

# **AMENDED AND RESTATED BYLAWS OF FOUNTAIN OF THE SUN HOMEOWNERS ASSOCIATION**

Name: Fountain of the Sun Homeowners Association  
Address 540 S. 80<sup>th</sup> Street  
City/State/Zip: Mesa, AZ 85208

**(Updated 4/18/17)**

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**AMENDED AND RESTATED BYLAWS OF  
FOUNTAIN OF THE SUN HOMEOWNERS ASSOCIATION**

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# **AMENDED AND RESTATED BYLAWS OF FOUNTAIN OF THE SUN HOMEOWNERS ASSOCIATION**

## **ARTICLE 1 PURPOSE AND DEFINITIONS**

### **1.1 General**

- 1.1.1 The name of this Corporation, herein referred to as the Association, shall be changed to FOUNTAIN OF THE SUN ASSOCIATION (referred to hereinafter as the "Association").
- 1.1.2 The general office for the transaction of business of the Association shall be 540 S. 80<sup>th</sup> Street, Mesa, Arizona, 85208. This address may be changed by the Board of Directors to effectively carry out the business of this Association.
- 1.1.3 The Association's fiscal year shall be from January 1 through December 31, unless the board establishes a different fiscal year by resolution.

### **1.2 Purpose**

- 1.2.1 The purpose for which this Association is organized is to conduct the lawful affairs for which corporations may be incorporated under the Arizona Revised Statutes as amended from time to time.
- 1.2.2 The Association shall conduct the affairs of, and shall constitute the homeowners association for lots of Fountain of the Sun (FOS), a development in Maricopa County, Arizona as described in the Association's Governing Documents (defined below) and referred to hereinafter as "FOS." As such, the Association shall make and collect assessments, execute the Governing Documents, and maintain, operate and pay the expenses of the Association's Facilities. The Association shall perform the acts and duties required by its Governing Documents.
- 1.2.3 Notwithstanding anything herein to the contrary, the Association shall be operated exclusively for nonprofit purposes and shall be operated to qualify as a Homeowners Association under the Internal Revenue Code (IRC) and other applicable Federal, State and Local laws as amended from time to time.
- 1.2.4 The duration of this Association shall be perpetual.

### **1.3 Definitions**

- 1.3.1 **Absentee Ballots:** As required by Arizona law, the Association shall provide Members with a method for casting ballots by mail or other means in a manner designed by the Board of Directors in advance of an election.
- 1.3.2 **CC&Rs:** The current Amended and Restated Declaration of, Covenants, Conditions and Restrictions from Fountain of the Sun recorded with the County Recorder of Maricopa County, Arizona; as such declarations may be amended from time to time.

- 1.3.3 **Assessment**: An annual or special assessment levied by the Association pursuant to the Governing Documents.
- 1.3.4 **Association**: Fountain of the Sun Homeowners Association, an Arizona Nonprofit Corporation.
- 1.3.5 **Association Office**: The general business office of the Association.
- 1.3.6 **Board**: The Board of Directors of the Association.
- 1.3.7 **Committees**: Individuals appointed by the Board to perform a specific task or tasks for the Association.
- 1.3.8 **Community and Association Facilities and Common Areas**: The building, land, equipment, and all property owned by the Association in Common for the use and benefit of the Individuals.
- 1.3.9 **Directors**: Members of the Board.
- 1.3.10 **Fee(s)**: Fixed charge(s) payable pursuant to the Governing Documents for various activities of the Association or for the use of certain Association Facilities as established by the Board.
- 1.3.11 **Governing Documents**: The 1983 agreement, CC&Rs, Articles of Incorporation, current Bylaws, Policies, Procedures, and the Rules and Regulations of the Association, as amended or supplemented from time to time. Documents available on the published association website.
- 1.3.12 **Individuals**:
- 1.3.12.1 **Houseguest**: A person (and the person's spouse and children) regardless of the age of any such person (or of the person's spouse or children), who occupies a Residential Unit for less than thirty (30) days during a twelve (12) month period with a Resident who is relative or close friend of that person where both of the following apply: (a) the person pays no rent or similar compensation, and (b) the Resident is living in the Residential Unit at that time and is not away on vacation or business, or is not living in the Residential Unit at that time because of being in a hospital, nursing home or similar facility.
  - 1.3.12.2 **Member**: An Owner of Record of Units who shall have the right to vote on all Association matters.
  - 1.3.12.3 **Members in Good Standing**: a Member whose assessments are current and whose voting rights have not been suspended.
  - 1.3.12.4 **Non-Member Occupant**: A person who occupies a Residential Unit for more than thirty (30) days in a calendar year but who is not a Member of the Association.
  - 1.3.12.5 **Non-Resident Owner**: An Owner of a Residential Unit who does not reside in FOS.
  - 1.3.12.6 **Occupant**: A person actually residing in or occupying a Residential Unit in the Fountain of the Sun regardless of the length or duration of the occupancy. Such term includes, without limitation, household staff and houseguests.

