

The Foothills Clusters Homeowner Association
MINUTES - BOARD OF DIRECTORS MEETING

Date/time: Monday, September 14, 2015 6:30 p.m.

Location: Catalina Foothills High School, House #1, Seminar Room

I. CALL TO ORDER/ROLL CALL

Aletha Kalish, President called the board meeting to order at 6:36 PM.

Roll call

Board Member	Present	Absent	Proxy
Aletha Kalish	X		
Brian Bickel	X		
Bob Newcomb			X
Dave Larrabee	X		
Dale Prescott	X		
Dave Spire	X		
Irene Barg	X		
Vacant			
Vacant			

Quorum was present.

Next board meeting day/time/location (Monday, October 5, 2015, 6:30pm, same location)

II. APPROVAL OF JULY MINUTES

A discussion followed, regarding corrections added by Dale. Motion to accept July Minutes with corrections was seconded and passed.

III. APPROVAL OF AUGUST MINUTES

A discussion followed, regarding corrections added by Dale. Motion to accept August Minutes with corrections was seconded and passed.

IV. PRESIDENT'S COMMENTS

I feel we get too bogged down with minor corrections. I don't want a dictatorial Board, but prefer a "community" versus HOA. I want folks to participate. We don't need to go by Robert's Rule of Order. We need to get folks to attend our meetings and work together.

V. TREASURE'S REPORT (BALANCE SHEET attached)

Motion to accept the Treasurer's Report was seconded and passed.

VI. COMMITTEE REPORTS

1. Landscape & Roads Committee (attached)
Dale requested permission to award Engineering Services not to exceed \$30,000. Proposals for the Engineering Assessment for Phase 1 only are due Tuesday, September 15. The Committee would like to award the bid at the October 5th Board Meeting. A long discussion followed about the interpretation of the HOA bylaws ARTICLE VII, Section 3. Limitations: Expenditures Exceeding \$15,000.

Motion to approve the expenditure for the not-to-exceed amount of \$30,000 was seconded and passed.

- Business Process Committee
No report.

2. Communications Committee (attached)
One of the bullet items is:

Propose we hold a "town meeting" after a brief board meeting in October to present and exchange ideas on the road options before voting to hire an engineering firm.

A discussion followed with several options presented:

- i. Publish an overview of the status of the Roads Project prior to the October 5th Board meeting. Take comments from members at the October 5th Board meeting.
- ii. Wait to award bid at the November Board meeting.

Member Comments:

1. There is a sense of urgency to move forward.
2. Proposals are good for 30 days, so we will need to ask engineering firms if we can extend it to November 2nd.
3. How can we exchange ideas on options we don't have yet?
4. Better to do outreach at Annual meeting.

No motion was made on this issue.

3. Architectural Control Committee with CC&R Enforcement (attached)
 1. Propose we hire the Cluster's attorney's staff to create a formal Enforcement Policy for the cost of \$150. Motion to approve outside the five-hour limit was seconded and passed.
 2. Architectural activity in August:
 - a. 3532 E Nugget, Elliot residence – The owner intends to resurface the roof in Desert Tan. APPROVED
 - b. 3441 E Nugget Cyn Pl, Hejl residence – The owner would like to add rooftop solar PV. APPROVED

- c. 6541 N Burro Creek, Chapman residence – The owners have provided plans and an application for adding a new patio at the back of their house. APPROVED
- d. 3575 E Ventana Cyn, Seminari residence – Owner had been advised to remove a 15-20' saguaro that was crowded by a mesquite tree. NO BOARD ACTION REQUESTED.
- 3. CC&R violations and issues in August. (Attached)
- 4. Architectural Control Committee meeting with Attorney Sept 2015 Summary (attached)

VII. OLD BUSINESS

- 1. Status of home that has been vacant for 3 years. The pool is a mess. Brian says this house belongs to the Sparlings, whose kids have not paid assessments in over a year. He will send a certified letter to the homeowners.
- 2. The status of the Nominating Committee was discussed. With Dena Petersen resignation, the Committee is left without a chair. Dave Larrabee said he would act as chair, and Dave Spire volunteered to be on the Committee.

VIII. NEW BUSINESS

- Establish date for Annual Meeting.
 - Date for Annual Meeting was set for Sunday, November 15 2:00-4:30 PM.
 - A Special Meeting to set assessments and elect officers will follow same date at 4:30 – 5:00 PM.
 - Location for both meetings: Catalina Foothills High School, House #1, Seminar Room.

