirteen (13) months after the last meeting. If the date for the annual meeting of the Homeowners is a legal holiday, the meeting shall be held at the same hour on the first day following which is not a legal holiday.

Section 2. Special Meeting.

A special meeting of the Homeowners may be called by the Board of Directors, or by Homeowners having at least one-tenth (1/10th) of the votes entitled to be cast at such meeting, or by Homeowners having at least one tenth (1/10th) of the votes actually cast at the last previous meeting, or by any two (2) directors (or by one (1) director, if only one (1) is then serving). A special meeting of the Homeowners maybe called by any one (1) director, whether there has been a lapse of thirteen (13) months since the last annual meeting and when a meeting date has not been fixed by the Superior Court of Maricopa County, State of Arizona.

Section 3. Notice of Meetings.

Written notice of each meeting of the Homeowners shall state the place, day and hour of the meeting and, in case of a special meeting, the purpose for which the meeting is called, and

shall be mailed or delivered not less than ten (10) or more than fifty (50) days before the date of the meeting. The mailing or delivery shall be at the direction of an officer of the Association or by the authority by which the meeting is called. If mailed, such notice shall be addressed to the Homeowner as the address appears on the records of the Association. Delivery shall be personal service or by deposit at the Association entry mail box of a Homeowner who is in residence at the time of notice.

Section 4. Quorum.

The presence at the meeting of Homeowners entitled to cast, or of proxies entitled to cast, one tenth (1/10) of the votes shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the Homeowners entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum, as aforesaid, shall be present or be represented.

Section 5. Proxies.

At all meetings of Homeowners, each Homeowner may vote in person or by proxy. Each proxy shall be only for the meeting designated and any reconvened meeting thereof, unless otherwise provided, but in no event for a period of more than one (1) year unless given for a valuable consideration. Each proxy shall be revocable and shall automatically cease upon conveyance by the Homeowner of his Lot or Unit. Each proxy shall be in writing, dated and filed with the Secretary of the Meeting at which it is to be voted.

Section 6. Conduct of Meeting.

The meeting of the Homeowners may be called to order by the President or by a Vice President acting for the President who shall call for the election of a Chairman of the Meeting to be elected by a show of hands or voice vote, unless a Homeowner shall call for a ballot. The Chairman of the Meeting shall assume the Chair and conduct the entire meeting, unless there shall be a motion involving the Chairman who shall then stand aside after election of a temporary Chairman of the Meeting or a permanent Chairman of the Meeting, as determined by a majority of the Homeowners present in person or by proxy.

**ARTICLE IV  
BOARD OF DIRECTORS AND OFFICERS**

Section 1. Number.

The number of Directors shall be not less than three (3) in number nor more than eleven (11) in number. Until changed, the number of directors shall be five (5) in number but the number may be fixed from time to time by an amendment to the Bylaws by the membership or by a vote of the Homeowners.

Section 2. Term of Office.

Directors will be elected to serve for a period of two (2) years, with two (2) Directors to be elected in even numbered years and with three (3) Directors to be elected in odd numbered

years. No Director may serve two successive terms, except when one of such terms occurs as the result of being appointed to fill the remainder of the unexpected term of a vacancy.

### Section 3. Nomination.

Nomination for election to the Board of Directors shall be made by a Nominating Committee and by nomination from the floor by an Homeowner in good standing and entitled to vote. The Nominating Committee shall consist of the Chairman and two or four more other Homeowners of the Association, none of whom shall be a member of the board of Directors. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Homeowners, to serve until the close of such annual meeting, which appointment shall be announced at each annual meeting. The Nominating Committee may, at the discretion of the Board of directors, serve as the judges of the election at any meeting of the Homeowners. The Nominating Committee shall make as many nominations for elections to the Board of Directors as it shall determine but not less than the number of vacancies which are to be filled.

### Section 4. Vacancy.

Any vacancy occurring in the Board of Directors may be filled by an affirmative vote of a majority of the remaining Directors, although there may be less than a quorum, or by a sole remaining Director, and the Director so chosen shall hold office until the next election of Directors, when his successor is elected and qualified. A newly created directorship shall be deemed to be a vacancy. If a vacancy exists at the time of an annual meeting of the Members, the vacancy shall be filled by the Members.

