

**Amended and Restated Bylaws  
of the  
The Foothills Property Owners Association, Inc.**

ARTICLE I

Name and Location

The name of the corporation is THE FOOTHILLS PROPERTY OWNERS' ASSOCIATION, INC., hereinafter referred to as the "Association." The principal office of the Association shall be located at \_\_\_\_\_, Prescott, Arizona. The Association may from time to time change the location of its principal office as the Board of Directors may determine or as the affairs of the Association may require. .

ARTICLE II

Definitions

Except as otherwise defined herein, the words and terms used herein shall be deemed to have the same meanings as are given those words and terms in that certain Declaration of Covenants, Conditions and Restrictions for The Foothills dated March 14, 1996, and recorded on March 14, 1996, in Book 3171, Pages 494-537 of the Official Records of Yavapai County, Arizona (the "Declaration").

ARTICLE III

Membership and Transfer

Section 1. Membership. Every owner (an "Owner") shall be a member (a "Member") of the Association. The terms and provisions set forth in these Bylaws, which are binding upon all Owners, are not exclusive, as Owners shall, in addition, be subject to the terms and provisions of the Articles of Incorporation (the "Articles"), the Declaration and the Association Rules. Membership of Owners (a "Membership") shall be appurtenant to and may not be separated from the interest of such Owner in any residence (a "Residence") on a lot in the Project (a "Lot"). Ownership of a Lot or Residence shall be the sole qualification for membership; provided, however, a Member's voting rights or privileges in the Common Area, or both, may be regulated or suspended as provided in the Declaration, these Bylaws or the Association Rules. Not more than one Membership shall exist based upon ownership of a single Lot.

Section 2. Transfer. The Membership held by any Owner shall not be transferred, pledged or alienated in any way, except that such Membership shall automatically be transferred to the transferee of the interest of an Owner in a Lot. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. The Association shall have the right to record the transfer upon the books of the Association without any further action or consent

Section 3. Voting Rights. All voting rights in the Association shall be vested in the Members of the Association. The votes for a Lot shall be exercised as the Owners of the Lot determine, but in no event shall more than one (1) vote be cast with respect to any Lot. The vote for each Lot shall be cast as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes should be cast, they shall lose their right to vote on the matter in question. If any Owner casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that the Owner was acting with the authority and consent of all other Owners of the same Lot. In the event that more than one vote is cast for a particular Lot, none of such votes shall be counted and such votes shall be deemed void.

Section 4. Corporate or Trust Membership. In the event any Lot is owned by a corporation, partnership, trust, or other association, the corporation, partnership, trust, or association, such corporation, partnership, trust, or other association, as the case may be, shall be a Member and shall designate in writing at the time of acquisition of the Lot an individual who shall have the power to vote said Membership, and in the absence of such designation and until such designation is made, the chief executive officer, if any, of such corporation, partnership, or association, shall have the power to vote the membership, and if there is no chief executive officer, then the board of directors or general partner of such corporation, partnership, or association shall designate who shall have the power to vote the Membership. In the case of a trust where no trustee has been designated to cast the vote, the first named of current trustees shall have the power to cast the vote for the trust.

Section 5. Suspension of Voting Rights. In the event any Owner is in arrears in the payment of any assessments or other amounts due under any of the provisions of these Bylaws, the Declaration, the Articles, or Association Rules for a period of fifteen (15) days, said Owner's right to vote as a Member of the Association shall be suspended and shall remain suspended until all payments, including accrued interest and attorneys' fees, are brought current. In the event any Owner is in default of any non-monetary obligation of these Bylaws, the Declaration, the Articles, or Association Rules, and remains in default for more than ten (10) days after notice from the Association to cure same, said Member's right to vote shall be suspended for a period not to exceed sixty (60) days.

#### ARTICLE IV Meeting of Members

Section 1. Annual Meetings and Special Meetings. An annual meeting of the members of the Association shall be held at least once every twelve (12) months at a date and time determined by the Board of Directors for the purpose of electing or announcing the results of the election of Directors and transacting such other business as may properly come before the meeting.