- Paid Administrative Assistant. (Moved to 2016)
- No Solicitor signs at the Clusters entrances.
 - Since the entrances are County roads, we cannot do this. It was suggested that folks that who don't want solicitors, place a sign on their property.
- Phone account for HOA (moved to 2016)

IX. MASTER ASSOCIATION (attached)

- Status of 3712 Lizard Rock – Is currently up for sale, but has encroachments into the Common Area.
- Master Association's attorney wrote an opinion regarding the Master Association's "Authority to Sell, Transfer, Convey, and Exchange Common Area". (Attached)
- The Foothills Cluster's HOA questions the legality of transferring title of Common Area to private individuals (see attached)

A motion was made, that the Master Association be advised that the FCHOA Board of Directors was opposed to any future transfer of Associations "Common area". Further, the three FCHOA representatives to the Master Association would be instructed to oppose any movement to transfer any "Common area land" until the FCHOA Board determines the legality of such transfers and that Master Associations governing documents requirements have been followed."

Motion was seconded and passed.

X. ADJOURN – Meeting was adjourned at 9:23 PM

XI. ATTACHMENTS

1. Balance Sheet

The Foothills Clusters Homeowners Association

BALANCE SHEET

As of September 13, 2015

	Total
ASSETS	
Current Assets	
Bank Accounts	
BBVA Compass MM 8225	0.00
Old Operating Account	0.00
WFB Checking 7998	72,280.51
WFB Savings 0057	465,203.54
Total Bank Accounts	537,484.05
Accounts Receivable	
Accounts Receivable	4,060.90
Total Accounts Receivable	4,060.90
Other current assets	
Federal Income Tax Withheld	94.41
Undeposited Funds	0.00
Total Other current assets	94.41
Total Current Assets	541,639.36
Other Assets	
BBVA Compass (deleted)	0.00
W/F Business High Yield Savings (deleted)	0.00
Total Other Assets	0.00
TOTAL ASSETS	\$541,639.36
LIABILITIES AND EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
Accounts Payable	0.00
Total Accounts Payable	0.00
Total Current Liabilities	0.00
Total Liabilities	0.00
Equity	
Opening Balance Equity	434,957.74
Retained Earnings	122,003.93

Accrual Basis Sun, Sep 13 9:23AM GMT-7

Net income	-15,322.31
Total Equity	541,639.36
TOTAL LIABILITIES AND EQUITY	\$541,639.36

2. Landscape And Roads

Date: September 14, 2015

From: Dale Prescott (daleprescott@theriver.com)
, Chairman, Landscape & Roads Committee

To: FCHOA Board of Directors

Re: Request permission to award Engineering Services not to exceed
\$30,000

We request the Board to approve awarding engineering services for
Phase 1 - Engineering Assessment which includes cost/benefit
analysis and pavement recommendation plan. The Engineering

Assessment will provide an independent analysis and recommendation on the most cost effective method to rehabilitate our roads. The Engineering Assessment in Phase 1 is crucial. It includes:

- Field visits.
- Get some core samples and obtain a Geotechnical study.
- Recommend the most cost effective option based on various pavement lives.

 O Evaluation of all options should include the effects on:

- Elevation of manholes and water valves.
- Preservation and/or elevation of survey monuments.
- Replacement of flood control berms located at the entrances of some private driveways.
- Mitigation of right-of-way encroachment.

The issue of pavement design and costs cannot be discussed until we determine if we have a base. So a Geotechnical study is required.

Our Bylaws state:

"ARTICLE VII - POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 3. Limitations, Expenditures Exceeding \$15,000. All expenditures exceeding \$15,000 shall first be considered at a Regular or Special Meeting of the Board of Directors. If the Board shall approve such expenditure at such a 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."

Reference URL:

http://foothillsclusters.com/documents/fhchoa_bylaws_2007.pdf

Upon approval of this expenditure, and per ByLaws, we will post this document to the Foothills Clusters web site (foothillsclusters.com) by Monday, September 21, 2015. We will notify our members by posting the URL on our sandwich boards at the entrances to our neighborhood.

On Monday, October 5th, we will present our recommendation for an engineering firm for Phase 1 Engineering Assessment and ask the Board to approve our recommendation by signing acceptance of the proposal set forth.