### Section 5. Election.

The election shall be by ballot. Cumulative vote is not permitted so that each Homeowner voting in person or by proxy shall cast one vote for the number of different nominees for the number of vacancies to be filled, that is, if three (3) vacancies are to be filled, then one (1) vote may be cast for each of three (3) different nominees. The nominees receiving the largest number of votes shall be the ones elected to fill the vacancies.

### Section 6. Removal.

A Director may be removed from office at any meeting of the Members of the Association by the vote of a majority of the Members present and entitled to vote at the meeting.

### Section 7. Compensation.

No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expense incurred in the performance of his duties.

## **ARTICLE V MEETING OF DIRECTORS**

### Section 1. Regular Meetings.

Regular meetings of the Board of Directors shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the Board of Directors. Except

that the Board of Directors may vote to cancel any meeting if there is expected to be no business requiring Board attention. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

#### Section 2. Special Meetings.

Special Meetings of the Board of Directors shall be held when called by the President of the Association, or by any two directors, after not less than three (3) days notice to each director, unless such notice is waived by all directors.

#### Section 3. Quorum.

A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority, of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board of Directors.

#### Section 4. Action Taken Without a Meeting.

Action may be taken by written consent of all directors and telephone meetings may be held, if all members of the Board of Directors are within hearing of each other. Such action shall be taken in conformance with the Laws of the State of Arizona.

### **ARTICLE VI POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

#### Section 1. Powers and Duties.

The Board of Directors shall have the power and duty:

(a) To exercise for the Association all powers and duties vested in or delegated to the Board of Directors by the Homeowners;

(b) To manage the property of the Association for the benefit of the Homeowners;

(c) To adopt and publish rules and regulations governing the use of the Common area and facilities and the personal conduct of the Homeowners and their guests thereon, and to establish penalties for the infraction thereof;

(d) To suspend the voting rights and right to use of the Common Area facilities of a Homeowner and any person claiming right of use and enjoyment under such Homeowner during any period in which such Homeowner shall be in default in the payment of any assessment levied by the Association, such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days as a fine for infraction of published rules and regulations;

(e) To declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from two (2) consecutive regular meetings of the Board of

Directors without an acceptable excuse, at which time the Board of Directors shall appoint a successor for that member of the Board of Directors.

(f) To employ a manager, independent contractors, or such other employees as they deem necessary, and to prescribe their duties; and

(g) To delegate such duty and authority to the Manager as may be determined from time to time, except for the duty and authority required to be carried out by a Director or Officer, for example, without limitation, the authority and duty of the Treasurer or an Assistant Treasurer to sign checks of the Association.

(h) To prepare an Annual Budget for the ensuing fiscal year (January 1 through December 31) for approval by the homeowners present at an Annual Budget Meeting called by the Board of Directors for the first or second Sunday of December of each calendar year. Said budget shall clearly specify all operating and maintenance costs and the estimated costs of all capital improvement projects proposed for the ensuing fiscal year; and

(i) To establish the homeowners' monthly assessment consistent with the operating and capital costs within the Annual Budget approved by the homeowners; and, in the event the approved capital expenses will, at the Board's discretion, excessively deplete the Reserve Fund, to establish the amount of a special assessment covering an appropriate portion of the cost(s) of the approved capital improvement project(s), with any such special assessment subject to a formal vote of all homeowners; and

(j) To manage the affairs and business of the Association in strict accord with the Annual Budget approved by the homeowners, and shall not undertake any capital improvement project not explicitly identified in said approved budget, except for emergency-induced requirements.

