

**RESTATED AND AMENDED BYLAWS OF
FOUNTAIN PARK HOMEOWNERS ASSOCIATION, INC.**

ARTICLE I: DEFINITIONS AND APPLICABILITY

Section 1.01 Definitions. The definitions used in these Bylaws are the same as those definitions used in the Declaration of Covenants, Conditions and Restrictions for Fountain Park, aka Acacia Park, recorded in Docket 11729 at Pages 761 through 789 in the Office of the Pima County Recorder as may be amended from time to time.

ARTICLE II: MEMBERSHIP AND VOTING

Section 2.01

- A. Qualifications. Each Owner of a Dwelling Unit, by virtue of being such an Owner and for so long as he/she is an Owner, is a Member of the Association. No Owner has more than one membership for each Lot owned.
- B. Membership in the Association. Each Owner is automatically a Member of the Association for so long as he/she owns a Lot.
- C. Transfer of Membership. Membership in the Association is appurtenant to ownership of the Dwelling Unit and shall not be transferred, pledged or alienated in any way except upon the transfer of ownership of the Dwelling Unit, and then only to the transferee. Any attempt to make a prohibited transfer is void. Any transfer of ownership of a Dwelling Unit automatically transfers membership to the new Owner.

Section 2.02 Voting Rights.

The Members are entitled to one vote for each Dwelling Unit owned. When more than one person holds an interest in any Dwelling Unit, all such persons are Members. The vote for each Dwelling Unit shall be exercised as the Owners of the Dwelling Unit agree, but no more than one vote shall be cast for any Dwelling Unit. If more than one Owner votes and they are in agreement, one vote will be counted. However, if they contradict one another, neither vote will be counted.

ARTICLE III: ADMINISTRATION

Section 3.01 Association Responsibilities. The Association is responsible for administering the Common Area(s) or the Common Property, approving the annual budget, establishing and collecting assessments together with such

other responsibilities as set forth in these Bylaws and the Declaration. The Association is an Arizona Non-profit Corporation.

Section 3.02 Annual Meetings of Owners. The annual meeting of the Owners shall be held during the first quarter of each year on a date and at a place located in Pima County, Arizona, as designated by the Board.

Section 3.03 Special Meetings of Owners. A special meeting of the Owners may be called at any reasonable time and place by the President, a majority of the Board, or the Owners having 25% of the total votes of the Association may provide a written request to the Board asking that the Board schedule a special meeting. Such request shall state the matters to be transacted at the special meeting. No business shall be transacted at a special meeting except as stated in the notice.

Section 3.04 Notice of Meeting. It is the duty of the Secretary to mail or deliver notice of each annual or special meeting to each Owner at the address reflected in the Association's records not less than ten (10) days nor more than fifty (50) days prior to the date set for the meeting. The notice shall state the purpose of the meeting, and the date, time, and place where it will be held. Notices are to be sent to the Lot address or any other address designated in writing by the Owner. Mailing of the notice shall be deemed as complete when the notice is deposited in the US Mail, Postage Prepaid, or upon delivery of such notice to each Owner.

Section 3.05 Quorum and Adjourned Meeting. The presence in person or by absentee ballot of 10% of Members entitled to vote constitutes a quorum for any action at any meeting except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If a quorum is not present in person or by absentee ballot at any meeting, the Owners entitled to vote have the power to adjourn the meeting from time to time. Notice of a subsequent meeting due to adjournment for failure to obtain quorum shall be noticed pursuant to Article III, Section 3.04 of these Bylaws. Except as otherwise provided, any action may be taken at any meeting of the Owners upon the affirmative vote of the Owners having a majority of the total votes present at such meeting either in person or by absentee ballot. The Owners present at a meeting at which a quorum is present at the time the meeting was called to order, may continue to do business until the meeting is adjourned, even if a quorum is no longer present because Owners have left the meeting.

Section 3.06. Agenda. The agenda at all annual meetings of the Association may include:

A. Call to Order/Introductions.

- B. Report of officers and committees.
- C. Election of Directors.
- D. Unfinished business.
- E. New business.
- F. Adjournment.

ARTICLE IV: BOARD OF DIRECTORS

Section 4.01 Number and Qualifications. The affairs of the Association shall be conducted by a Board of Directors, comprised of five persons who are Owners.

Section 4.02 Election and Term of Office. The Directors shall be elected at the annual meeting of the Members at which a quorum is present either in person or by absentee ballot. The terms of the Directors shall be for two years, or until a successor is elected and qualified and shall be staggered so that two directors are elected in even numbered years and three directors are elected in odd numbered years. Any director may be re-elected. Only one Owner of a Dwelling Unit may serve on the Board at any one time.