Dale Prescott

3. Communications Committee

last minutes agend addition

From : Bob InTheClusters <clusters85718@yahoo.com>

Mon, Sep 14, 2015 03:20 PM

Subject : last minutes agend addition

To : Irene Barg <lbarg@comcast.net>

Reply To : Bob InTheClusters <clusters85718@yahoo.com>

Irene, I'm very sorry - I missed this until just now..

Could you insert on the agenda a section for the Communications Committee?

Communications Committee

- The committee is striving to make this the go-to site for HOA communications
 - Ask the board what documents and other information they would like to see be accesses by the public and what by login of neighborhood members?
 - Propose we hold a "town meeting" after a brief board meeting in October to present and exchange ideas on the roads options before voting to hire an engineering firm.
 - o A lot of neighbors have no idea of the project cost of the road resurfacing and may be totally shocked
 - o Some people feel that anyone interested should come to the board meetings, but I propose that they shouldn't be required to; we should get this information to them.
-

4. Architectural Control Committee Board Report September 2015

Respectfully submitted by Bob Newcomb, chair

Unfortunately, I am not able to attend this month's HOA Board meeting in person, so I have asked another board member to kindly read this report aloud in my absence.

This report summarizes Architectural Control activities in the past month requiring Board action. It also lists CC&R violations for which we have received reports or which we have observed directly. Finally, this report refers to a separate report on the efficacy and even legality of CC&R enforcement in the Clusters – we are now in a state where, since previous committees did not enforce certain violations, our power to do so now may be substantially curtailed. This second report includes a summary of a meeting held this month with the Architectural Control Committee and our attorney, Carolyn Goldschmidt.

Since this committee is now responsible for CC&R violation enforcement, we intend to create a standard process for handling complaints and observed violations to ensure consistency and timely response. Taking the right steps up front can significantly affect the outcome of any potential legal actions, should we have to take it that far (though we sincerely wish to avoid that). As part of our on-going email service with our attorney, we have begun discussions along these lines, and our attorney has recommended that we hire her staff to create a formal Enforcement Policy. We are very much in favor of this and would like to complete this before we create any specific policies on our own. The cost of this Enforcement Policy is \$150, which this committee will pay for out of the five-hour budget previously approved by the board.

Our attorney has emphatically advised for quite some time that we be vigilant about violations and respond to them as soon as we are aware of them, meaning that we periodically look for violations and that we definitely do NOT wait until we receive a complaint. Some people do not want to “snoop” on neighbors, but being exclusively complaint driven leads to inconsistent enforcement and can undermine our ability to enforce.

Architectural activity in August:

- 3532 E Nugget, Elliot residence – The owner intends to resurface the roof in Desert Tan. This committee recommends approval; **I move that the board approve this project.**

- 3441 E Nugget Cyn Pl, Hejl [rhymes with “tile”] residence – The owner would like to add rooftop solar PV. This committee recommends approval; **I move that the board approve this project.**
- 6541 N Burro Creek, Chapman residence – The owners have provided plans and an application for adding a new patio at the back of their house. This committee recommends approval; **I move that the board approve this project.**
- 3575 E Ventana Cyn, Seminari residence – Owner had been advised to remove a 15-20’ saguaro that was crowded by a mesquite tree. We informed the owner that we would not approve removal per CC&R requirement. Owner was cooperative and understanding and withdrew his request. **No board action is requested.**

CC&R violations and issues in August:

- House on the corner of Evans Mtn and Lizard Rock – Committee observed bright white roof.
- House on the corner of N Pidgeon Spring Pl and Ventana Canyon – Committee observed bright white roof.
- Almost every single built-up roof on all segments of Lizard Rock Pl, totaling around 10, has a very bright white roof. Many more exist throughout the neighborhood, some more visible than others due to house orientation. Many of these have been white for one or more years without any apparent enforcement attempts. This committee feels that the existence of white roofs is completely out of hand and that we need to determine our approach before attempting to enforce any of these violations. We address this in more detail in the attached addendum.
- 3716 E Guthrie Mountain Pl. A motor home has been parked at this address for several months. Our understanding is that the previous committee spoke in person to the tenant to no apparent avail. We intend to send certified mail to both owner and tenant, but we will wait until we receive the Enforcement Policy from our attorney. In addition to being a CC&R violation and, to many, an eyesore, the presence of this motor home could give the impression to potential buyers that motor homes are allowed in our neighborhood, possibly creating further problems for us in the future.
 - Also at 3716 E Guthrie Mountain Pl, there is storage of a lot of unsightly various objects along the northeastern side of the house, which is visible from the street. We will address this in the same correspondence
- 3732 E Guthrie Mountain Pl. This home has had a side and rear fence for over two years that is not in harmony with the neighborhood and has never been approved. It was erected without application or approval. We had previously discussed possible alternatives, but the violation remains one year later. Now that this committee has assumed responsibility for infractions we will resume discussions with the owner after we receive the Enforcement Policy mentioned above. It is worthy to note that this home also had a serious violation with the front wall, which the owner has resolved by installing a slump-block wall that matches the home beautifully.

