

**BYLAWS**  
**FOUNTAIN OF THE SUN COMMUNITY ASSOCIATION**  
(a non-profit corporation)

ARTICLE I  
Eligibility for Membership

Membership in FOSCA shall be comprised of all owners of units (a unit being defined as a mobile home, single family home and individual living units constructed under the Horizontal Property Regime (HPR) Law and improved lots). Improved lots are those with street and utilities installed, ready for construction and on which dues or fees are being paid to a homeowners association within the Fountain of the Sun Community in Maricopa County, Arizona, consisting of the following described subdivisions set forth on plats of record in the Office of the Recorder of Maricopa County, Arizona, in the Book of Maps and at the pages set forth below.

<b>SUBDIVISIONS</b>		<b>BOOK</b>	<b>PAGE</b>
FOS Parcel No. 1	FOSHA	135	31
FOS Parcel No. 2	FOSHA	138	43
FOS Parcel No. 3A	FOSHA	138	42
FOS Parcel No. 3B	FOSHA	155	26
FOS Parcel No. 4	FOSHA	155	20
FOS Parcel No. 6	FOSHA	227	31
FOS Parcel No. 7A	FOSHA	138	44
FOS Parcel No. 7B	FOSHA	251	47
FOS Parcel No. 8 Unit 1	Quail Run	153	33
FOS Parcel No. 8 Unit 2	Quail Run	157	45
FOS Parcel No. 8 Unit 3	Greenside Villas	164	22
FOS Parcel 9 Phase I		191	12
FOS Parcel 9 Phase II		200	2
FOS Parcel 9 Phase III		211	5
FOS Parcel 9 Phase IV		226	17
FOS Parcel 10 Phase I	Fairway Village	226	39
FOS Parcel 10 Phase II	Fairway Village	237	2
FOS Parcel 10 Phase III	Village Green	255	45
FOS Parcel 11	Lakeside Terrace	239	25
FOS Parcel 12	Pueblo Estates	398	31
FOS Parcel 13	Sunvilla Apartments	168	34
FOS Parcel 14	Fountain Cove	275	30
FOS Parcel 15	Fairway Vista	611	47

And also including any subdivision hereafter platted, recorded, and developed within the boundaries of Section 29, Township I North, Range 7 East, Gila and Salt River Base and Meridian by Universal Development Corporation, a Maryland Corporation, or any successor thereof, as part of a common development plan within the subdivisions listed and described above. An owner of one or more of such units shall automatically be a member of FOSCA and shall remain a member until such time as ownership ceases, for any reason.

For purposes of this article only, "Owner" means the legal title holder as shown on the last deed of record in the office of the Maricopa County Recorder, State of Arizona, or the Purchaser under a contract for sale of a dwelling unit unless and until the interest therein is forfeited or transferred. In the case of property held in trust, the owner shall be deemed to be the beneficiary of such trust and not the trustee holder of record title. Membership rights shall exist as aforesaid, whether or not the property is subject to a mortgage, deed of trust, or other security.

There shall be one membership for each unit of record. Where a unit is jointly owned by more than one person or by multiple entities one owner shall be deemed to be the member. A corporate or partnership owner of a unit or units shall designate one representative for each unit, who shall have all rights and privileges of membership. With regard to any unit held by more than one person (other than a husband and wife) as joint tenants or tenants in common the member shall be deemed to be the person among them whom all of such joint tenants or tenants in common shall designate notifying the association in writing, who is the member. Said person shall continue as the member until the association receives written notice of a change.

## ARTICLE II Meeting of Members

**SECTION 1.** Annual Meeting. The annual meeting of FOSCA members shall be held the second Wednesday in February of each year, for the purpose of transacting such business as may properly come before the meeting.

**SECTION 2.** Special Meetings. Special meetings of the members for any purpose or purposes, unless otherwise regulated by statute, may be called by:

- a. Resolution of the Board of Directors (hereafter referred to as "the Board");
- b. The President;
- c. The Secretary upon receipt of a petition signed by at least ten percent of the eligible voting members, based on the current roll of membership. Such petition shall state the purpose or purposes of such proposed meeting and the matters to be considered at the Special Meeting will be limited to the matters stated in the petition.

