

BY-LAWS OF  
FOUNTAIN HILLS UNIT OWNERS ASSOCIATION  
A Arizona Condominium Project

BY-LAWS

ARTICLE I

Plan of Unit Ownership

1.1 Name and Location. These are the By-Laws of the FOUNTAIN HILLS UNIT OWNERS ASSOCIATION. The principal office of the Association shall be located at the Property or at such other place as may be designated from time to time by the Board of Directors.

1.2 Compliance. Every Unit Owner and all those entitled to occupy a Unit shall comply with these By-Laws.

1.3 The definitions contained in the "Declaration of Condominium of the Fountain Hill Condominium Project" shall be used in these By-Laws.

ARTICLE II

Association

2.1 Composition. The Association shall consist of all of the Unit Owners acting as a group in accordance with the Act pursuant to the Declaration and these By-Laws. For all purposes the Association shall act merely as an agent for the Unit Owners as a group. The Association shall have the responsibility of administering the Project, establishing the means and methods of collecting assessments and charges, arranging for the management of the Project and performing all of the other acts they may be required or permitted to be performed by the Association by the Act and the Declaration. Except as to those matters which the Act specifically requires to be performed by the vote of the Association, the foregoing responsibilities shall be performed by the Board of Directors.

2.2 Annual Meetings. The annual meetings of the Association shall be held on the second Monday of September of each year, unless such date shall occur on a holiday, in which event the meeting shall be held on the succeeding business day. At such annual meetings the Board of Directors shall be elected by ballot of the Unit Owners in accordance with the requirements of Section 4 of Article III of these By-Laws.

2.3 Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at

...able pl a convenient to the Unit ers as may be designated by the Board of Directors.

2.4 Special Meetings. (a) The President shall call a special meeting of the Association if so directed by resolution of the Board of Directors or upon a petition signed and presented to the Secretary by Unit Owners of not less than twenty-five percent of the aggregate Percentage Interests. The notice of any special meeting shall state the time, place and purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

2.5 Notice of Meetings. The Secretary shall mail to each Unit Owner a notice of each special meeting of the Unit Owners at least six but not more than thirty days, prior to such meeting, stating the time, place and purpose thereof. The mailing of a notice of meeting in the manner provided in this Section and Section 1 of Article VII of the By-Laws shall be considered service of notice.

2.6 Order of Business. The order of business at all meetings of the Association shall be as follows:

- (a) Roll call.
- (b) Proof of notice of meeting.
- (c) Reading of minutes of preceding meeting.
- (d) Report of officers.
- (e) Report of Board of Directors.
- (f) Report of Committees.
- (g) Election or appointment of inspectors of election (when so required).
- (h) Election of members of the Board of Directors (when so required).
- (i) Unfinished business.
- (j) New Business.

2.7 Voting. Voting at all meetings of the meetings of the Association shall be on a Unit basis and each Unit is entitled to one vote. Where the ownership of a Unit is in more than one person, the person who shall be entitled to cast the vote of such Unit shall be the person named in a certificate executed by all of the owners of such Unit and filed with the Secretary or, in the absence of such named person from the meeting, the person who shall be entitled to cast the vote of such Unit shall be the person owning such Unit who is present. If more than one person owning such Unit is present, then such vote shall be cast only in accordance with their unanimous agreement of all owners of such Unit. Such certificate shall be valid until revoked by a subsequent certificate similarly executed. Wherever the approval or disapproval of a Unit Owner is required by the Act, the Declaration or these By-Laws, such approval or disapproval shall be made only by the person who would be entitled to cast the vote of such Unit at any meeting of the Association. Except where a greater number is required by

the Act, the Declaration or these By-Laws, the owners of more than fifty percent of the Units in the project voting in person or by proxy at one time at a duly convened meeting at which a quorum is present ("Majority of the Unit Owners") is required to adopt decisions at any meeting of the Association. If the Declarant owns or holds title to one or more Units, the Declarant shall have the right at any meeting of the Association to cast the votes to which such Unit or Units are entitled. No Unit Owner may vote at any meeting of the Association or be elected to or serve on the Board of Directors if the Association has perfected a lien against his Unit and the amount necessary to release such lien has not been paid at the time of such meeting or election.