5. Architectural Control Committee meeting with Attorney Sept 2015
Summary

On Monday, August 31, 2015, the committee met for an hour with the attorney for The Foothills Clusters HOA, Carolyn Goldschmidt, to discuss CC&R issues and questions.

Date: Monday, August 31, 2015
Time: 5:15pm – 6:15pm
Location: Law offices of Goldschmidt, Shupe
6700 North Oracle Road, Suite 240
Tucson, AZ 85704

Attendees: Carolyn Goldschmidt
Bob Newcomb
Joe Mucenski
Dennis McLean
Nicole Perez

Purpose of meeting

Members of the committee wanted guidance on legal options, as well as best practices, relating to existing CC&R violations, particularly in light of many of them not having been enforced in recent years. Of particular concern were white roofs, which are explicitly prohibited by CC&Rs but which have not been enforced in the past year or more – we have many pure white roofs in the neighborhood at this point.

Potential problems enforcing CC&R violations

Clearly, anything (violation or not) that was approved by a previous Architectural Control Committee or Board cannot be challenged; if it was approved, it is legal.

Carolyn pointed out that there is a long history of non-enforcement in the clusters and this can complicate matters. There are many defenses that a homeowner could bring up after all these years.

- “Estoppel” – Lack of enforcement or incomplete enforcement can lead to the perception that we don’t enforce that issue.
 - E.g. if we have a rule stating no RVs and yet we have RVs in the neighborhood, then somebody might buy a house because they saw the RVs. This could have been something that a purchaser was mainly looking for in house. If we prohibited their RV, they have good defense because they saw that we were not enforcing the rule and relied on that for their purchase decision.
 - The legal term is *estoppel*, that is, enforcement is stopped (we cannot enforce an issue contrary to our previous actions). Our lack of enforcement caused them to rely on it.
- “Waiver” and “laches” – We waited too long to enforce, so we’re waving our right to enforce by not having enforced for all these years.

- The legal term “waiver” means the intentional and voluntary giving up of a right by not enforcing it.
- The legal term “laches” means an unreasonable delay pursuing a right or claim and asserts that the opposing party (the HOA) has “slept on its rights”.
- Basically, if we wait too long to enforce something, we lose the right to enforce it. In some cases, this could be construed as giving up our right to enforce any such issue in the future.
- “Statute of limitations”. The CC&Rs are considered a contract, and violation of them is a breach of contract. The statute of limitations for a (non-monetary) breach of contract is four years from the date of the breach. This is law from the Arizona Revised Statutes (ARS).
 - Basically, any violation that has been un-enforced for four years is now considered legal in the realm of the HOA

The bottom line is that violations that have been in existence for four or more years are pretty much now considered legal.

An important consideration seems to be what will or will not stand up in court. We need to keep in mind that the courts don’t always look favorably on HOA issues, and if we have sloppy records or unclear rules, a court may find in an owner’s favor even if an item is written in our CC&Rs. Therefore, it very strongly behooves us to be as clear and explicit as possible in stating what we will and will not enforce, and for us to enforce immediately and consistently.

If we want to allow white roofs from now on

To allow white roofs, we should publish a policy describing the reasons for not prohibiting them and then amend the CC&Rs. The rationalization could include the number of current violations, the trend of people to be more energy efficient and the role of white roofs, a change in the desires of the neighborhood.

The technically correct path would be to change the CC&Rs. But the requirement of 75% of lots in favor of a change makes the CC&Rs virtually un-modifiable. At the time of this printing, we are trying to get a clearer picture from our attorney on the legitimacy of this approach.

If we want to return to disallowing white roofs

We need a campaign and a strategy. The committee and board need to decide what our goals are. We may need to consider new trends.