Prior to the Annual Meeting the Board shall appoint a nominating committee to obtain a list of names of Owners who desire to serve on the Board and be elected at that annual meeting. The nominating committee shall inform the Owners that it is accepting names of persons to serve on the Board. After the nominating committee has determined which Owners are willing to serve on the Board, it shall prepare a list of such names and submit it for a vote of the Owners. Nominations from the floor shall also be permitted at that meeting. Election of the Board shall be by secret written ballot. There shall be no cumulative voting. The nominating committee shall count and verify the ballots at the Annual meeting.

Section 4.03 Vacancies. Vacancies in the Board caused by any reason other than the removal of a Director by vote of the Owners, shall be filled by vote of the majority of the remaining Directors, even though there is less than a quorum. Each person elected or appointed to fill a vacancy shall serve as a Director until the completion of the term for which that Director has filled.

Section 4.04 Removal of Directors. At any duly called annual or special meeting any one or more of the Directors may be removed in accordance with A.R.S. § 33-1813, as may be amended from time to time. Directors who are subject to removal proceedings at a meeting will be provided an opportunity to speak at the meeting prior to the submission of in-person ballots and the counting of all ballots.

Section 4.05 Organization Meeting. The first meeting of a newly elected Board shall usually be held immediately after the annual membership meeting, but in no circumstances any later than 10 days of the election, at a date and place designated by the Directors. No notice of that meeting is required to be provided to the newly elected Directors for a legally constituted meeting to occur so long as a majority of the Board is present.

Section 4.06 Regular Meetings. At least two regular meetings of the Board shall be held during each fiscal year at a date, time and place designated by the Board. Notice of regular meetings of the Board shall be given to each Director, personally, by mail, fax, email or telephone at least three days before the date set for such meeting.

Section 4.07 Special Meetings. Special meetings of the Board may be called by the President on three days' notice to each Director. Notice may be given personally, by mail, telephone, fax or email and the notice shall state the date, time, place and purpose of the meeting. Special meetings of the Board may also be called on the written request of at least two Directors. The three-day notice requirement may be waived by a majority of the Directors or in instances of an emergency.

Section 4.08. Notice of Board Meetings. Notice of all Board meetings, except for meetings held in executive session, shall be provided to the Members in accordance with the requirements of the Planned Community Act.

Section 4.09 Quorum. At all meetings of the Board, a majority of the Directors constitutes a quorum for the transaction of business, and the act of the majority of the Directors present at a meeting at which a quorum is present constitutes an act of the Board.

Section 4.10 Powers and Authority of the Board. The Board has all the powers of an Arizona non-profit corporation, subject only to those limitations contained in the Association's Articles of Incorporation, these Bylaws and the Declaration. The Board has the power to do any and all lawful acts which may be authorized, required or permitted to be done by the Association under its Articles, these Bylaws and the Declaration, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association. The Board has the specific power and authority at any time to do the following:

- A. Provide care, upkeep, repair and supervision of the Common Areas and facilities. The Board shall determine all maintenance and repair expenses on the basis of at least three independent bids, whenever

possible; the bids shall be submitted by reputable contractors or persons in the business of performing such maintenance and repairs and the contractors shall be licensed if required by law. The Board shall select the best bid which is not necessarily the lowest bid, and the Board's decision in this regard shall be final and conclusive.

- B. Collect assessments from Owners.
- C. Designate and dismiss personnel necessary for the maintenance and operation of the common property.
- D. Maintain insurance coverage as provided for in the CC&Rs and use the insurance proceeds to repair and replace any damage or destruction of property, real or personal, covered by such insurance and pay any balance remaining out as required by the CC&Rs.
- E. Grant and convey easements and rights-of-way in accordance with the terms of the Declaration.
- F. Retain and pay for legal and accounting services necessary or proper in the operation of the Common Areas and facilities, enforcement of these Bylaws and the Declaration, or in any of the other duties or rights of the Association.
- G. Maintain and repair drainage and other easements, private pedestrian walkways, roads, roadways, roadway rights-of-way, parking lots, median strips, entry details, walls or other areas not maintained by governmental entities or Owners.
- H. Obtain or pay for, as the case may be, any other property, or services, which the Board deems necessary including monitoring services for the Common Areas and facilities.
- I. Enter at any reasonable time upon any exterior portion of any Dwelling Unit for the purpose of carrying out its duties and obligations for exterior maintenance and landscaping pursuant to Section 4.04 of the Declaration.
- J. Repair any damage to property owned by the Association in a good workmanlike manner in conformance with the original plans and specifications of the Association. Collect any costs incurred in connection with the repair to damage if caused by an Owner, which shall become an assessment against the Lot and may be collected in

the same manner as assessments are collected under the Declaration, including the imposition of late charges and the recordation of a lien against the Lot.