**SECTION 3.** Notice of Meeting. Notice of every meeting of the members shall be in writing, signed by the President or Secretary. Such notices must state the purpose or purposes of the meeting, and the time and place that it will be held. A copy of such notice shall be prominently posted on the FOSCA Official Bulletin Board. In addition such notice shall be hand delivered, or mailed, to the member's last known address, not less than ten or more than fifty days before the meeting. Meetings may be adjourned to be reconvened at a date stated at adjournment without further notice to the members.

**SECTION 4.** Place of Meeting. Every meeting of the FOSCA members shall be held as specified in the notice as required under Section 3 above. Such meeting shall be held within Maricopa County, Arizona.

**SECTION 5. Quorum.** The presence in person, or by absentee ballot of a minimum of thirty percent of the members of FOSCA for a meeting of the membership, and who are eligible to vote shall constitute a quorum at such meeting. In the absence of a quorum at any meeting or any adjournment or adjournments thereof, the meeting may be adjourned from time to time until a quorum shall be present. At any meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

**SECTION 6. Membership Book.** The Secretary of FOSCA shall maintain a membership book reflecting the names and addresses of every unit owner. Upon the transfer of any unit within the Fountain of the Sun Community it shall be the responsibility of the transferee to present to the Secretary of FOSCA, his/her address along with the documents, or copies of documents, evidencing such transfer. The Board may fix a time not exceeding thirty days preceding the date of any meeting, as record date for the determination of the members entitled to receive notice and vote at any such meeting. In the event no such record date is fixed by the Board, the record date for the determination of eligibility to receive notice and vote at any meeting shall be the fourteenth day preceding the date of such meeting, as of 9:30 A.M. of said day.

**SECTION 7.** (Note: Section 7 was eliminated by a vote of the membership on 1-12-2011.)

**SECTION 8. Voting.** For purposes of determining the right to vote at any meeting of the members, the information set forth in the membership book shall be deemed conclusive except that the meeting may receive evidence as to the incorrectness of the information in the membership book, if member information is shown to be incorrect, the Board by majority vote shall so determine and the Secretary shall correct such membership book and the right to vote shall be as so corrected at the meeting.

All voting for members of the Board of Directors shall be done under policies and procedures established by the Board and conducted by an Elections Committee, appointed by the Board on an annual basis. All voting by members on other matters shall be conducted on an at-large basis by the members as a whole.

Each membership may be voted by the owner thereof, or absentee ballot. At all meetings of members with a quorum being present, all matters shall be decided by a majority of the votes cast by members present in person, or by absentee ballot and entitled to vote thereat, except as otherwise required by the Articles of Incorporation or these Bylaws.

All voting at any meeting of the members shall be conducted by ballot and shall be limited to matters specified in the notice of the meeting duly posted and served upon the membership prior to the meeting as required by these Bylaws.

**SECTION 9. Proxies.** Votes allocated to a unit may not be cast pursuant to a proxy. The association shall provide for votes to be cast in person, and by absentee ballot and may provide for voting by some other form of delivery. Any action taken at an annual, regular or special meeting of the

members shall comply with all of the following if absentee ballots are used:

1. The absentee ballot shall set forth each proposed action.
  2. The absentee ballot shall provide an opportunity to vote for or against each proposed action.
  3. The absentee ballot is valid for only one specified election or meeting of the members and expires automatically after the completion of the election or meeting.
  4. The absentee ballot specifies the time and date by which the ballot must be delivered to the board of directors in order to be counted, which shall be at least seven days after the date that the board delivers the un-voted absentee ballot to the member.
  5. The absentee ballot does not authorize another person to cast votes on behalf of the member.
- B. Votes cast by absentee ballot or other form of delivery are valid for the purpose of establishing a quorum.

**SECTION 10.** Conduct of Meetings. Conduct of any meeting may be governed by Roberts Rules of Order, using the most recent edition as authority.

### **ARTICLE III** Directors

**SECTION 1.** Number, Qualifications, and Term of Office. The number of Directors of FOSCA shall be seven. Every elected Director of FOSCA must be a member in good standing of FOSCA qualified in accordance with this section and Article I of these Bylaws.