In a landmark case from Sedona, an appeals court supported an HOA plan to remove a prohibited, but previously unenforced, item (in this case, grape-stake fences), so there is legal precedent for this kind of plan to get back on track. If we want to enforce the prohibition of white roofs, we can publish such a policy and plan describing a time period during which they may keep their white roof but after which we will enforce all to be in compliance with the CC&Rs.

We need to choose what we as an HOA want to enforce and what not.

Some committee members didn't want to go around looking for problems, but Carolyn countered that we can't wait for problems to come to us (complaint-based). One requirement of enforcement is that we be consistent and treat all people the same. Also, a complaint-driven process can be swayed by whether neighbors like each other. A proper enforcement policy would have us inspecting periodically. Carolyn reiterated that we need an overall plan.

6. Master Association – Authority to Sell, Transfer, Convey, and Exchange Common Area



190 W Magee, #182
Tucson AZ 85704
520-229-3377 Office
888-202-0059 Fax

5201 N 7th Avenue
Phoenix AZ 85013
602-952-6925 Office
888-259-6199 Fax

September 1, 2015

Board of Directors
The Foothills Homeowners Master Association

RE: Authority to Sell, Transfer, Convey, and Exchange Common Area

Dear Board:

You have asked this law firm to provide its opinion regarding The Foothills Homeowners Master Association ("Association") Board of Director's ("Board") authority to convey certain Common Area to an Owner of a Lot within the community. In exchange, that Lot Owner shall convey a portion of his Lot to the Association. The Association shall convert said portion of the Lot into Common Area. For purposes of this opinion, we have examined copies of the Association's Articles of Incorporation, Bylaws, and Declaration of Covenants, Conditions and Restrictions ("CC&Rs"). We have also reviewed the Arizona Nonprofit Corporation Act.

Article IV, Section 1 of the Association's Bylaws states in pertinent part that, "[t]he affairs of this Association shall be managed by [the] Board." Article VII, Section 1(c) of the Bylaws further states that the Board has the power to:

exercise for the Association all powers, duties and authority vested in or delegated to this Association, and not reserved to the membership by other provisions of the By-Laws, the Articles of Incorporation, or the Declaration.

The Association is an Arizona nonprofit corporation. The Arizona Nonprofit Corporation Act, A.R.S. §10-3302 provides that the Association has the power, "to do all things necessary or convenient to carry out its affairs including the power to...sell, convey, mortgage, pledge, lease, exchange and otherwise dispose of all or any part of its property." Article IV of the Association's Articles of Incorporation states in pertinent part that the Board has the power to, "convey, sell, lease, transfer...or otherwise dispose of real...property in connection with the affairs of this Association." Article 1, Section 4 of the Association's CC&Rs states in pertinent part that 'Common Area' is defined as "all real property owned by the Association"

The Association's governing documents and the Arizona Nonprofit Corporation Act expressly grant the Board the power to sell, convey, exchange, or otherwise dispose of its Common Area as necessary to carry out the affairs of the Association.

There is no provision in the Articles of Incorporation, Bylaws, or CC&Rs that would prohibit the Board from doing so.

Based upon our review of the Articles of Incorporation, Bylaws, CC&Rs, and the Arizona Nonprofit Corporation Act, we are of the opinion that the Board has the authority to convey certain Common Area to an Owner of a Lot within the community, and more specifically to swap the Common Area in exchange for a portion of the Owner's Lot.

Best Regards,

Brown | Olcott, PLLC

7. FCHOA Board Member Opinion on Transferring Deed of Any Portion of the Common Area

Member Opinion on Transferring Deed of Any Portion of the Common area

County contract establishes indivisibility of Common Area

According to the Assistant Planning Director for Pima County Development Services, Land Planning and Regulation, Estes established a legal agreement with Pima County while setting up Common Area in part to enable the Cluster Option. The rules for the “cluster option” are complicated and sometimes hard to find. One law links to another, that ultimately references a contract that Estes made with the County. It appears that breaking up the Common Area in any way would be in violation of that contract with the County.

CC&R Restrictions on transfer of Common Area

The Foothills Master Association CC&Rs, Article II, Section 1-c provides:

- c. The right of the Association to dedicate or transfer all or any part of the COMMON AREA to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members and subject to present or future County Zoning Ordinances and Subdivision Regulations.
 - a. No such dedication or transfer shall be effective unless an instrument signed by 2/3 of each class of members has been recorded.

