

**AMENDED AND RESTATED
BY-LAWS
OF
THE FOOTHILLS CLUSTERS HOMEOWNERS ASSOCIATION
APPROVED ON NOVEMBER 5, 2007**

**ARTICLE I
NAME AND LOCATION**

The name of the corporation is The Foothills Clusters Homeowners Association, hereinafter referred to as the "Association" or "FCHA". The address of the Association is P. O. Box 36046, Tucson, Arizona 85740.

**ARTICLE II
DEFINITIONS**

The definitions used in these By-Laws are the same as the definitions set forth in the Declaration of Covenants, Conditions and Restrictions for Foothills Clusters (hereinafter "Declaration").

**ARTICLE III
MEETINGS OF MEMBERS**

Section 1. Annual Meeting. The Annual Meeting of the Members shall be held during the month of November of each year at a date, time and location designated by the Board of Directors.

Section 1A. Annual Meeting Notice. Notice of the Annual Meeting, including date, time and location along with the agenda, will be sent to all Members at least two weeks prior to the meeting.

Section 1B. Annual Meeting Quorum - Members. Ten percent of the members (37) present or represented by absentee ballot shall constitute a quorum at the Annual Meeting.

Section 1C. Motions Made at Annual Meeting. Motions may be brought at an Annual Meeting by any Member and seconded by another Member. Such motions will be voted on at the Annual Meeting if enough Members are present in person to constitute a quorum for voting purposes (at least 37 Members must be physically present in order to vote on a matter which was not notified to the Membership prior to the Annual Meeting.) If fewer than 37 Members are physically present at the Annual Meeting, then motions made and seconded by Members at the Annual Meeting will be noticed to the Membership and voted on by Members at a Special Meeting held to consider such motions no later

than 30 days after the Annual Meeting.

Section 2. Special Meetings of Members. Special Meetings of the Members may be called at any time by the President, by five of the nine Directors, or upon the written request to the Board from at least ten (10) percent of the Members who are entitled to vote. In the event that the Members request a Special Meeting, the Board shall determine the date, time and place of such meeting, which shall take place no less than ten and no more than thirty days after the written request has been delivered to the Board.

Section 2A. Special Meetings of Members - Notice. Notice of Special Meetings shall be sent by the Secretary to all Members by postage prepaid mail not later than two weeks prior to the meeting. The address of the Member will be that address which appears on the books of the Association, or that supplied by such Member to the Association for the purpose of notice. The notice will specify the place, day, hour and reason for the meeting, and will contain an agenda and absentee ballot.

Section 2B. Special Meetings of Members – Quorum of Members. Twenty-five (25) percent of the Members present or represented by absentee ballot shall constitute a quorum at Special Meetings.

Section 2C. Matters Handled at Special Meetings of Members. Only those matters mentioned in the notice of the Special Meeting may be considered at the Special Meeting.

Section 3. Absentee Ballots. At all Annual or Special Meetings of Members, each Member may cast one vote per lot owned, either in person or by absentee ballot. All absentee ballots shall be filed with the Secretary or appointee prior to the beginning of the meeting. Every absentee ballot is revocable by the Member casting the absentee ballot and shall automatically terminate upon adjournment of the meeting at which it is used. The absentee ballot may be for more than one item listed on the agenda if the ballot so indicates.

ARTICLE IV BOARD OF DIRECTORS; QUALIFICATIONS; REMOVAL; TERM OF OFFICE

Section 1. Number of Directors. The affairs of the Association shall be managed by a board of nine (9) Directors.

Section 2. Directors' Term of Office. The term of office for each Director is three (3) years. The terms of the Directors shall be staggered. At each Annual Meeting of the Members, three (3) Directors will be elected to replace those Directors whose terms are expiring.

Section 3. Qualifications. At the time of his/her election or appointment to the

Board and throughout his/her term of office on the Board, each Director must be a Member in good standing of the FCHA, as determined by the Board. Being in good standing includes being current in the payment of any sums due to the Association and being in compliance with the Association's Governing Documents (including without limitation, no current outstanding liens or Board-initiated unresolved letters of complaint). Only one Member from each Lot may serve as a Director.

