

**BY-LAWS**  
**of**  
**FORTY-NINERS ESTATES HOMEOWNERS ASSOCIATION, INC.**

ARTICLE I

Definitions

- Section 1. “Corporation shall mean and refer to Forty-Niners Estates Homeowners Association, Inc., a non-profit corporation organized under the laws of the State of Arizona.
- Section 2. “Deed Restrictions” shall mean and refer to the Covenants, Conditions and Restrictions (CC&Rs) recorded for lots 4-326 of Forty-Niners Country Club Estates in 1961 and extended in 1998.
- Section 3. A “voting member” shall mean a property owner of lots 4-326 of Forty-Niners Country Club Estates who has paid current membership dues.

ARTICLE II

Membership

- Section 1. Membership in the Corporation shall be open to all persons who own real property in the Forty-Niners Country Club Estates, a subdivision of Pima County. Membership shall cease upon loss of this qualification.
- Section 2. Membership shall be limited to one membership per lot and one vote at membership meetings regardless of how many owners of said lot.
- Section 3. In the case of a property owned jointly or as tenants in common by two or more persons, such persons collectively shall be eligible to apply for membership and such membership shall have one vote. Any one of the joint owners may cast the one vote. The joint owners shall determine among themselves which of them shall apply for membership. Only one of the joint owners may serve as director or officer at one time.
- Section 4. Membership shall be non-transferable, except by the sale of the real estate upon which the membership qualification is based.

### ARTICLE III

#### Dues and Assessments

- Section 1. Dues of members shall be established from time to time by resolution of the Board of Directors and shall be uniform in its application. Dues shall be payable no later than February 28<sup>th</sup> of each year.
- Section 2. No member shall hold office, vote, nor serve on any committee who has not paid current dues.
- Section 3. Any member in default in payment of dues for 30 days after notice of such default in writing shall be automatically suspended from all privileges of membership.
- Section 4. Any assessment levied against the membership at large under any circumstances will require the majority vote of the membership. This provision, however, shall not prevent any member or group of members from making voluntary donations to the Association.

### ARTICLE IV

#### Membership Meeting

- Section 1. The annual meeting of the members of this Corporation for the election of directors and transaction of other business shall be held during January of each year on a date chosen by the Board of Directors. Written notice thereof shall be given to each member as appears from the corporate membership books, by the Secretary, by mail, at least 10 days and not more than 60 days before such meeting. One notice shall be mailed to property owner(s) of record and shall be deemed sufficient notice to all owners.
- Section 2. Special membership meetings may be called at any time by the President, or Board of Directors, and noticed as provided in Section 1 of this Article.
- Section 3. The presence of 20% of members entitled to vote at a meeting, whether in person or by proxy shall constitute a quorum. Each member present in person shall have one vote. Members who attend a meeting where a quorum cannot be obtained shall nevertheless have the power to adjourn such meeting from time to time until it shall be regularly constituted.

### ARTICLE V

#### Directors

- Section 1. A Board of Directors shall be elected by the members at the annual meeting. Directors shall serve for two years with approximately half being elected each year. The Secretary shall maintain the official roster of director term of offices. Directors shall be members of the Corporation and are to manage the affairs of the Corporation. The Board shall consist of not less than three nor more than twenty-five members, the exact number to be determined by resolution of the Directors passed at any regular or special meeting.

- Section 2. In the event a vacancy occurs on the Board, the remaining directors may appoint any member of the Association to serve as a Board member until the next annual election.
- Section 3. The first regular meeting of the Board of Directors shall be held in January of each year following the annual membership meeting. Monthly meetings shall be held at the discretion of the Board of Directors. All meetings shall be open to the membership except if the Board finds it necessary to go into executive session. Special meetings may be called by the President or any two Directors by giving two day's notice by mail or telephone to each Director. A majority of the Directors shall constitute a quorum.
- Section 4. The Directors shall have the general management and control of the business and affairs of the Corporation, and shall exercise all the powers that may be exercised to perform by the Corporation under the law, the Articles of Incorporation and to these By-laws.
- Section 5. No salaries or other compensation shall be paid to any Director.
- Section 6. The Board of Directors shall, except as otherwise provided by law, have the power to act in the following manner: a resolution in writing signed by all members of the Board of Directors, shall be deemed to be action by all the members of the Board with the affect therein expressed, and as if the same had been duly passed by the same vote at a duly convened meeting. It shall be the duty of the Secretary of the Corporation to record such resolution in the minute book of the Corporation under its proper date.

## ARTICLE VI

### Officers

- Section 1. The officers of this Corporation shall consist of a President, Vice President, Secretary, and Treasurer and such other officers as shall from time to time be chosen and appointed, such officers to be elected from and by the Board of Directors at the regular Board meeting in each year. Officers shall be elected by majority vote. Should an officer resign during his/her term of office, the Board of Directors shall elect a replacement from its body to serve out the remainder of the term.
- Section 2. The President shall preside at all meetings of the Directors and shall have general charge of and control over the affairs of the Corporation, subject to such limitations as may be established by resolution of Board of Directors.
- Section 3. The Vice President shall perform such duties as may be assigned by the Board of Directors. In the event of the death or disability or absence of the President, the Vice President shall perform and shall be vested with all of the duties and powers of the President.
- Section 4. The Secretary shall keep a record of the minutes of the proceedings of meetings of members and Directors and may give notices required by these By-laws of all such meetings. The Secretary shall have custody of all books, records, and papers of the Corporation, except such as shall be in the charge of the Treasurer, or of some other person authorized to have custody and possession thereof by resolution of the Board of Directors.