It appears from this that it is illegal to transfer any of the Common Area:

- To a private individual or anyone or anything other than a public agency, authority, or utility
- For any purposes other than those agreed to by the members
- In violation of County Zoning Ordinances
- Without approval from 2/3 of all members. That is, 433 of the 639 members

Deed transfer unnecessary

The rationale presented so far for deed transfers has been liability avoidance. One wonders, in that case, why not just write up an Encroachment Easement that frees the Association from liability and prevents the private party from claiming adverse possession?

Goal of protecting the Common Area

If, as we are told, a main goal of the Association is to protect the Common Area, it would make more sense to demand encroachment removal and restoration of property to its original state than to give the land away to a violator.

Personal legal liability

If the Master Association has performed any illegal deed transfers of the Common Area, it is reasonable to expect legal culpability to fall on directors who voted for, or signed paperwork for, such recorded transactions.

Master Association attorney opinion does not address the legality of a transfer

An opinion letter from the law firm Brown, Olcott, PLLC dated September 1, 2015, and addressing The Foothills Homeowners Master Association’s “authority to sell,

transfer, convey, and exchange Common Area” addresses the authority of the board to act, but does not address the legality of the action.

It is clear from this opinion that, for any legitimate and legal transfer of deed, the Association has the authority to affect the transfer. This is not the question many members are asking, however.

The question that deserves a legal opinion is instead whether a transfer of deed of any portion of the Common Area is legally permitted.

This is analogous to verifying the authority of a bus driver to drive a bus, whereas the important question at hand is whether the authorized bus driver is driving in accordance of all traffic laws. If a driver drives a vehicle in the wrong direction on a one-way street, the action is illegal even though the driver is authorized to drive.

Secondarily, the attorney opinion letter states that a deed transfer would involve an exchange of land (presumably in equal amount), meaning neither a net gain nor loss of land in the Common Area. This has apparently not been mentioned during any previous presentations in front of The Foothills Clusters HOA Board.

Five laws prevent transfer of deed

This member believes that the County zoning contract and the four bullets above from the Master CC&Rs indicate that it is illegal to transfer deed of any portion of the Common Area to a private party.

Bob Newcomb
The Foothills Clusters

8. Bob Newcomb’s Proxy

HOMEOWNER PROXY
FOOTHILLS CLUSTERS HOMEOWNERS ASSOCIATION

A QUORUM IS REQUIRED TO CONDUCT OFFICIAL BUSINESS. IF YOU ATTEND THE MEETING, YOU MAY VOTE IN PERSON. IF YOU DO NOT PLAN TO ATTEND, DESIGNATE A PROXY TO VOTE FOR YOU AND PROVIDE HIM/HER WITH THIS PROXY.

Robert Newcomb, the undersigned Board Member (the "Board Member"), of 3693 E Esperero Canyon Pl, Tucson, Arizona 85718, is entitled to vote at any regular, special, or annual meeting of Foothills Clusters Homeowners Association.

The undersigned designate(s) and appoint(s) Aletha Kalish (the "Proxy") of 3560 E Marshall Gulch Pl, Tucson, Arizona 85718, as the Proxy for the Board Member.

By this designation of proxy, the Proxy may attend and represent the Board Member with the full power to vote and act for the Board Member in the same manner, to the extent and with the same effect as if the Board Member were personally present.

This designation revokes any prior designation of proxy that the Board Member may have given previously with respect to the Board Member's ownership interest in Foothills Clusters Homeowners Association.

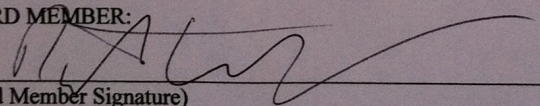
This designation of proxy shall be effective for the September 2015 Board Meeting of the Foothills Clusters Homeowners Association to be held on September 4, 2015, at 6:30 PM, and at all adjournments of such meeting.

The Proxy shall have the full power, as the Board Member's substitute, to represent the Board Member and vote on all issues and motions that are properly presented at the meeting(s) for which this designation of proxy is effective. The Proxy shall have the authority to vote entirely at the discretion of the Proxy. Provided, however, with respect to the following issue(s) the Proxy shall vote as stated: _____

Date of Signing: September 6, 2015

UNIT:

BOARD MEMBER:



(Board Member Signature)