**Section 2 Special Meetings.** Special meetings of the Members may be called by the president, the Board of Directors, or by the written request signed by Members having at least one-fourth (1/4th) of the total authorized votes in the Association.

**Section 3. Notice of Meetings.** Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, not less than ten (10) days nor more than fifty (50) days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the purpose of the meeting.

**Section 4. Quorum.** The presence at the meeting in person or by absentee ballot of Members entitled to cast thirty percent (30%) of the votes of the Membership entitled to be cast shall constitute a quorum for any action except as otherwise provided in the Declaration, the Articles, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the Members present thereat shall have power to adjourn and reschedule the meeting.

**Section 5. Absentee Ballots.** At all meetings of Members, each Member then entitled to vote may vote in person or by absentee ballot in accordance with applicable Arizona statutes.

**Section 6. Non-cumulative Voting.** All voting shall be done on a non-cumulative basis.

**Section 7. Voting by Mail.** When Directors are to be elected or any other matter is submitted to a vote of the Members, such vote may be conducted at a meeting or by mail in such manner as the Board of Directors shall determine. In the event that a vote is taken by mail, the return of ballots by thirty percent (30%) of Members entitled to vote shall validate the vote and satisfies any quorum requirement. Unless otherwise required by statute, the Declaration or these Bylaws, a majority vote of those voting by mail shall be sufficient to elect Directors or carry a matter put to such a vote.

## ARTICLE V

### Board of Directors: Selection: Term of Office

**Section 1. Number.** The affairs of this Association shall be managed by a Board of Directors all of whom shall be Members of the Association. The Board shall have the exclusive right of determining the affairs of the Association. The Board shall consist of not less than five (5) nor more than ten (10) directors.

Section 2. Term of Office. Directors shall be elected to and shall serve staggered three-year terms as follows: One-third of the number of Directors (or as close to one-third as is possible, rounding up and then down in consecutive years) shall be elected for three-year terms at each annual meeting, or each year if voting is conducted by mail. All elections and appointments of directors under these Bylaws shall be made in a manner to preserve the staggering of terms contemplated hereby. At each annual meeting, the Members shall elect directors to replace those directors whose terms have expired and all such directors shall be elected for a term of three (3) years. The number of directors may from time to time be increased to not more than ten (10) and may from time to time be decreased to not less than five (5), by vote of the Board. If the new directorships are created and filled by the Board between annual meetings, the newly elected directors shall serve until the next annual meeting of the Members. If the Board approves a reduction in the number of directors, sitting directors will be allowed to complete their elected term(s). The removal provisions of Section 3 of this Article V are not affected by this provision.

A "Term Year" is defined as the period commencing the date of an annual meeting and ending on the date that is one day before the date of the next annual meeting. A Board member may serve a maximum of six (6) consecutive Term Years. Subject to the following sentence, after serving such period, the Member is not eligible to serve as a board member until after at least one Term Year has elapsed since the Member served as a director. In the event that because at an annual meeting there are an insufficient number of candidates to fill the vacancies on the Board to be filled at such meeting and as a result the number of directors serving on the Board will be less than five (5) directors, notwithstanding the maximum Term Year limitation, the Board may appoint a member, including an existing Board member whose six-year maximum Term Year limitation would otherwise prevent the Board member from continuing to serve, to fill a vacancy such that the Board consists of at least five (5) directors.

Section 3. Removal and Vacancies. At any annual or special meeting of the Members duly called, any one or more of the directors may be removed from the Board, with or without cause, by a majority vote of the Members of the Association, and a successor may then and there be elected by a majority of the members in attendance at the meeting to fill the vacancy thereby created. A director so elected shall be elected for the full unexpired term of the director removed. Any director whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting prior to the vote for removal. Except as to a vacancy created by the removal of a director pursuant to this Section 3, any vacancy occurring in the Board of Directors and any directorship to be filled by reason of an increase in the number of Directors shall be filled by the affirmative vote of a majority of the remaining Directors, though less than a quorum, at the next regular or special meeting of the Board. A Director appointed to fill a vacancy shall be appointed for the full unexpired term of his predecessor in office.