2.8 Proxies. A vote may be cast in person or by proxy. Such proxy may be granted by any Owner in favor of only another Unit Owner, a Mortgagee or the Declarant. Proxies shall be duly executed in writing, shall be valid only for the particular meeting designated therein and must be filed with the Secretary before the appointed time of the meeting. Such proxy shall be deemed revoked only upon actual receipt by the person presiding over the meeting of notice of revocation from any of the persons owning such Unit. Except with respect to proxies in favor of a Mortgagee, no proxy shall in any event be valid for a period in excess of eleven months after the execution thereof.

2.9 Quorum. Except as otherwise provided in these By-Laws, the presence in person or by proxy of Unit Owners of fifty percent or more of the Units shall constitute a quorum at all meetings of the Association. If, however, such quorum shall not be present or represented by proxy, shall have power to adjourn the meeting and reschedule for a time no earlier than 48 hours, and no later than thirty (30) days after the time set for the original meeting. No notice of such rescheduled meeting shall be required except an announcement thereof at the original meeting.

2.10 Conduct of Meetings. The President, or in his absence the Vice-President, shall preside over all meetings of the Association and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting as well as a record of all transactions occurring thereat. All votes shall be tallied by tellers appointed by the President.

### ARTICLE III

#### Board of Directors

3.1 Number and Qualification. The affairs of the Association shall be governed by a Board of Directors. The Board of Directors, shall be composed of three persons, all of whom shall be Unit Owners, officers of corporate Unit Owners, partners of a partnership Unit Owner, trustees of a trust, Mortgagees (or

Designees of Mortgagees) or designees of the Declarant.

3.2 Powers and Duties. The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by the Act, the Declaration or by these By-Laws required to be exercised and done by the Association. The Board of Directors shall have the power from time to time to adopt any Rules and Regulations deemed necessary for the benefit and enjoyment of the Project; provided, however, that such Rules and Regulations shall not be in conflict with the Act, the Declaration or these By-Laws. The Board of Directors shall delegate to one of its members or to a person employed for such purpose the authority to act on behalf of the Board of Directors on such matters relating to the duties of the Manager, if any, which may arise between meetings of the Board of Directors as the Board of Directors deems appropriate. In addition to the duties imposed by these By-Laws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall on behalf of the Association:

- (a) Prepare an annual budget, in which there shall be established the assessments of each Unit Owner for the Common Expenses.
- (b) Make assessments against Unit Owners to defray the costs and expenses of the Project, establish the means and methods of collecting such assessments from the Owners and establish the period of the installment payment of the annual assessment for Common Expenses. Unless otherwise determined by the Board of Directors, the annual assessment against each Unit Owner for his proportionate share of the Common Expenses shall be payable in equal monthly installments, each such installments to be due and payable in advance on the first day of each month for such month.
- (c) Provide for the operation, care, upkeep and maintenance of all the Property and services of the Project.
- (d) Designate, hire and dismiss the personnel necessary for the maintenance, operation, repair and replacement of the Common Elements and provide services for the Property and, where appropriate, provide for the compensation of such personnel and for the purchase of equipment, supplies and material to be used by such personnel in the performance of their duties, which supplies and equipment shall be deemed part of the Property.
- (e) Collect the assessments against the Unit Owners, deposit the proceeds thereof in bank depositories

designated by the Board of Directors and use the proceeds to carry out the administration of the Property.

- (f) Make and amend the Rules and Regulations.
- (g) Open bank accounts on behalf of the Association and designate the signatories thereon,
- (h) Make, or contract for the making of, repairs, additions and improvements to or alterations of the Property, and repairs to and restoration of the Property, in accordance with the Declaration and these By-Laws, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings.
- (i) Enforce by legal means the provisions of the Declaration, these By-Laws and the Rules and Regulations and act on behalf of the Unit Owners with respect to all matters arising out of any eminent domain proceedings.
- (j) Obtain and carry insurance against casualties and liabilities, as provided in the Declaration, pay the premiums therefor and adjust and settle any claims thereunder.
- (k) Pay the cost of all authorized services rendered to the Association and not billed to Unit Owners of individual Units.
- (l) Keep books with detailed accounts of the receipts and expenditures affecting the Property, and the administration of the Project, specifying the expenses of maintenance and repair of the Common Areas and any other expenses incurred. All books and records shall be kept in accordance with good and accepted accounting practices.
- (m) Borrow money on behalf of the Project when required in connection with any one instance relating to the operation, care, upkeep and maintenance of the Common Elements, provided, however, that (i) the consent of a majority of all Unit Owners, obtained at a meeting duly called and held for such purpose in accordance with the provisions of these By-Laws, shall be required to borrow any sum in excess of Fifteen Thousand Dollars. If any sum borrowed by the Board of Directors on behalf of the Project pursuant to the authority contained in this paragraph (m) is not repaid by the Association, a Unit Owner who pays to the creditor such proportion thereof as his