- 1.3.12.7 **Owner:** Any purchaser under agreement of sale or owner of record, whether one or more person or entities of the fee simple title to any lot situated upon Fountain of the Sun Homeowners Association property, but notwithstanding any applicable provision of a mortgage, shall not mean or refer to a mortgagee until such mortgagee has acquired title through foreclosure or any proceeding in lieu of foreclosure.
- 1.3.12.8 **Person:** An individual, corporation, business trust, estate trust, partnership, association, joint venture, limited liability company, or other legal entity.
- 1.3.12.9 **Renter:** A person who occupies a Residential Unit under an oral or written lease with the Owner of the Unit and is paying rent or other compensation to the Owner of the Unit.
- 1.3.12.10 **Resident:** An occupant other than (a) household staff, (b) houseguest, (c) person under fifty-five (55) years of age occupying a Residential Unit with his or her parent(s) or (d) person who occupies all or any part of a Residential Unit in violation of the Association's Governing Documents. (See Appendix B for Age Restrictions.)
- 1.3.13 **Lot:** Lots as shown upon the latest applicable recorded subdivision map of the property within FOS and as described in the CC&Rs.
- 1.3.14 **Majority of Members:** Members casting more than fifty percent (50%) of the votes with respect to a matter submitted to a vote of the Members.
- 1.3.15 **Manager(s):** The individual(s) or entity employed by the Board to manage and administer the operations of the Association and to carry out the policies and directives of the Board.
- 1.3.16 **Petition:** A formal written document requesting a right, benefit or action signed by voting Members in Good Standing and submitted to the Board.
- 1.3.17 **Quorum:** The minimum number of ballots properly returned in accordance with Paragraph 6.4.6 of these Bylaws, or a majority of the Board at a meeting for the valid transaction of Association business.
- 1.3.18 **Residential Unit:** Any lot within FOS.
- 1.3.19 **Restricted Capital Asset Fund:** To be used solely for the major modification of existing capital assets or acquisition of new capital assets.
- 1.3.20 **Restricted Community Improvement Fund:** To be used for projects specified through receipt of voluntary gift, donor, memorial, bequest or fund raising.
- 1.3.21 **Restricted Replacement Reserve Fund:** To be used for restoration, major repair and replacement of existing or future capital improvements and equipment.
- 1.3.22 **Voting Individuals:** Those Individuals referenced in Appendix A.

## ARTICLE 2 GOVERNANCE STRUCTURE

### 2.1 General

- 2.1.1 The affairs of the Association shall be governed by the Board and administered by the Manager(s). The Board shall be the policy making and decision making body of the Association. The Manager(s), under the direction and supervision of the Board, shall be responsible for carrying out the policies and directives of the Board.

### 2.2 Board of Directors

- 2.2.1 The Board of Directors shall be composed of seven (7) Voting Individuals and elected by the Voting Individuals or appointed by the Board in accordance with the provisions of these Bylaws. The purpose, duties, functions, responsibilities and limitations of the Board shall be as provided in Article 7 of these Bylaws.

### 2.3 Manager(s)

- 2.3.1 Responsibility for management and administration of the Association shall be vested in one or more Manager(s), who shall be employed by and serve at the pleasure of the Board. The Manager(s) shall not be owners or residents of FOS.
- 2.3.2 The Manager(s) shall provide each Director with the copies of agenda and documentation pertaining to agenda items at least forty-eight (48) hours prior to the meetings when possible.

### 2.4 Members Responsibilities

- 2.4.1 It is the intent of the members and Board of Directors to adhere to the long established policies and procedures that continue to enhance our facilities and provide for the enjoyment, health and safety of our residents.
- 2.4.2 All members and residents are obligated to adhere to the Association's Governing Documents.

## ARTICLE 3 USE OF ASSOCIATION FACILITIES

### 3.1 Persons Entitled to Use Association Facilities

- 3.1.1 Upon payment of fees, and under conditions as may be established, the following shall have the right to use the Association Facilities:
- 3.1.1.1 Members;
  - 3.1.1.2 Voting Individuals;
  - 3.1.1.3 Houseguests of Members;
  - 3.1.1.4 Non-Member Occupants of a Residence owned by one or more Members;
  - 3.1.1.5 Renters, whose use has been delegated by Owners through written notice filed with the Association office. Each notice shall contain name(s), age(s), contact information, description and vehicle license number(s) of tenant, duration of lease and Owner's current address. During the time period of such delegation, an Owner of a rented Residential Unit shall

not be entitled to use the Association facilities associated with that Rental Unit until written revocation of such delegation has been filed with the Association office;

**3.1.2 Non-resident Participants:**

- 3.1.2.1 Non-resident individuals participating in Association-approved leagues, meets, games and tournaments. Prior to participation, non-resident individuals shall sign a waiver of liability to be filed with the Association office. Responsibility for having the waivers signed shall be the duty of the sponsoring club or activity.