- Section 5. The Treasurer shall keep accounts of all monies of the Corporation received or disbursed, and shall deposit all monies and valuables to the credit of the Corporation as the Board of Directors shall authorize and direct.
- Section 6. No officer shall be paid or awarded compensation for services to the Corporation.
- Section 7. Each officer shall serve for the term of one year or until the next annual election held by the Board of Directors at the regular annual meeting of the Board.

## ARTICLE VII

### Covenants, Conditions and Restrictions

- Section 1. The Association shall assist in the enforcement of the Covenants, Conditions and Restrictions (CC&R) recorded for lots 4-326 of Forty Niners Country Club Estates in 1961 and extended in 1998. Association assistance will be in the conduct of required architectural review as provided by the CC&Rs, and by appropriate response to member complaints about violations of CC&R restrictions.
- Section 2. Architectural Committee. An Architectural Committee is hereby established. It will consist of not less than three and not more than seven association members appointed by the President with the consent of the Board of Directors. The President will also designate the chairman of the committee. The term for members of the Architectural Committee will be concurrent with that of the officers of the Association. The Architectural Committee will meet formally and informally as required in the performance of its functions. The Architectural Committee will:
- a) Advise the Board of Directors on matters pertaining to architectural control and CC&R enforcement.
  - b) Authenticate disapproval of plans submitted for approval under the architectural control process and approve variances.
- Section 3. Architectural Control. As prescribed by the CC&Rs, owners of lots 4-326 must submit plans for construction or alteration of any building, swimming pool, wall, fence, coping or other structure to the Association for approval. The plans will be reviewed by the Architectural Agent designated by the Association and a response will be rendered to the submitter within fifteen days. The response will be one of the following: approval of plans documented on the plans themselves by the agent, approval of a required variance documented by the Architectural Review Committee, return for coordination of a variance with adjacent owners, return for clarification, or disapproval by the Architectural Review Committee.
- Section 4. Architectural Agent. The association will contract with an individual to perform the architectural control review as prescribed above. The agent will maintain files of all architectural control submissions. A fee paid by the requesting homeowner for this function will be provided to the agent as mutually agreed between the association and the agent. Should the agent designated by the Association be replaced, the agent will return all files to the Association to be passed on to the replacing agent.

Section 5. Appeal. Disapproval of architectural plans may be appealed in writing to the Association Board of Directors stating the basis for the appeal. The board will act on such appeals within 30 days. Should the board fail to act within the prescribed period the appeal will be considered to have been approved.

Section 6. CC&R Enforcement. Members may formally request Association action to cure an apparent violation of the CC&Rs. The Architectural Review Committee will review the request, establish the factual basis and, if warranted, request cure of the violation by the offending homeowner:

- a) Architectural Review Committee will attempt to contact the offending homeowner of the violation within seven (7) days of the complaint.
- b) If the offending homeowner fails to respond to the complaint within seven (7) days, a Notice of Violation will be sent via Certified Mail.
- c) If offending homeowner fails to respond to the Notice of Violation sent by Certified Mail within seven (7) days, legal action to cure may be sought.

Should legal action be recommended, the Architectural Review Committee shall advise the Association Board of Directors of the facts of the case and their recommendation for action. The final decision to initiate legal proceedings for CC&R enforcement rests with the Association's Board of Directors.

OFFENDING HOMEOWNER MAY BE LIABLE FOR ANY COSTS INCURRED BY THE ASSOCIATION IN THE EFFORT TO CURE SAID VIOLATION.

Section 7. Any owner may initiate legal proceedings to cure an apparent CC&R violation impacting that owner's property independent of the Forty-Niners Estates Homeowners Association.

## ARTICLE VIII

### Seal

Section 1. The corporate seal of this Corporation shall be a circular seal with the name of the Corporation around the border and the year of incorporation in the center.

## ARTICLE VIII

### Amendments

Section 1. These By-laws may be amended at any regular meeting, or at any special meeting called for the purpose, by a majority vote of all Directors.

ARTICLE IX

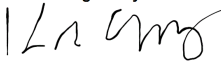
Indemnification

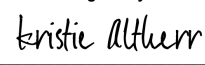
Section 1. Under Arizona Law, Section 10-2317 D, “Any person who serves as a director or who serves on a board or council in an advisory capacity to the non-profit corporation shall be immune from civil liability and shall not be subject to suit directly or by way of contribution for any act or omission resulting in damage or injury if such person was acting in good faith and within the scope of his official capacity, unless such damage or injury was caused by willful or wanton and grossly negligent conduct of such person. Nothing in this subsection shall limit or modify in any manner the duties or liabilities of a director or person serving in an advisory capacity to the corporation or the corporation’s members. ‘Official capacity’ as used in this subsection is any decision, act or event undertaken by the non-profit corporation in furtherance of the purpose or purposes for which such organization is organized.”

Certification

The foregoing amended By-laws for the governance of the Forty-Niners Estates Homeowners Association, Inc., adopted by resolution of the Board of Directors this 10<sup>th</sup> day of August, 2020.

IN WITNESS WHEREOF, we have hereto set our hands this 10<sup>th</sup> day of August, 2020

DocuSigned by:  
  
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Kevin Curry, President

DocuSigned by:  
  
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Kristie Altherr, Secretary