Unit ownership bears to the total Units in the Project shall be entitled to obtain from the creditor a release of any judgment or other lien which such creditor shall have filed or shall have the right to file against such Unit Owner's Unit.

- (n) Acquire, hold and dispose of Units and mortgage the same if such expenditures and hypothecations are included in the budget adopted by the Association.
- (o) Do such other things and acts not inconsistent with the Act, the Declaration or these By-Laws which the Board of Directors may be authorized to do by a resolution of the Association.

Section 3 Manager. The Board of Directors may employ for the Project a Manager at a compensation established by the Board of Directors to manage the Project, subject to the provisions of the Declaration with respect to the terms of contract for professional management as required thereby.

Section 4 Election and Term of Office. (a) At the annual meeting of the Association, three members of the Board of Directors shall be elected. Term of office shall be one year. The members of the Board of Directors shall hold office until their respective successors shall have been elected by the Association. (b) Persons qualified to be members of the Board of Directors may be nominated for election only as follows:

(1) Any Unit Owner may submit to the Secretary at least ten days before the meeting at which the election is to be held a nominating petition signed by Unit Owners owning at least two Units, and a statement that the person nominated is willing to serve on the Board of Directors.

(2) Nominations may be submitted from the floor at the meeting at which the election is held for each vacancy on the Board of Directors for which no more than one person has been nominated by petition.

3.5 Cumulative Voting. Each Unit shall be entitled to one vote except that in voting for members of the Board of Directors. Cumulative voting shall prevail, each Unit may have votes equalling the number of Directors being elected and all votes may be cast for one Director or the votes may be split as the owner shall desire.

3.6 Removal or Resignation of Members of the Board of Directors. At any regular or special meeting duly called, any one or more of the members of the Board of Directors may be removed with or without cause by a vote of the Unit Owners and a successor may then and there be elected to fill the vacancy thus created. If 9 of the Unit Owners affirmatively vote to retain

the Board of Director then he shall be retained. Any Director whose removal has been proposed by the Unit Owners shall be given at least seven days' notice of the time, place and purpose of the meeting and shall be given an opportunity to be heard at the meeting. A member of the Board of Directors may resign at any time and shall be deemed to have resigned upon disposition of his Unit.

3.7 Vacancies. Vacancies in the Board of Directors shall be filled by a vote of a majority of the remaining Directors at a special meeting of the Board of Directors held for such purpose promptly after the occurrence of any such vacancy, even though the directors present at such meeting may constitute less than a quorum. Each person so elected shall be a member of the Board of Directors for the remainder of the term of the member being replaced and until a successor shall be elected at the next annual meeting of the Association.

3.8 Organization Meeting. The first meeting of the Board of Directors following the annual meeting of the Association shall be held within thirty days thereafter at such time and place as shall be fixed by the Association at the meeting at which such Board of Directors shall have been elected, and no notice shall be necessary to the newly elected members of the Board in order legally to constitute such meeting, providing a majority of the whole Board of Directors shall be present thereafter.

3.9 Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the Directors.

3.10 Special Meetings. Special meetings of the Board of Directors may be called by the President on three business days notice to each Director, given by mail, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board shall be called by the President or Secretary in like manner and on like notice on the written request of at least two directors.