**3.2 Suspension of Right to Use Association Facilities**

- 3.2.1 If a Member fails to pay Assessments or other amounts due to the Association under the Governing Documents within fifteen (15) days after such payment is due, the Board, without notice or hearing, shall have the right to suspend the rights of the Member and of Non-Member Occupants and Renters of the Member's Residence to use the Association Facilities until such time as all delinquent Assessments and other amounts due to the Association are paid in full.
- 3.2.2 If a Member, Voting Individual, Non-Member Occupant, Renter or Houseguest violates or fails to comply with the provisions of the Governing Documents, other than the provision requiring the payment of assessments or other amounts to the Association, the Board shall have the authority to suspend the person's rights to use the Association Facilities. The Member shall be given written notice of the nature of the violation and given an opportunity to be heard with respect to the violation at a hearing. If the Member requests a hearing, the hearing shall be conducted within fifteen (15) days of the request.

**3.3 Policies, Procedures, Rules and Regulations**

- 3.3.1 The rights of Members, Voting Individuals, Non-Member Occupants, Renters and Houseguests to use the Association Facilities shall be subject to the policies, procedures, rules and regulations, as may be adopted the Board.

## **ARTICLE 4 ASSESSMENTS, FINES AND FEES**

**4.1 Assessments**

- 4.1.1 Assessment amounts may be established by the Board, in accordance with the Association's Governing Documents. Assessments shall be paid to the Association at its office or according to the billing notice instructions.
- 4.1.2 Annual Assessments shall be based on the budget needs of FOS. Annual assessments may not be increased in excess of ten percent (10%) per year without prior approval of the Members by a majority of the votes cast at a meeting held for that purpose.
- 4.1.3 Special Assessments may be established for special needs after meetings in accordance with the Association's Governing Documents.

**4.2 Fines**

- 4.2.1 Fines for violations of Governing Documents shall be established by the Board in accordance with Arizona law and relevant provisions of the Association's Governing Documents, and charged to Members.

**4.3 Fees**

- 4.3.1 Fees may be established by the Board in accordance with Arizona law and the Association's Governing Documents.
- 4.3.2 The following fees shall be paid on sale of Residential Units at closing of ownership transfers.
- 4.3.2.1 Disclosure Fee for copying and distributing FOS Governing Documents and preparing Residence file for new Owners;
  - 4.3.2.2 Transfer Fee for record investigation and account charges for Residential Unit;
  - 4.3.2.3 Impact Fee for all real estate sale transactions.
- 4.3.3 Room Usage Fee shall be established in the "Policy and Procedures Manual" as approved by the Board.

## **ARTICLE 5** **MEETINGS OF THE MEMBERS**

**5.1 General Meeting Provisions**

- 5.1.1 Meetings of the Members shall be open to Members of the Association, Voting Individuals, and any Non-Member designated in writing by a Member as the Member's representative. Meetings shall be conducted in accordance with Arizona law.
- 5.1.2 Agendas for the meetings shall be established by the Board.
- 5.1.3 Notices of meetings by the Board of Directors shall be given at least forty-eight (48) hours in advance of the meeting by newsletter, conspicuous posting or any other means as determined by the Board of Directors or as recognized by Arizona law.
- 5.1.4 Meetings may be conducted, but are not required to be conducted, in accordance with a current edition of Robert's Rules of Order for guidance.

**5.2 Annual Meetings**

- 5.2.1 An Annual Meeting shall be held on the second Wednesday of February each year. If that day is a legal holiday, the Annual Meeting shall be held the next day.
- 5.2.2 Notices of Annual Meetings, stating the date, location, time and agenda, shall be provided to members at least ten (10) days and no more than fifty (50) days prior to the meeting as follows:
- 5.2.2.1 posting notice on the official Association bulletin board;
  - 5.2.2.2 mailing notice to each Member and Voting Individual at their address on file in the Association office;
  - 5.2.2.3 Current electronic communication notices to Members and Voting Individuals.

- 5.2.3 The agenda for the Annual Meeting shall be established by the Board. Additional discussion items added to the agenda by a Petition, signed by at least ten (10%) percent of recorded unit Members in Good Standing, provided such Petition is submitted to the Board not less than fifteen (15) days prior to the date of the Annual Meeting.