Section 4. Removal of Director by Action of the Board. In the event that any Director ceases to meet the qualifications of office as set forth in Section 3 above, the Director shall be removed from the Board by action of the Board and his/her position considered a vacancy as per Section 6 below. Also, the Board may remove a Director in the event the Director is not present in person at 30% of the Regular Meetings of the Board of Directors within a twelve month period without a showing of good cause.

Section 5. Removal of Director by Vote of Members. Any Director may be removed from the Board by a majority vote of the Members who are in attendance at any meeting of the Association held for that purpose, provided that a quorum of Members (in this case defined as not less than twenty (20) percent of the Members) is present at that meeting in person or through absentee ballot. The Members requesting the removal of the Director(s) must submit a petition to the Board which has been signed by at least twenty-five (25) percent of the Members. Upon receipt of such petition, the Board shall call and provide written notice of a Special Meeting of the Members for the purpose of considering such petition. The Board will set the date and time of such Special Meeting (not less than ten and not more than 30 days after receipt of the petition) and will send notice of the meeting to the Members. Any Director whose removal has been proposed shall be given notice of the petition calling for his/her removal and shall be given the opportunity to submit a written response to the petition, to be mailed to the Members by the Board, together with the Notice of the Special Meeting. At the Special Meeting, the Director(s) whose removal has/have been proposed shall be entitled to address the Members prior to the vote on the removal. The Board shall then open the discussion to those Members present. In the event of the removal of a Director, his/her successor shall be elected by the vote of the Members at that meeting to fill the un-expired term of the Director who was removed or, if no such successor shall be identified at that meeting, the Board of Directors may fill the vacancy pursuant to Article IV, Section 6 below.

Section 6. Vacancies. A vacancy in any position on the Board of Directors may be filled by appointment by the Board. The person elected to fill such vacancy shall serve for the remainder of the un-expired term of the Director he/she replaces.

Section 7. Compensation. No Director shall receive compensation for any service he/she may render to the Association, including services unrelated to serving on the Board. However, any Director may be reimbursed for his/her actual expenses incurred in the performance of his/her duties.

ARTICLE V

NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination of candidates for election to the Board of Directors shall be made by a Nominating Committee. The Nominating Committee shall consist of a Chairperson, who must be a member of the Board of Directors, and two or more Members, none of whom shall be a spouse, relative or household member of any Director. The Nominating Committee shall be appointed by the Board of Directors at least ninety (90) days prior to the Annual Meeting of the Members and shall serve until the close of the Annual Meeting for which they were appointed. The Nominating Committee shall present all persons wishing to run for the Board of Directors. Any Member who meets the qualifications set forth in Article IV, Section 3 above and who wishes to be considered for election to the Board may contact a member of the Nominating Committee or a Director and make his or her wishes known no later than the October Board Meeting. Nominations may also be entertained from the floor at the October Board Meeting.

Section 2. Election. Election to the Board of Directors shall be by written ballot at the Annual Meeting. Members may cast their votes in person or through absentee ballot in respect to each vacancy. Each Member is entitled to cast as many votes as permitted under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted. In the event that the number of candidates equals the number of positions to be filled, then the Members may vote to accept the entire slate of candidates. If a person elected to the Board is found not to have met the qualifications set forth in Article IV, Section 3 above, the election of that person shall be null and void, and the person who received the next highest number of votes shall be offered the position. If there are no other qualified candidates for the position, then the position will be considered vacant and the Board will appoint a person to fill the position as per Article IV, Section 6 above. If there are not enough candidates to fill all positions which are open for election, then the Board will appoint persons to fill positions for which there are no candidates, as per Article IV, Section 6 above.

ARTICLE VI MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held each month on the first Monday of the month, without further notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal State holiday, then that meeting shall be held at the same time on the next Monday after said legal holiday. The Board reserves the right to cancel any meeting and shall give notice of cancellation prior to that meeting by posting notice at the two entrances to the Foothills Clusters and at the place of the meeting.