3.11 Waiver of Notice. Any director may at any time, in writing, waive notice of any meeting of the Board of Directors and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board of Directors shall constitute a waiver of notice by him of the time, place and purpose of such meeting. If all directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

3.12 Quorum of Board of Directors. At all meetings of the Board a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board. If at any meeting of

the Board there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.13 Fidelity Bonds. There shall be obtained fidelity bonds in such amount in such form and such other amounts as are required by the Declaration for all officers, directors, volunteers and employees of the Association, including without limitation the Manager, handling or responsible for Project funds. The premiums on such bonds shall constitute common expense.

3.14 Compensation. No director shall receive any compensation from the Project for acting as such.

3.15 Conduct of Meetings. The President shall preside over all meetings of the Board and the Secretary shall keep a minute book of the Board recording therein all resolutions adopted by the Board and a record of all transactions and proceedings occurring at such meetings.

3.16 Action Without Meeting. Any action by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if all of the members of the Board shall individually or collectively consent in writing to such action. Any such written consent shall be filed with the minutes of the proceedings of the Board of Directors.

3.17 Liability of the Board of Directors, Officers, Unit Owners and Association. (a) The officers and members of the Board of Directors shall not be liable to the Association for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The Association shall indemnify and hold harmless each of the officers and Directors from and against all contractual liability to others arising out of contracts made by the officers or the Board on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Act, the Declaration of these By-Laws. Officers and members of the Board shall have no personal liability with respect to any contract made by them on behalf of the Association. The liability of any Unit Owner arising out of any contract made by the officers or Board of Directors, or out of the aforesaid indemnity in favor of the members of the Board of Directors or officers, or for damages as a result of injuries arising in connection with the Common Elements solely by virtue of his ownership of Unit therein or for liabilities incurred by the Association, shall be limited to the total liability divided by the number of Units.



## ARTICLE IV

### Officers

4.1 Designation. The principal officers of the Association shall be the President, the Vice-President, the Secretary, and the Treasurer, all of whom shall be elected by the Board of Directors. The Board may appoint an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary. The President and Vice-President shall be members of the Board of Directors. Any other officers may, but need not, be Unit Owners or members of the Board of Directors.

4.2 Election of Officers. The officers of the Association shall be elected annually by the Board at the organization meeting of each new Board of Directors and shall hold office at the pleasure of the Board.

4.3 Removal of Officers. Upon the affirmative vote of a majority of all members of the Board any officer may be removed, either with or without cause, and a successor may be elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

4.4 President. The President shall: be the chief executive officer of the Association; preside at all meetings of the Association and of the Board of Directors; and have all of the general powers and duties which are incident to the office of president of a business corporation organized under the laws of the State of Arizona, including without limitation the power to appoint committees from among the Unit Owners from time to time as the President may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association.

4.5 Vice President. The Vice President shall take the place of the President and perform the duties of the President whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to act in the place of the President on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors or by the President.

4.6 Secretary. The Secretary shall keep the minutes of all meetings of the Association and of the Board of Directors; have charge of such books and papers as the Board of Directors may direct; maintain a register setting forth the place to which all notices to the Unit Owners and Mortgagees hereunder shall be delivered; and, in general, perform all the duties incident to the office of secretary of a business corporation organized under the laws of the State of Arizona.

4.7 Treasurer. The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate financial records and book of account showing all receipts and disbursements, and for the preparation of all required financial data; and be responsible for the deposit of all monies and other valuable effects in the name of the Board of Directors, the Association or the Manager, in such depositories as may from time to time be designated by the Board, and in general, perform all the duties incident to the office of treasurer of a business corporation organized under the laws of the State of Arizona.

4.8 Execution of Documents. All agreements, contracts, deeds, lease, checks and other instruments of the Association for expenditures or obligations shall be executed by any two persons designated by the Board of Directors.

4.9 Compensation of Officers. No officer who is also a director shall receive any compensation from the Association for acting as such officer.