**5.3 Annual Budget Meetings**

- 5.3.1 An Annual Budget Meeting shall be held between September 15 and October 31 for the purpose of reviewing and discussing with the Members the budget for the next calendar year. Written requests relating to amounts requested for inclusion in the budget on behalf of facilities, amenities, clubs and organizations shall be submitted to the Board by June 1.
- 5.3.2 Copies of the proposed budget for the next calendar year shall be available to Members at the Association office at least five (5) days prior to the Annual Budget Meeting or upon request provided by electronic communications.
- 5.3.3 All clubs and organizations designated by the Board, shall maintain an annual record of income and expenditures. Such reports shall be provided to the Manager(s) in a timely manner. These accountings are required to maintain Association records and the annual audit.

**5.4 Special Meetings**

- 5.4.1 Special Meetings of the Members may be called by the President, a quorum of the Directors, or upon written request signed by at least ten (10%) percent of recorded unit Members in Good Standing submitted to the Secretary.
- 5.4.2 The notice of a Special Meeting shall specify the purpose of the meeting. Matters not set forth in such notice shall not be considered.
- 5.4.3 A meeting requested by the Members shall be held within thirty (30) days of the receipt of the request.
- 5.4.4 All meetings of the Board of Directors shall conform to Arizona Law.

## **ARTICLE 6** **VOTING**

**6.1 Voting Rights**

- 6.1.1 There shall be one (1) ballot per Residential Unit or unit as referenced in Appendix A.
- 6.1.2 In the election of Directors, each Voting Individual (as referenced in Appendix A) may cast as many votes per ballot as there are Directors then being elected; however, only one vote may be cast for any one candidate.
- 6.1.3 Notices of elections of Directors and issues to be voted upon shall be mailed to all Voting Individuals (as referenced in Appendix A) to the record address provided to the Association.
- 6.1.4 Voting rights shall automatically be suspended for Voting Individuals and Members who are not in Good Standing by reason of delinquency in paying Annual Assessments or fines for more than fifteen (15) days. Voting rights shall be suspended automatically also for Members who have more than two (2) unresolved violations of the Governing Documents. Members shall be notified in writing of suspensions.

6.1.5 Voting rights are subject to individuals' compliance with the Association's "Election Procedures Manual" and instructions supplied with their ballots.

**6.2 Nominating Committee**

6.2.1 The Nominating Committee Chairperson shall be selected and appointed by the Board on or before the second Monday of September. The Chairperson shall recruit his or her Committee Members. No member of the Nominating Committee shall be a current member of the Board, a candidate for the Board, a family member of a current Board member or candidate or a paid employee of the Association.

6.2.2 On or before November 15, the Nominating Committee shall solicit candidates, verify eligibility of every candidate and submit to the Secretary, in writing, the names and addresses of candidates who are eligible and willing to serve as Directors. The Secretary shall promptly post a list of candidates on the official Association bulletin board and by current electronic communications.

6.2.3 After December 15, any other person who is eligible and willing to be elected may be nominated as a candidate by a Petition, signed by at least ten percent (10%) of Members in Good Standing. The petition must be delivered to the Secretary or the Nominating Committee Chairperson or Co-Chairperson of the Nominating Committee on or before noon on January 1. If the person nominated by Petition is found eligible, their name shall be submitted to the Secretary, in writing, who shall promptly post a revised list of candidates on the official Association bulletin board and by current electronic communications.

**6.3 Election Committee**

6.3.1 The Election Committee shall consist of no more than nine (9) Individuals.

6.3.2 The Election Committee Chairperson shall be appointed by the Board on or before the second Thursday of November for the annual election of Directors or a minimum of sixty (60) days before an election for other purposes. The Chairperson shall recruit his or her Committee Members. No member of the Election Committee shall be a current member of the Board, a candidate for the Board, a family member of a current Board member or candidate, or a paid employee of the Association. The actions of the Election Committee are not subject to review by any Member of the Board except for compliance with the Association's "Election Procedures Manual." The Election Committee shall meet at such times and places as determined by the Chairperson.

**6.4 General Procedure for Electing Directors**

6.4.1 The voting process shall be by secret ballot and supervised by the Election Committee in accordance with the Election Procedures Manual. The Election Committee shall verify the eligibility of each Voting Individual by name and address prior to mailing ballots.

6.4.2 Ballots for Electing Directors shall be mailed in January to each Voting Individual or to the record address provided to the Association.

6.4.3 Absentee Ballots must be received before 3:00 p.m. on the Tuesday prior to the Annual Meeting in order to be counted.

6.4.4 The Election Committee shall determine the place designated for return ballots. Ballots may be returned by mail as an Absentee Ballot or returned in person to the designated association ballot box in the main office.