Section 1A. Quorum of Directors. At least five of the nine Directors must be present in person or by proxy in order to conduct business of the FCHA. Directors are authorized to vote in person or by proxy at Board meetings. If such a quorum is not

present at any Meeting of the Board, those Directors who are present have the power to adjourn the meeting or may hold a "Town Hall" style meeting, but no action may be taken unless a quorum shall be present.

Section 2. Special Meetings of the Board of Directors. Special Meetings of the Board of Directors shall be held when called by the President, or by any two Directors, after not less than three (3) days' notice to each Director. Notice will be given to Members of such meetings no less than 48 hours before the Special Meeting unless emergency circumstances do not permit enough time for such notice to be given.

Section 3. Actions Taken Without a Meeting. The Directors have the right to take actions in the absence of a meeting by obtaining written approval or consent evidenced by an electronic signature as defined in applicable law of all of Directors. Any such action has the same effect as though taken at a Regular or Special Meeting of the Directors, and shall be presented at the next Regular Board Meeting. Normally such actions will be limited to emergency actions, which are items requiring immediate attention.

ARTICLE VII POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors has all of the powers of a Board of Directors of an Arizona non-profit corporation, subject only to those limitations set forth in applicable law and the Association's Governing Documents (CC&Rs, By-Laws and Articles of Incorporation). The Board has the power to do any and all lawful acts which may be authorized by applicable law and the Association's Governing Documents, as well as any acts which may be necessary or incidental to the exercise of any of the express powers of the Association.

Among other powers, the Board of Directors has the power to:

- a. Maintain the limited Common Areas and such other areas as provided for in the Declaration in a neat and attractive manner which may include private streets and roadways.
- b. Adopt policies and procedures which govern the conduct and actions of Members, tenants, visitors, and guests on the Lots and the limited Common Areas which are not otherwise covered in the Governing Documents. Such policies and procedures, when adopted by the Board and approved by the Members as provided for in the Governing Documents, have the same force and effect as the provisions in the Governing Documents.

c. After notice and an opportunity for a hearing, impose fines and/or penalties on Members for violations of the Governing Documents.

d. Enter into a contract with any person or firm to provide administrative, accounting, legal, construction, or other services and/or enter into an employment contract with any person to perform such services as the Board deems necessary, and to prescribe their respective duties. The Board is not empowered to hire a management firm to manage the affairs of the FCHA without the approval of the majority of Members constituting a quorum at a Meeting of Members held for the purpose of considering such an action.

Section 2. Duties. The Board of Directors shall:

a. Determine the amount of annual and special assessments and collect such assessments from the Members.

b. Pay all taxes due on property owned by the Association. Obtain insurance on the limited Common Areas, and in the event of an insurance claim, apply such insurance proceeds to the damaged area for which the claim was filed.

c. Keep a complete record of all its acts and corporate affairs, and provide such documents upon request in writing by a Member, except as prescribed in applicable law. Provide the Members with the Association's annual financial statement at the Annual Meeting, and to provide an annual financial audit, review or compilation of the Association as required by applicable law.

d. Supervise all officers, agents and employees of the Association, and ensure that their duties are properly performed.

e. Issue, or to cause an appropriate Officer to issue, upon demand by a Member, an official statement or letter setting forth whether or not any assessment has been paid.

f. Obtain Directors' and Officers' insurance on all Directors and Officers and insure all employees who handle the funds of the Association.

g. Borrow money for any reasonable purpose after the approval of seventy-five (75) percent of the Members.

Section 3. Limitations; Expenditures Exceeding \$15,000. All expenditures exceeding \$15,000 (Fifteen Thousand Dollars) shall first be considered at a Regular or Special Meeting of the Board of Directors. If the Board shall approve any such expenditure at such meeting, a notification of the proposed expenditure will be provided to the Members no less than two (2) weeks before the next Regular or Special Meeting of the Board of Directors. The proposed expenditure will be discussed by the Board at the next Regular or Special Meeting. Members will be given an opportunity to comment on

the proposal before final action is taken by the Board, provided that the approval of the Members shall not be required as a condition to the Board approving any such expenditure.