## Section 2. Manager.

In addition to the powers and duties listed, the Board of Directors shall delegate to the Manager such authority as may be necessary for the Homeowners to have the greatest enjoyment use of their property and the Common Areas including, without limitation:

(a) To cause to be kept a complete record of the acts of the Board of Directors and corporate affairs and to present a statement thereof to the Homeowners at the annual meeting of the Homeowners, or at any special meeting when such statement is requested in writing by one-tenth (1/10) of the Homeowners who are entitled to vote at the last annual meeting;

(b) To supervise all independent contractors and employees of this Association, and to see that their duties are properly performed;

(c) To adopt the amount of the monthly assessment against each Lot established by the Board of Directors in accord with the approved Annual Budget, to send written notice thereof to each homeowner at least ten (10) days prior to the start of the new fiscal year, and to enforce collection thereof by whatever action may be necessary;

(d) To issue, or cause to be issued a certificate of the status of any assessments for which issue a reasonable charge may be made by the Board of Directors;

(e) To procure and maintain adequate liability and hazard insurance on the property owned by the Association;

(f) To cause any officers and employees having fiscal responsibilities to be bonded, as it may deem appropriate; and

(g) To cause the Common Area to be properly maintained and the front portion of the property of each lot to be properly maintained by the Association, as required, and by each Homeowner, as required, with the Association to be reimbursed for any maintenance performed by the Association which was outside of the obligation of the Association.

#### Section 3. Authority of Board of Directors.

The authority of the Board of Directors shall be limited in any manner as provided in the Declaration, in the Articles of Incorporation or in these Bylaws.

### **ARTICLE VII OFFICERS**

#### Section 1. Officers.

The officers of this Association shall be a president, a vice-president, a secretary and a treasurer, who shall at all times be members of the Board of Directors, and such other officers as the Board of Directors may appoint from time to time by a majority vote of the Board of Directors.

#### Section 2. Election of Officers.

The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Homeowners.

#### Section 3. Term.

The officers of this Association shall be elected annually by the Board of Directors and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

#### Section 4. Special Appointments.

The Board of Directors elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as from time to time may be determined by the Board of Directors.

#### Section 5. Resignation and Removal.

Any officer may be removed from office with or without cause by the Board of Directors. Any officer may resign at any time by giving written notice to the Board of Directors, the president or the secretary. Such resignation shall take effect on the date or receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies.

A vacancy in any office may be filled by appointment by the Board of Directors. The replaced officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaced.

Section 7. Multiple Offices.

The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article or when serving as an assistant in more than one office.

Section 8. Duties.

The duties of the officers are as follows:

(a) President. The President is the Chief Executive Officer of the Association. The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board of Directors are carried out; shall sign all leases, mortgages, deeds, contracts and other written instruments which constitute obligations of the Association.

(b) Vice President. The vice-president shall act in the place and stead of the president in the event of the absence of the president or the inability or refusal of the president to act and the vice president shall exercise and discharge such other duties as may be required by the Board of Directors.

(c) Secretary. The secretary shall record the votes and keep the minutes of all meetings and proceeding of the Board of Directors and of the Homeowners; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board of Directors and of the Homeowners; keep appropriate current records of the Association including a roster together with their addresses; and shall perform such other duties as required by the Board of Directors.

(d) Treasurer. The treasurer shall receive and deposit in appropriate bank accounts monies of the Association; shall disburse such funds as directed and approved by the Board of Directors or the Homeowners; shall sign all checks and promissory notes of the Association (although other director and officers may be authorized signators); shall keep or cause to be kept proper books of account; shall cooperate with the Audit Committee and with other persons as directed by the Board of Directors or the Homeowners regarding review of records and financial reports including financial reports otherwise required to be furnished by the treasurer; shall cause an annual review in cooperation with the Audit Committee; shall prepare, or cause to be prepared, an annual budget to be submitted to the Homeowners; shall furnish annual financial



reports and appropriate interim financial reports to the Homeowners on demand; shall deliver to the Homeowners any other financial information which may be ordered by the Board of Directors or by the Homeowners; and shall perform other duties delegated by the Board of Directors or by the Homeowners.