- 6.4.5 Ballots received shall be deposited in a locked ballot box. Once a vote is cast, it cannot be changed. The ballot box shall remain sealed and kept in a secure place designated by the Election Committee until officially opened for tabulation by the Election Committee.
- 6.4.6 At least thirty percent (30%) of the ballots mailed and properly returned shall constitute a quorum. The affirmative vote of a majority of a quorum shall be sufficient to take lawful action unless a larger affirmative vote is required by law or the Governing Documents of the Association.
- 6.4.7 If a candidate withdraws in writing to the Election Committee prior to the Election, votes cast for that candidate shall be null and void.
- 6.4.8 When all ballots have been counted and recorded by the Election Committee, the ballots and supporting documents shall be retained for inspection for at least one year. If no protest of the vote or request for recount has been filed, the ballot box shall be opened and the voting materials destroyed by the Manager(s) and the Election Committee.
- 6.4.9 Ballots for the election of Directors shall be tabulated and the results indicating the total number of ballots cast shall be delivered to the Secretary for announcement at the Annual meeting and be posted within twenty-four (24) hours after the Annual Meeting on the official Association bulletin board and via current electronic communications.
- 6.4.10 any protest or request for recounts shall be in writing and filed with the Election Committee within seventy-two (72) hours after the results of the election have been posted. The ballot box shall remain sealed until opened for resolution by the Election Committee. Only one recount shall be conducted with respect to each election regardless of the number of requests filed with Election Committee.
- 6.4.11 Candidates for the Board shall be elected by plurality. The candidate(s) receiving the highest number of votes shall be elected. If there is a tie, the successful candidate shall be determined by a flip of coin at the Annual Meeting.
- 6.4.12 The initial 2018 director balloting ONLY: Seven (7) board positions will be elected for the following staggered terms: Top three (3) vote tallies will each serve a three (3) year term; next two (2) vote tallies will each serve a two (2) year term; and the next two (2) tallies will each serve a one (1) year term. Beginning in 2019 and subsequent year's elections will be for 3-year terms of those director terms expiring in that year.

## ARTICLE 7

### BOARD OF DIRECTORS

#### 7.1 Number of Directors and Director Terms

- 7.1.1 The Board shall be composed of seven (7) Voting Individuals who have staggered terms of office. Directors shall be elected for a term of three (3) years.
- 7.1.2 A Director may serve no more than two (2) terms consecutively.
- 7.1.3 A Director appointed to fill out a vacancy shall not be precluded from serving two (2) consecutive elected terms on the Board.
- 7.1.4 After serving for two (2) consecutive terms, a Director cannot serve on the Board of Directors for a period of a full three (3) years.

7.1.5 For purposes of eligibility to being elected to the Board of Directors and term limits, a Board member who resigns before the end of his or her term shall not be considered for re-election until following the date of his or her initial elected term of office.

**7.2 Qualifications of Board Candidates**

7.2.1 To qualify as a candidate for election as a Director, the individual must be a Voting Individual and have voting rights as referenced in Appendix A.

**7.3 Board Meetings**

7.3.1 A majority of the Directors shall constitute a quorum required to conduct the business of the Association.

7.3.2 Meetings of the Board shall be open to all Members of the Association and Voting Individuals, except that the Board may close a meeting of the Board to the Members to the extent permitted by and pursuant to Arizona law.

7.3.3 Meetings shall be held on a regular basis to conduct affairs of the Association as determined by the Board of Directors.

7.3.4 The Board may conduct an Emergency Meeting without notice to the Membership and individuals with voting rights as referenced in Appendix A. If the Board takes actions at an Emergency Board Meeting, those actions shall be recorded and placed in the minutes of the next Board Meeting to be voted on and approved. The President or any two (2) Directors may call an Emergency Meeting.

**7.4 Removal from the Board**

7.4.1 A Director may be removed from the Board only by a majority vote of the Voting Individuals by the following process:

7.4.1.1 The Voting Individuals who are eligible to vote at the time of the meeting may remove any member of the Board of Directors by a majority vote of those voting on the matter at a meeting of the Voting Individuals

7.4.1.2 A meeting of the Voting Individuals shall be called pursuant to this section and action may be taken only if a quorum is present.

7.4.1.3 The Voting Individuals may remove any member of the board of directors with or without cause.

7.4.1.4 On receipt of a petition that calls for removal of a member of the board of directors and that is signed by a number of persons who are eligible to vote (as referenced in Appendix A) at the time the person signs the petition equal to at least ten percent (10%) of the votes in the association. The Board shall call and provide written notice of a special meeting of the association. The Board shall provide written notice of a special meeting as prescribed by Arizona Law.

7.4.1.5 The special meeting shall be called, noticed and held within thirty days after receipt of the petition.

7.4.1.6 For purposes of a special meeting called pursuant to this subsection, a quorum is present if the number of owners who are eligible to vote (as referenced in Appendix A) at the time the person attends the meeting equal to at least twenty percent (20%) of the votes of the Association.