ARTICLE VIII OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers. The Officers of this Association are a President, Vice-President, Secretary, and Treasurer who shall be members of the Board of Directors.

Section 2. Election of Officers. The Directors shall elect the Officers at the first Regular Meeting of the Board following each Annual Meeting, and as necessary due to vacancies.

Section 3. Term. The Officers shall be elected annually and each shall hold office for one (1) year unless he/she resigns, or is removed, or is otherwise found to be disqualified to serve by at least five (5) of the nine (9) members of the Board.

Section 4. Special Appointments. The Board may appoint such other Officers as the affairs of the Association require. The appointees shall have the authorities and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any Officer may be removed from office with cause by at least (5) of the nine (9) members of the Board. Such removal shall take effect immediately. Any Officer may resign at any time by giving written or electronic notice to any Officer of the Board. Such resignation shall take effect on the date of receipt of the notice or at any later time specified by the resigning Officer. The acceptance of a resignation is not necessary to make it effective. An Officer may resign but remain on the Board of Directors.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The person appointed to fill such vacancy shall serve for the remainder of the unexpired term of the Officer he/she replaces.

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 (1) of any of the other offices.

Section 8. Duties. The duties of the Officers are as follows:

- a. President: The President shall preside at all meetings of the Board of Directors; shall carry out the orders and resolutions of the Board; shall sign all leases, mortgages, deeds and other written instruments executed on behalf of the Association and shall co-sign all checks and promissory

notes on behalf of the Association.

- b. Vice-President: The Vice-President shall act in the place of the President in the event of his/her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him/her by the Board.
- c. Secretary: The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; shall serve notice of meetings of the Board and of the Members; shall keep appropriate records showing the Members of the Association together with their addresses; and shall perform such other duties as required by the Board.
- d. Treasurer: The Treasurer shall effect the collection of all income from dues, assessments and fines; shall report to the Board all requests for payments together with their due dates; and shall assist with inspections of properties as may be necessary from time to time.

Section 9. Delegation of Officer's Duties. The Board may delegate the duties and responsibilities of an Officer as it deems appropriate to another Director.

ARTICLE IX COMMITTEES

The Board shall consult with all committees as provided for in the Governing Documents. In addition, the Board may appoint other committees as deemed appropriate in carrying out the affairs of the Association. All committees will report their recommendations to the Board of Directors for final approval.

ARTICLE X FINANCIAL AND OTHER RECORDS

Except as provided for in applicable law, the financial and other records of the Association are available for inspection by any Member. Any Member desiring to review such records must provide a written request to any Officer of the Board setting forth the purpose of the inspection. Upon receipt of the request by the Board, the Member shall be entitled to inspect such records at the principal office of the Association during normal business hours and to have copies provided to him/her of such records. A reasonable charge (not to exceed any limitation imposed by applicable law) will be made for providing such copies. The original records will not be released to the Member.

ARTICLE XI AMENDMENTS

Section 1. These By-Laws may be amended at an Annual or Special Meeting of the Members, by the vote of a majority of the Members present in person or by absentee ballot. In the event Federal, State or County laws change which put these By-Laws in conflict with such laws, such legal changes will automatically supercede the portions of the By-Laws which are in conflict with the law, and a majority vote of the Members present in person or by absentee ballot will be required to amend the By-Laws to bring them into accord with said legal changes. In such a case, written notice of the proposed amendments to the By-Laws will be sent to all Members by the Board of Directors for approval.

Section 2. In the case of any conflict between the Articles of Incorporation and the By-Laws, the By-Laws will prevail.

**ARTICLE XII
MISCELLANEOUS**

The fiscal year of the Association begins on the first day of July and ends on the 30th day of June of every year.

The undersigned Secretary of the Association hereby certifies that the By-Laws were adopted by a majority of the Members present in person or by absentee ballot voting at a meeting of the Members held on November 5, 2007.

FOOTHILLS CLUSTER HOMEOWNERS ASSOCIATION

By: Belinda K. Barrington

Name of Association Secretary: Belinda K. Barrington