- K. Maintain all Common Areas in a neat and attractive manner.
- L. Construct new improvements or additions to the Common Areas or demolish or replace existing improvements.
- M. Assign parking spaces.
- N. Utilize water metered to the Dwelling Units for watering of the plants, trees and shrubs in the Common Area; provided, however, that the Association reimburses Owners on a fair and equitable basis for the cost of water so utilized.
- O. Select and employ a trust company, bank or professional property management company, in Tucson, Arizona, to collect and disburse funds of the Association and delegate other duties as directed by the Board.

Section 4.11 Management. The Board shall control, maintain, manage and improve the Common Property as provided in these Bylaws, the Articles and the Declaration. Such right and power of control and management shall be exclusive. In managing the Common Property, the Association accepts all responsibility for the control, maintenance and monitoring of such Common Property including but not limited to collecting and paying taxes on Common Areas as assessed by the County Assessor. Any agreement for professional management of the subdivision, or any management agreement, shall provide for termination by either party without cause and without payment of a termination fee on 90 days (or less if agreed upon by the parties) written notice and for termination with cause and without payment of a termination fee upon 30 days written notice.

Section 4.12 Taxes. The Association shall pay all taxes levied upon any property conveyed, leased or otherwise transferred to the Association, to the extent not assessed to Owners.

Section 4.13 Assessments. The Board shall levy and collect assessments pursuant to the provisions of these Bylaws and Articles V and IX of the Declaration.

- A. The Board shall keep books with detailed accounts affecting the administration of the Common Property specifying the maintenance,

repair and replacement expenses thereof and any other expenses incurred. The books and records are available for examination to any of the Owners at convenient hours on working days so long as such Owner complies with the provisions of the Arizona Non-profit Act. The Board shall provide the members with a copy of the annual financial report at the Annual Meeting of the Association. Upon the vote or written request of 25% of the Association's members, the Board shall appoint a committee of at least three members to audit the books or in the alternative shall contract with a private accounting firm to perform the audit.

Section 4.14 Authorized Payments by the Association. The Board has the exclusive authority to make payments out of the Association's funds for the benefit of each Owner; this authority includes but is not limited to the following:

- A. Water Service for the Common Areas and public rights of way in which landscaping has been planted.
- B. Utility service for the Common Areas.
- C. All goods, materials, supplies, labor, services, maintenance, repair, alterations, reconstruction and insurance which the Board is authorized to obtain and pay for pursuant to these Bylaws and the Declaration or which are authorized by the Owners for the convenient operation of the common property.
- D. Worker's Insurance to the extent necessary to comply with any applicable laws.
- E. Professional management services as provided herein, legal, accounting and other services contracted for by the Board if deemed necessary for the operation and maintenance of the Common Property, protection of any of the Common Property or in the best interest of the Owners.
- F. Maintenance, repair, and upkeep of the Association, except as provided in Article VI, Section 6.1 of the Declaration, which requires maintenance, repair, upkeep and repainting of Dwelling Units, including perimeter yard walls and any other improvements on a Lot is the sole responsibility of each Owner.
- G. All costs of enforcing the provisions of these Bylaws and the Declaration, including attorney fees and court costs, provided that all

costs incurred for the enforcement of the provisions of these Bylaws and the Declaration against any Owner shall be assessed specially against such Owners.

Section 4.15 Rules and Regulations. The Board has the power to adopt and publish rules and regulations governing the use of the Common Property, and such rules and regulations are binding upon the Members of the Association. Section 4.17 Damage and Destruction. In the case of damage by fire or other casualty to the Common Property or exteriors of Dwelling Units:

ARTICLE V: OFFICERS

Section 5.01 Designation. The principal officers of the Association are a President, a Vice President, a Secretary and a Treasurer, all of whom shall be Directors. Any number of offices, except the offices of President and Secretary, may be held by the same person, unless the Articles or these Bylaws otherwise provide.

Section 5.02 Election of Officers. The officers of the Association shall be elected annually by the Board at the organizational meeting of each new board and shall hold office at the pleasure of the Board.