## **7.5 Vacancies**

- 7.5.1 The Board may declare the office of a member of the Board to be automatically vacant in the event such member shall have three (3) consecutive unexcused absences from meetings of the Board of Directors.
- 7.5.2 A vacancy of the Board may be filled by an appointee chosen by the remaining Directors within sixty (60) days of the vacancy. The appointed Director shall fill that term vacancy until that elected term expires.
- 7.5.3 If by reason of death, resignation or otherwise, the Association has no Directors in office, a Member in Good Standing may call a special meeting of the Members for the purpose of electing a Board pursuant to the provisions of Article 6.

## **ARTICLE 8 BOARD OF DIRECTORS AUTHORITY**

### **8.1 General Board Authority**

- 8.1.1 The Board shall act as the principal rules and decision-making body and shall establish such policies as it deems proper and expedient in conformance with the Governing Documents and all applicable Local, State and Federal laws. Policies shall promote the objectives of the Association and shall protect the best interests and welfare of the Members. The Board shall have the powers and duties necessary for the administration of the affairs of the Association, including, but not limited to, the following:
  - 8.1.1.1 Hold and administer the assets of, and provide supervision of, the administration of the Association;
  - 8.1.1.2 Establish operating policies, procedures, rules and regulations within their authority as outlined in the Governing Documents and publish the same, establish penalties, including, but not limited to, fines, probation and suspension of Membership privileges for an infraction thereof. Additions to or changes in policies, rules and regulations shall be conspicuously posted on the official Association bulletin board. A copy of Association policies, regulations and rules shall be available for inspection by Members at the Association Office. Copies may be purchased for a fee;
  - 8.1.1.3 Employ a Manager or management firm. The Manager may be an individual, a corporation, partnership or entity, and may be either an employee of the Association or an independent contractor;
  - 8.1.1.4 Levy Annual and Special Assessments in accordance with Article 4 of these Bylaws;
  - 8.1.1.5 Perfect and foreclose a lien against a property for which Annual or Special Assessments are not paid, or to bring an action at law against the Member personally obligated to pay the same;
  - 8.1.1.6 Establish fees to be collected from Members, Non-Member Occupants, Renters and Houseguests for the use of the Association Facilities;
  - 8.1.1.7 Pay taxes and assessments which are, or could become, a lien on the Association Facilities or any portion thereof;

- 8.1.1.8 Ensure that goods and services for the grounds, facilities and interests of the Association are provided for and maintained in a timely and professional manner;
- 8.1.1.9 Elect officers of the Association;
- 8.1.1.10 Delegate responsibilities to Committees appointed by the Board;
- 8.1.1.11 Fill vacancies on the Board as provided in Paragraph 7.5 of these Bylaws;
- 8.1.1.12 Establish and maintain a Capital Reserve Replacement Study, which shall be updated at least every five (5) years;
- 8.1.1.13 Establish and maintain a Restricted Replacement Reserve Fund in accordance with a current Capital Reserve Replacement Study, which funds are to be used pursuant to Section 1.3.21.
- 8.1.1.14 Establish a Restricted Capital Asset Fund,
- 8.1.1.15 Exercises such other powers as may be granted to the Board by the Governing Documents.

## **8.2 Obligations of Directors**

- 8.2.1 Directors shall:

- 8.2.1.1 Be reasonably available on a year-round basis for participation in the business affairs of the Association and subject to the terms of Bylaw 7.5.1.
- 8.2.1.2 Be available physically, or by electronic communication.
- 8.2.1.3 Cooperate with other Directors to ensure a quorum at Board Meetings.
- 8.2.1.4 Serve in any capacity assigned.

## **8.3 Limitations of the Board of Directors**

- 8.3.1 The Board shall be prohibited from taking the following actions outside of the approved and adopted annual budget without the affirmative vote of a majority of the Members of the Association:
  - 8.3.1.1 Incur a debt for which scheduled payment exceeds one (1) year, on behalf of the Association;
  - 8.3.1.2 Sell or acquire real property, except when exercising a lien on a delinquent account or other charges;
  - 8.3.1.3 Expend funds for capital expansion or additions to facilities; however, these expenditure limits shall not apply to the funds designated and recorded for the FOS Community Improvement Fund;
- 8.3.2 In the event of a city or state health emergency and safety violation, the association has the authority to secure ownership of a residential unit with purpose to sell and reimburse the expended funds.

## **8.4 Indemnification of Directors of the Association**

- 8.4.1 To the fullest extent provided by Arizona law, the Association shall indemnify a director deemed to be acting in good faith, within their elected fiduciary responsibilities and within the terms of all Association governing documents for non-fraudulent legal actions taken on behalf of the Association.

## **8.5 Committees**

- 8.5.1 The Board may appoint and dissolve committees, as the Board deems appropriate for the administration and operation of the Association. Committees shall report to the Board and serve at the pleasure of the Board.