Section 4. Compensation. No director shall receive compensation for any service the director renders to the Association in the capacity of director. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties as a director and may receive a salary or wages if he is employed by the Association in a capacity in addition to serving as a director.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

## ARTICLE VI Nomination and Election of Directors

Section 1. Nomination. Nomination for election to the Board shall be made by a nominating committee. The nominating committee shall consist of a chairman, who shall be a member of the Board, and two or more persons who are either Members of the Association, officers of the corporate Member, or partners in a partnership Member. The nominating committee shall be appointed by the Board at least sixty (60) days prior to each annual meeting of the Members, to serve from the date of such appointment to the close of such annual meeting. The members of the nominating committee shall be announced at each annual meeting. The nominating committee shall survey the membership and make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies which are to be filled.

Section 2. Election. Election to the Board shall be by secret written ballot or electronic ballot. The persons (not to exceed the number of vacancies to be filled at such election) who receive the largest number of votes shall be elected.

## ARTICLE VII Meeting of Directors

Section 1. Regular Meetings. Regular meetings of the Board may be held at least quarterly, at such place and hours as may be fixed from time to time by resolution by the Board.

Section 2. Special Meetings. Special meetings of the Board shall be held when called by the President of the Association, or by any two directors, provided that, absent an emergency, no less than 48 hours' notice shall be given to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a

majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 4. Open Meetings. The Association shall comply with the open meeting requirements of A.R.S. § 33-1804, as amended from time to time.

ARTICLE VIII  
Powers and Duties of the Board of Directors

Section 1. Powers. The Board shall have power to:

(a) Adopt and publish rules and regulations governing the use of the Common Area, the personal conduct of the Members and their guests thereon, and any other matters contemplated by the Declaration and the Articles, and to establish fines for infractions thereof;

(b) Suspend the voting rights of a Member and/or the Member's right to use all or any portion of the Common Area during any period in which such Member shall be in default in the payment of any assessment levied by the Association, or for non-monetary infractions of the Declaration, or the Association Rules;

(c) Exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the Members by other provisions of these Bylaws, the Articles or the Declaration;

(d) Declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board; and

(e) Employ a manager, independent contractors, or such other employees as they deem necessary and to prescribe the duties of such persons.

Section 2. Duties. It shall be the duty of the Board to:

(a) Cause to be kept a complete record of all of its acts and corporate affairs in accordance with Arizona statutes, and to present a financial statement to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by at least ten percent (10%) of the Members who are entitled to vote at such meeting;

(b) Supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;

(c) As more fully provided in the Declaration, to:

(1) Fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period; and

(2) Take such action, as and when the Board deems such action appropriate but after notice as provided in the Declaration, to foreclose the lien against any Lot for which assessments are not paid and/or to bring an action at law against the Member personally obligated to pay the same.

(d) Issue or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of such certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment, as against any bona fide purchaser of, or lender on, the Residence in question;

(e) Procure and maintain adequate liability and property insurance on the Common Area;

(f) Cause the maintenance responsibilities of the Association set forth in the Declaration to be performed.

## ARTICLE IX Officers and Their Duties

Section 1. Enumeration of Offices. The officers of this Association shall be a President, who shall at all times be a member of the Board, a Vice President, a Secretary, and a Treasurer, and such other officers as the Board may from time to time create by resolution. Eligibility to serve as an officer requires that the Member declares the Member's primary residence to be in the Project.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board following each annual meeting of the Members. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as convenient. New offices may be created and filled at any meeting of the Board of Directors.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he or she shall be removed or otherwise disqualified to serve or unless elected for a time period specified to be different than one year. There is no term limit for officer positions except President. A Board President may serve not more than three consecutive Term Years.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall (i) hold office for such period, (ii)

have such authority, and (iii) 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 or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein and, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer replaced.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. Other than for these two (2) offices, no person simultaneously shall hold more than two (2) offices except in the case of special offices created pursuant to Section 4 of this Article.

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

(a) President. The President shall preside at all meetings of the Board; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments; and shall co-sign all checks over \$1000 and promissory notes. The President may authorize individual expenditures in amounts less than 2% of the budget for the year in which the expenditure will be made.