Section 5.03 Removal of Officers; Vacancies. Upon an affirmative vote of a majority of the members of the Board, any officer may be removed, either with or without cause, and his/her successor elected to serve the remainder of the term at any regular meeting of the Board, or at any special meeting of the Board called for that purpose. Upon an affirmative vote of a majority of the members of the Board, a vacancy in any office may be filled by the Board, and the officer appointed to such vacancy shall serve the remainder of the term of the officer he replaces. If the office of President becomes vacant, the Vice President shall automatically fill the vacated office of President.

Section 5.04 President. The President shall be the chief executive officer of the Association. He/she shall preside at all meetings of the Association and Board. He/she shall have all of the general powers and duties which are usually vested in the office of President of a corporation, including but not limited to the power to appoint committees from among the Owners and/or residents from time to time as he/she may in his/her discretion decide is appropriate to assist in the conduct of the affairs of the Association.

Section 5.05 Vice President. The Vice President shall take the place of the President and perform his/her duties whenever the President is absent or unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to do so on an interim basis. The

Vice President shall also perform such other duties which are imposed upon him/her by the Board.

Section 5.06 Secretary. The Secretary shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association; the Secretary is responsible for maintaining all books and records as directed by the Board, and shall in general perform all the duties incident to the office of Secretary.

Section 5.07 Treasurer. The Treasurer is responsible for Association funds and securities and for keeping full and accurate accounts of all receipts and disbursements of the Association unless such function is delegated by the Board to a trust company, a bank or a professional property management company as authorized under Section 4.10 O of these Bylaws. The Treasurer is responsible for depositing all monies and other valuable effects which he/she personally collects in the name and to the credit of the Association in such depositories designated by the Board. All funds of the Association over which the Treasurer has direct control shall only be withdrawn upon his/her signature and the Board may require the signature of one other member of the Board for disbursement of Association funds.

ARTICLE VI: COMMITTEES

Section 6.01 General. The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution. Committees of the Board shall include any required by the Declaration, including the Architectural Committee.

Section 6.02 Committee Participation. A Member who has been found by the Board to be in violation of the terms of the Declaration, whether by non-payment of Assessments or otherwise, including by reason of violating applicable covenants, rules or regulations concerning improvements on such Member's property, may not remain a member of a committee of the Association if such violation remains uncured. Should such person be a committee member at the time such violation has been found to exist, then such person shall be deemed removed as a committee member ten (10) days after the date the Board determines that such uncured violation exists, unless the Board also determines that, in the case of a non-monetary default, said Member is reasonably and diligently attempting to cure such default. The Board may also remove committee members for any other reason as it deems appropriate.

ARTICLE VII: AMENDMENTS

Section 7.01 Bylaws. These Bylaws may be amended by the President and Secretary of the Association certifying that such amendment has been approved by the vote of a majority of the Owners voting in person or by absentee ballot at any meeting of the Association. Any amendment to the Bylaws becomes effective when executed by the President and Secretary.

ARTICLE VIII: RECORDS

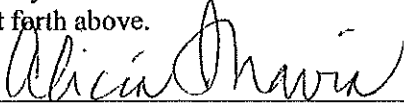
Section 8.01 Members of the Association may request financial and other records of the Association pursuant to A.R.S. § 33-1805 as may be amended from time to time.

ARTICLE IX: GENERAL PROVISIONS

Section 9.01 Fiscal Year. The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

Section 9.02 Standards of Conduct. In performing his or her duties, each director and officer shall act in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the director or officer reasonably believes to be in the best interests of the Association. A director or officer acting in accordance with such standards acts in accordance with the business judgment rule and shall be insulated from personal liability to the extent permitted under Arizona law and as otherwise provided by the Governing Documents. Board determinations of the meaning, scope, and application of Governing Documents provisions shall be upheld and enforced so long as such determinations are reasonable. The Board shall exercise its power in a fair and nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

IN WITNESS WHEREOF, these Bylaws of the Fountain Park Homeowners Association are adopted as set forth above.



Alicia Navia, President

SECRETARY'S CERTIFICATE

The undersigned does hereby certify that:

He/She is the duly elected Secretary of the Fountain Park Homeowners Association, Inc., an Arizona nonprofit corporation; and the foregoing Bylaws constitute the Bylaws of Fountain Park Homeowners Association, Inc. as adopted by a majority of the members present at a meeting duly called and held on January 15, 2022.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand as of this 27th day of January, 2022.

Melissa Mon-Rovedy
Secretary