## **8.6 Architectural Control Committee**

- 8.6.1 An Architectural Control Committee (ACC) shall be established by the Board to ensure compliance with the Association's Governing Documents. The committee shall be appointed by the Board annually and consist of five (5) members with a Board of Director member serving as the chairperson.
- 8.6.2 The Architectural Control Committee shall prepare and revise, as needed, the Architectural Guidelines, subject to Board approval, for use by the Residents as a reference for changes to the exterior of their homes and lots.

## **8.7 Compliance**

- 8.7.1 After notice and an opportunity to be heard, the Board of Directors may impose reasonable monetary penalties on Members for violations of the declarations, bylaws and rules of the Association.

# **ARTICLE 9 OFFICERS**

## **9.1 General**

- 9.1.1 The Officers of the Association shall be President, Vice President, Secretary and Treasurer. Newly elected Directors shall take office, and their terms become effective, at the first Special Meeting following the Annual Election. At that meeting, the new Board shall elect from among its members the Officers to serve for the year or until their successors are elected. Officers are not prohibited from succeeding themselves in office. Officers and Directors shall serve without pay but may be reimbursed for actual expenses incurred upon presentation of an itemized statement.

## **9.2 President**

- 9.2.1 In accordance with the Governing Documents and policies of the Association, duly adopted by the Board, together with applicable Local, State and Federal laws, the President shall:
- 9.2.1.1 Preside at and conduct meetings of the Board;
  - 9.2.1.2 Be responsible for the general supervision of the affairs of the Association;
  - 9.2.1.3 Execute the Association's Governing Documents on behalf of the Association;
  - 9.2.1.4 Vote on issues that come before the Board, at his or her discretion.

## **9.3 Vice President**

- 9.3.1 The Vice President shall have such powers and duties as the President or as the Board may prescribe, from time to time. At the request of the President, or in case of the President's absence or inability to act, the Vice President shall perform the duties of the President and when so acting, shall have the powers and the restrictions of the President.

#### **9.4 Secretary**

- 9.4.1 The Secretary shall be responsible for maintaining a record of the proceedings of the Board Meetings. Records of these meetings shall be kept in separate books. The Secretary shall assure that notices of meetings are duly given in accordance with the provisions of these Bylaws or as required by law.
- 9.4.2 The Secretary shall maintain a membership book reflecting the names and addresses of every unit owner.

#### **9.5 Treasurer**

- 9.5.1 The Treasurer, with Board oversight, shall have responsibility for supervision of the funds and securities of the Association including, but not limited to, official records, documents, ledgers and accounts involving the financial business of the Association. Original records shall be kept and maintained at the office of the Association. The Treasurer shall maintain financial statements as required and perform such other duties as ordinarily pertain to that office.
- 9.5.2 The Treasurer and a Director shall ensure that the Association funds are deposited on behalf of the Association in recognized banks, savings and loan associations or other financial organizations insured by the FDIC or SIPC. Association Funds may be invested in U.S. government obligations: Treasury Bills, Notes or Government Agency obligations rated "A" or better; State or County Municipal Bonds rated "A" or better, insured money market deposit accounts, insured bank certificates of deposit; and short-duration commercial paper rated "A" or better.
- 9.5.3 Checks shall require two (2) signatures of duly appointed officers.

#### **9.6 Bonding**

- 9.6.1 Officers, Directors and Association office employees shall be bonded or be covered by fidelity insurance coverage in a sum sufficient to protect the association from loss.

#### **9.7 Removal of an Officer**

- 9.7.1 An Officer may be removed from office by a written resolution adopted by the majority vote of the other Directors, if in the Board's judgment; the best interest of the Association will be served by the removal. The resolution shall state good cause for the removal of the Officer. After receipt of written notice, the Officer in question shall have three (3) days to respond and shall be entitled to be heard at an executive session of the Board. If removed, the Officer shall remain a Director, unless he or she is removed from the Board in accordance with Article 7 of these Bylaws.

#### **9.8 Vacancies**

- 9.8.1 If an office becomes vacant by death, resignation, disqualification or other cause, the majority of the remaining Directors shall select a Member of the Board to fill the vacancy within seven (7) days.

## ARTICLE 10 GENERAL

### 10.1 Amendment

10.1.1 Amendments to the Policies, Procedures, Regulations and Rules may be adopted by a majority vote of the Board after the amendments are read at two (2) consecutive regular Board meetings.

10.1.1.1 A written Petition presented to the Board and signed by at least ten (10%) percent of the recorded unit Members in Good Standing may propose amendments to the Bylaws, and the reason for the proposed change. The proposed amendments shall be presented to a vote of the residents and ballots included in the Annual Election of Board Members provided the proposed amendments were submitted in writing and read at the previous two (2) regular board meetings.

### 10.2 Conflict

10.2.1 In the event of a conflict between the Governing Documents, the order of priority for consideration shall be the CC&Rs, Articles of Incorporation, Bylaws, and Policies, Procedures and Rules.