## ARTICLE V

### Compliance and Default

5.1 Relief. Each Unit Owner shall be governed by, and shall comply with, all of terms of the Act, the Declaration these By-Laws as any of the same may be amended from time to time. In addition to the remedies provided in the Act or in the Declaration, a default by a Unit Owner shall entitle the Association, acting through its Board of Directors or through the Manager, to the following relief:

- (a) Additional Liability. Each Unit Owner shall be liable for the expense of all maintenance, repair or replacement rendered necessary by his act, neglect or carelessness or the act, neglect or carelessness of any of his employees, agents or licensees, but only to the extent that such expense is not covered by the proceeds of insurance carried by the Board. Such liability shall include any increase in casualty insurance rates occasioned by use, misuse, occupancy or abandonment of any Unit or its appurtenances. Nothing contained herein, however, shall be construed as modifying any waiver by any insurance company of its rights of subrogation.
- (b) Costs and Attorney's Fees. In any proceedings arising out of any alleged default by a Unit Owner, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorney's fees as may be determined by the court.

(c) No Waiver of Rights. The failure of the Association, the Board or of a Unit Owner to enforce any right, provision, covenant or condition which may be granted by the Declaration, the Act or the By-Laws shall not constitute a waiver of the right of the Association, the Board of Directors or the Unit Owner to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Association, the Board or any Unit Owner pursuant to any term, provision, covenant or condition of the Declaration, these By-Laws or the Act shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other privileges as may be granted to such party by such instruments or Act or at law or in equity.

## ARTICLE VI

### Amendment to By-Laws

6.1 Amendments. Except as otherwise provided in this Section, these By-Laws may be modified or amended either (i) by a vote of at least fifty-one percent (51%) of the Units at any regular or special meeting at which a quorum is present, provided that notice of the proposed amendment shall have been given to each Unit Owner simultaneously with the notice of such meeting, or (ii) pursuant to a written instrument duly executed by at least fifty-one percent (51%) of the Unit owners. Furthermore, notwithstanding the foregoing, so long as the Declarant has one or more Units for sale, no amendment to the By-Laws may be adopted which might interfere with the construction, display, sale, lease, or other disposition of such Unit or Units.

6.2 Conflicts. No modification or amendment of these By-Laws may be adopted which shall be inconsistent with the provisions of the Act or with the provisions of the Declaration. A modification or amendment once adopted as provided for herein shall then constitute part of the official By-Laws of the Project and all Unit Owners shall be bound to abide by such modification or amendment.

6.4 Approval of Mortgagees. These By-Laws contain provisions concerning various rights, priorities, remedies and interest of Mortgagees. Such provisions in these By-Laws are to be construed as covenants for the protection of such Mortgagees on which they may rely in making loans secured by Mortgages. Accordingly, no amendment or modification of these By-Laws impairing or affecting such rights, priorities, remedies or interests of a Mortgagee shall be adopted without the prior written consent of such Mortgagee.

## ARTICLE VII

### Miscellaneous

7.1 Manner of Notice. All notices, demands, bills, statements or other communications provided for or required under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by U.S. Mail, first class postage prepaid, (i) if to a Unit Owner, at the address of his Unit or at such other address as the Unit Owner may have designated by notice in writing to the Secretary, or (ii) if to the Association or the Manager, at the principal office of the Manager or at such other address as shall be designated by notice in writing to the Unit Owners pursuant to this Section. If a Unit is owned by more than one person, each such person who so designates an address in writing to the Secretary shall be entitled to receive all notices hereunder.

7.2 Waiver of Notice. Whenever any notice is required to be given under the provisions of the statutes, the Declaration on these By-Laws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether signed before or after the time stated therein, shall be deemed equivalent thereto, unless such waiver is ineffective under the provisions of the Act.

7.3 Captions. The captions contained in these By-Laws are for convenience only and are not part of these By-Laws and are not intended in any way to limit or enlarge the terms and provisions of these By-Laws.

7.4 Gender, etc. Whenever in these By-Laws the context so requires, the singular number shall include the plural and the converse; and the use of any gender shall be deemed to include all genders.

7.5 Fiscal Year. The fiscal year of the Association shall consist of the twelve month period commencing on January 1 of each year and terminating on December 31 of the same year, except that the first fiscal year shall begin at the date of organization and terminate on December 31. The fiscal year herein established shall be subject to change by the Board of Directors should it be deemed advisable or in the best interest of the Association.

IN WITNESS WHEREOF, the Declarant has caused these  
By-Laws to be executed on behalf of the Association this 20  
day of FEB., 1986.

Michael A. DuBois  
Michael A. DuBois

Christopher F. Kendall  
Christopher F. Kendall