## **ARTICLE VIII COMMITTEES**

The Board of Directors shall appoint an Architectural Committee, as provided in the Declaration, and shall appoint a Nominating Committee, as provided in these Bylaws. The Board of Directors shall appoint an Audit Committee consisting of two or more members, none of whom shall be a member of the Board of Directors nor shall have been a member of the Board of Directors for at least one (1) year previous to the day of appointment. In addition, the Board of Directors may appoint other committees including, but not limited to, an Advisory Board, a Landscape Committee and a Legal Committee, as deemed appropriate in carrying out its purpose.

## **ARTICLE IX BOOKS AND RECORDS**

The annual statement of financial condition and statement of income and expenses shall be prepared by the Manager, and reviewed by the Treasurer before such statements are presented to the Homeowners at the Annual Meeting. Whenever further analysis and review of the Association's finances is deemed appropriate, the Board may appoint an Audit Committee to undertake such evaluation. The Audit Committee shall consist of two (2) or three (3) members of the Association with accounting or financial analysis experience, but who are not Directors, and will serve until the Committee is disbanded or successors have been appointed by the Board. If warranted, upon recommendation of the Audit Committee, the Board may employ a Certified Public Accountant to perform an independent formal review and audit of the Association's financial condition. All members of the Board, the Manager, employees, other committee members and Homeowners shall cooperate with the Audit Committee and Certified Public Accountant, if such shall exist, in all matters pertaining to any review of the books and records of the Association. Financial reports shall be available to the Homeowners on demand at reasonable times.

## **ARTICLE X ASSESSMENTS**

As more fully provided in the Declaration, each Homeowner is obligated to pay the Association annual, monthly and special assessments which are secured by, a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due, shall be delinquent and shall be enforced pursuant to the provisions of the Declaration.

**ARTICLE XI  
CORPORATE SEAL**

The Association shall have a seal in a form approved by the Board of Directors. Failure to use the seal shall not invalidate any document that would otherwise be valid.

**ARTICLE XII  
MISCELLANEOUS**

**Section 1. Amendments.**

These Bylaws may be amended by the Homeowners by a majority vote of the Homeowners present and voting in person or by Proxy at any meeting and may be amended by a majority vote of the Board of Directors at a meeting thereof specifically called for that purpose, except when such amendment would be contrary to the Articles of Incorporation or the Declaration or contrary to a Resolution of the Homeowners prohibiting an amendment, alteration, rescission or change to the provision attempted to be acted upon by the Board of Directors.

**Section 2. Conflicting Documents.**

In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles of Incorporation shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

**Section 3. Architectural Control.**

Neither the Architectural Control Committee nor the Board of Directors shall have the authority to change the existing architectural scheme and style of the structures, any colors of stucco, trim awnings, cement, doors, wrought iron, driveways, tile or other standards which have been established, without the approval of a two-thirds (2/3) majority of the Homeowners present in person or by proxy and entitled to vote at a meeting called for that purpose. This provision shall not be subject to amendment by the Board of Directors.

**Section 4. Fiscal Year.**

The fiscal year of the Association shall be the calendar year.

IN WITNESS WHEREOF, I, being the President of Colonia Encantada Homeowners Association have hereunto set my hand this 10 day of April, 2009

\_\_\_\_\_  
President

## CERTIFICATION

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting Secretary of COLONIA ENCANTADA HOMEOWNERS ASSOCIATION, an Arizona non-profit corporation; and

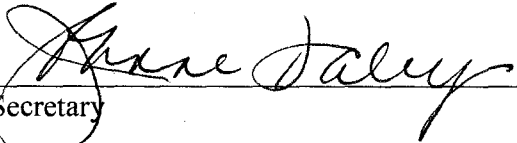
THAT the foregoing Bylaws constitute the Amended and Restated Bylaws of said Association, as duly adopted at a meeting of the Board of Directors thereof, held on the 7<sup>th</sup> day of March, 2004.

  
Secretary

## CERTIFICATION

The foregoing Bylaws were submitted to the Homeowners Association at a meeting thereof on the 7<sup>th</sup> day of March, 2004 and duly approved by a majority vote at such meeting.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association on this 10<sup>th</sup> day of April, 2009.

  
Secretary