(b) Vice President. The Vice President shall act in the place and stead of the President in the event of his 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; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses; keep all Association records required by Arizona statutes, and perform such other duties as required by the Board.

(d) Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board including budgeted items; shall sign all checks and promissory notes of the Association; shall keep the financial records of the Association which shall be reviewed by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and statement of income and expenditures to be presented to the membership at the annual meeting and delivered to the Members. Further, the



Treasurer shall present to the Board a quarterly financial report of the expenditures versus the budget year to date and the nearest end of quarter balance sheet at each regular Board meeting. Quickbooks, (or equivalent software, as approved by the board), is the required software to keep proper books. The accounting function will be separate from the check signing function. All officers shall be signatories on all bank accounts.

(e) Delegation. The Board may delegate the duties listed above or other duties to a manager or managing agent, or other person; however, such delegation shall not relieve any member of the Board of his/her responsibility for such duties.

Section 9. Compensation. No officer shall receive any compensation from the Association for acting as such. However, any officer may be reimbursed for his or her actual expenses incurred in the performance of his or her duties. Nothing contained herein shall be construed to preclude an officer from serving the Association in any other capacity, and receiving compensation therefor.

Section 10. Managing Agent. The Board of Directors may hire a managing agent at a compensation established by the Board of Directors. The managing agent may either be an employee of the Association, an independent professional management company, or an independent contractor. The managing agent shall perform such duties and services as the Board of Directors shall authorize. The Board of Directors may, but is not obligated to, delegate to the managing agent all of the powers granted to the Board of Directors or the officers of the Association by these Bylaws; provided, however, that the following powers may not be delegated to the managing agent:

- (A) To adopt the annual budget, any amendment thereto or to levy Assessments;
- (B) To adopt, repeal or amend Association Rules;
- (C) To designate signatories on Association bank accounts; and
- (D) To borrow or lend money on behalf of the Association.

Section 11. Management Agreement. Any contract with the managing agent must provide that it may be terminated with or without cause and without payment of any penalty or termination fee on no more than thirty (30) days written notice. The term of any such contract may not exceed one (1) year.

## ARTICLE X Indemnification

The Association shall indemnify all of its directors, officers, incorporators, members of the Architectural Committee, employees, agents and its former directors and officers, to the maximum extent authorized by law, against all expenses incurred by them, including, without limitation, legal fees, and judgments and penalties rendered or levied

against them or any of them in any legal action brought against any such persons for actions or omissions alleged to have been committed by any such person while acting within the scope of his or her employment by the Association, provided that the Board shall determine in good faith that such person did not act, fail to act, or refuse to act willfully or with gross negligence, or with fraudulent or criminal intent in regard to the matter involved in the action, and provided further that no such indemnification shall be available with respect to liabilities under the Securities Act of 1933, and provided further that the Association shall have the right to refuse indemnification in any instance in which the person to whom indemnification would otherwise have been applicable unreasonably shall have refused to permit the Association, at its own expense and through counsel of its own choosing, to defend him or her in any such legal action. Whenever any such person shall report to the President of the Association that he or she has incurred or may incur any such expenses, the Board shall, at its next meeting, or at a special meeting held within a reasonable time thereafter, determine in good faith whether such person acted, failed to act, or refused to act willfully, with gross negligence or with fraudulent or criminal intent in regard to the matter involved in the action. If the Board determines in good faith that such person did not act, fail to act or refuse to act willfully or with gross negligence or with fraudulent or criminal intent in regard to the matter involved in the action, indemnification shall be mandatory and automatically shall be extended as specified herein. except as otherwise provided hereinbefore.

## ARTICLE XI Committees

Section 1. Architectural Control Committee. The right to approve or disapprove plans and specifications for improvements on the Property shall be vested in an Architectural Control Committee consisting of at least three (3) Members who shall be appointed from time to time by the Association's Board of Directors. The Chairperson of the Architectural Control Committee shall be a Board Member. The members of the Architectural Control Committee need not be architects, owners or occupants of the Property, and do not need to possess any special qualification. Architectural Control Committee members shall serve for a term of one (1) year and may be reappointed or reelected; provided that such members may be removed by the Board at any time during their term of office, with or without cause. Upon removal of a member of the Architectural Control Committee, the Board shall appoint a replacement member as soon as possible, so that the Committee shall always consist of the number of members designated in this Section.