### 10.3 Inspection of Association Records

10.3.1 Association documents may be available on the Association's published community website.

### 10.4 Validation

10.4.1 If any part of these Bylaws is found to be invalid, it shall not invalidate other parts of these Bylaws.

## **Appendix A**

### **Voting Individuals**

Voting Individuals shall be comprised of all owners of units (a unit being defined as a mobile home, single family home and individual living units constructed under the Arizona law and improved lots). Improved lots are those with street and utilities installed, ready for construction and on which dues or fees are being paid to a homeowners association within the Fountain of the Sun Community in Maricopa County, Arizona, consisting of the following described subdivisions set forth on plats of record in the Office of the Recorder of Maricopa County, Arizona, in the Book of Maps and at the pages set forth below.

<b>SUBDIVISIONS</b>		<b>BOOK</b>	<b>PAGE</b>
FOS Parcel No. 1	FOSHA	135	31
FOS Parcel No. 2	FOSHA	138	43
FOS Parcel No. 3A	FOSHA	138	42
FOS Parcel No. 3B	FOSHA	155	26
FOS Parcel No. 4	FOSHA	155	20
FOS Parcel No. 6	FOSHA	227	31
FOS Parcel No. 7A	FOSHA	138	44
FOS Parcel No. 7B	FOSHA	251	47
FOS Parcel No. 8 Unit 1	Quail Run	153	33
FOS Parcel No. 8 Unit 2	Quail Run	157	45
FOS Parcel No. 8 Unit 3	Greenside Villas	164	22
FOS Parcel 9 Phase I		191	12
FOS Parcel 9 Phase II		200	2
FOS Parcel 9 Phase III		211	5
FOS Parcel 9 Phase IV		226	17
FOS Parcel 10 Phase I	Fairway Village	226	39
FOS Parcel 10 Phase II	Fairway Village	237	2
FOS Parcel 10 Phase III	Village Green	255	45
FOS Parcel 11	Lakeside Terrace	239	25
FOS Parcel 12	Pueblo Estates	398	31
FOS Parcel 13	Sunvilla Apartments	168	34
FOS Parcel 14	Fountain Cove	275	30
FOS Parcel 15	Fairway Vista	611	47

And also including any subdivision hereafter platted, recorded, and developed within the boundaries of Section 29, Township I North, Range 7 East, Gila and Salt River Base and Meridian by Universal Development Corporation, a Maryland Corporation, or any successor thereof, as part of a common development plan within the subdivisions listed and described above. An owner of one or more of such units shall automatically be a Voting Individual and shall remain a Voting Individual until such time as ownership ceases, for any reason.

For purposes of this article only, "Owner" means the legal title holder as shown on the last deed of record in the office of the Maricopa County Recorder, State of Arizona, or the Purchaser under a contract for sale of a dwelling unit unless and until the interest therein is forfeited or transferred for any lot within one of the above-named subdivisions. In the case of property held in trust, the owner shall be deemed to be the beneficiary of such trust and not the trustee holder of record title. Membership rights shall exist as aforesaid, whether or not the property is subject to a mortgage, deed of trust, or other security.

There shall be one vote for each unit of record. Where a unit is jointly owned by more than one person or by multiple entities one owner shall be deemed to be the Voting Individual. A corporate or partnership owner of a unit or units shall designate one representative for each unit, who shall have all voting rights. With regard to any unit held by more than one person (other than a husband and wife) as joint tenants or tenants in common, such tenants shall designate one individual among them to be the Voting Individual and notify the Association in writing of the designation. Said person shall continue as the Voting Individual until the Association receives written notice of a change from all tenants.

## Appendix B

### Age Restrictions

#### Fountain of the Sun Covenants, Conditions and Restrictions (CC&Rs) (As Amended April 1992)

At least one occupant of each living unit must be 55 years of age or older: provided, however, that this section shall not apply to current occupants who first occupied the living unit prior to September 13, 1988. If an occupant who is 55 years of age or older dies, the remaining occupants of the living unit may continue to occupy the living unit even though none of such persons are 55 years of age or older. No person under 18 years of age shall occupy or reside in a living unit for more than ninety (90) days during any twelve (12) month period. The provisions set forth in this section are for the purpose of establishing the policies and procedures necessary for the property to qualify for the age 55 or over housing exception under the Fair Housing Amendments Act of 1988. The Board of Directors is authorized to adopt such other policies and procedures which may be necessary from time to time in order for the property to meet all of the requirements for the Age 55 or over Housing Exception.

FOUNTAIN OF THE SUN HOMEOWNERS ASSOCIATION  
Amended and Restated Bylaws  
Certificate of Adoption

I hereby certify that I am the duly elected Secretary of Fountain of the Sun Homeowners Association, and that the foregoing Bylaws were duly adopted this 8 day of October, 2018.

By: Linda K Fischer  
Its: Secretary