Section 2. Duties of Committee. It shall be the duty of the Architectural Control Committee to consider and act upon any and all proposals or plans submitted pursuant to the terms of the Declaration, to ensure that all improvements constructed on the Project by anyone conform to plans approved by the Committee, to adopt Architectural Rules and to perform other duties imposed upon it by the Declaration.

Section 3. Meetings. The Architectural Control Committee shall meet from time to time as necessary to perform its duties hereunder. The vote or written consent of a majority of the members of the Architectural Control Committee, at a meeting or otherwise, shall constitute the act of the Architectural Control Committee unless the unanimous decision of the Architectural Control Committee is required by any other provision of the Declaration. The Architectural Control Committee shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. Members of the Architectural Control Committee shall not receive any compensation for services rendered.

Section 4. Architectural Rules. The Architectural Control Committee shall, from time to time, and in its sole and absolute discretion, adopt, amend, and repeal by unanimous vote or written consent, rules and regulations to be known as "Architectural Rules." The Architectural Rules shall interpret and implement the Declaration by setting forth the standards and procedures for Architectural Control Committee review, the guidelines for design and placement of improvements, as well as all other duties of the Architectural Control Committee as particularly set forth in Section 2 above.

Section 5. Waiver. The approval by the Architectural Control Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Control Committee, shall not be deemed to constitute a waiver or any right to withhold approval of any similar plan, drawing, specification, or matter subsequently submitted for approval.

Section 6. Liability. Neither the Architectural Control Committee nor any member thereof shall be liable to the Association, any Owner, or to any other party, for any damage, loss, or prejudice suffered or claimed on account of (i) the approval or disapproval of any plans, drawings, or specifications, or (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications.

Section 7. Appeal. In the event plans and specifications submitted to the Architectural Control Committee are disapproved, the party or parties making such submission may appeal in writing to the Board within thirty (30) days following the final decision of the Architectural Control Committee. The Board shall submit such request to the Architectural Control Committee for review, whose written recommendations will be submittal to the Board. Within forty-five (45) days following receipt of the request for appeal, the Board shall render its written decision. Failure of the Board to render a decision within said forty-five (45) day period shall be deemed a decision in favor of the appellant.

Section 8. General. The Board shall appoint such other committees as they deem appropriate in carrying out the purposes of the Association.

ARTICLE XII  
Books and Records

Subject to applicable statutory exceptions, the books, records and papers of the Association shall, during reasonable business hours, be available for inspection by any Member. The Declaration, the Articles and these Bylaws of the Association shall be available for inspection by any Member on the website of the Association, where copies may be made from the website. The Association will conform to all Arizona statutes concerning books and records of community associations.

ARTICLE XIII  
Assessments

As more fully provided in the Declaration, each Member is obligated to pay to the Association, annual assessments, special assessments and supplemental assessments which are secured by a continuing lien upon the Lot against which the assessment is made. Any assessments which are not paid within thirty (30) days after the date such assessment was due shall be deemed delinquent and shall bear interest at 14% per annum. The Association may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot against which the assessment was made, as provided in the Declaration and applicable law. Interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the Assessments provided for herein by virtue of such Owner's non-use of the Common Area or abandonment of his Lot.

ARTICLE XIV  
Amendments

Section 1. Amendment By Vote of Members. These Bylaws may be amended in a manner not inconsistent with the Declaration and the Articles, at a regular or special meeting of the Members, by a vote not less than fifty-one percent (51%) of Members present in person or by absentee ballot and voting at such meeting.

Section 2. Amendment If Required By Outside Agencies. The Board reserves the right to amend all or any part of these Bylaws to such an extent and with such language as to cause these Bylaws to remain in compliance with all local, state, and federal statutes.

ARTICLE XV  
Interpretation

In the case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE XVI

Fiscal Year

The fiscal year of the Association shall begin on the 1st day of January and end on the 31st day of December of each year.