The term of office of each Director shall be from the day first elected until election day of the second year following his/her election or:

- a. Until the office shall be vacated,
- b. The Director is unable to continue to serve as a Director,
- c. Until his/her successor shall have been duly elected and qualified,
- d. Until his/her office shall become vacant for any reason.

No Director shall serve more than two consecutive terms, unless appointed by the Board to fill a vacancy. After a lapse of one year after a second consecutive elected term, a candidate shall again become eligible to serve as a Director of FOSCA. Since each household has only one vote, then there may be no more than two consecutive terms per household.

**SECTION 2.** Vacancies. Any vacancy on the Board of Directors, for any reason, shall be filled by the affirmative vote of a majority of the remaining Directors then in office if the resignation is within the last 6 months of their term, no action is necessary. If the resignation is greater than the 6 months of the term, the remaining Directors shall fill the unexpired term of office so vacated. Any Director so appointed must be a member of FOSCA.

**SECTION 3.** Elections of Directors.

A. The election of Directors shall be conducted by balloting on the second Wednesday in February of each year. Ballots may be cast by absentee ballot via mail or hand delivery. Absentee ballots will be allowed until 11 a.m. the day of the election. Voters hand carrying absentee ballots shall deposit their ballots in the designated drop slot in the FOSCA

Office. Official absentee ballot forms shall be provided to all members of FOSCA with the mailing of the notice of the election. All Directors shall be elected for two year terms. Elections for odd numbered Board positions (1, 3, 5 and 7) shall be held on odd numbered years. Even numbered Board positions (2, 4 and 6) shall be held on even numbered years.

B. In the event that the total number of eligible voters represented in person or by absentee ballot do not constitute a quorum of the membership as defined in Article II, Section 5, of the Bylaws, the Election Committee shall declare the election invalid and reschedule the election at a time no later than thirty days after the original date.

C. Each member of FOSCA is entitled to one vote, for each unit owned, either in person or by absentee ballot in the election.

D. At each election for the election of a Director, the persons receiving the greatest number of votes shall be deemed elected. Election results shall be announced following the election or as soon thereafter as is practical.

E. Each Director who is then in office, shall appoint a member to the Nominating Committee who shall be authorized to appoint such additional members as he deems necessary to assist him. The Nominating Committee shall report the nominees selected to the Election Committee a minimum of thirty days prior to the date on which the election is to be conducted.

**SECTION 4. Initial Meeting of the Board.** As soon as practical following the election the newly elected Board shall meet with the President of the corporation as convener to elect officers. The election of officers shall take place annually in an open meeting. The Board shall assign areas of responsibility to each member to ensure a smooth operational organization.

**SECTION 5. Place of Meeting.** The Board shall hold all meetings within the confines of Fountain of the Sun and at such time and places as shall be determined by the Board, which shall be specified in the respective notices or waivers of notice thereto.

**SECTION 6. Regular Meetings.** Regular meetings of the Board shall be held at such times and places as the Board may determine, but at least ten (10) such meetings shall be held during each fiscal year. Any regularly scheduled monthly meeting of the Board may be waived by a majority vote of the Board members. All meetings of the Board shall be open to any member who wishes to attend, with the exception of executive session meetings as described in Section 9 of this Article.

**SECTION 7. Special Meetings.** Special meeting of the Board shall be held whenever called by the President, or upon the written request of a majority of the Directors. Such special meetings shall be open to any member who wishes to attend, with the exception of executive session meetings, as described in Section 9 of this Article.

**SECTION 8. Notice of Meetings.** Notice of regular meetings of the Board shall not be required if conducted pursuant to a fixed schedule. Notice of meetings not so conducted, and all special meetings, stating the time,

place and purpose thereof, shall be mailed to each Director, addressed to them at his/her residence or usual place of business, or shall be sent to them at such place by personal delivery, or telephone, at least two business days before the day on which this meeting is to be held, but notice need not be given to any Director if such notice shall be waived by him.

**SECTION 9.** Executive Sessions of the Board. Executive sessions of the Board of Directors may be held as needed per Arizona Revised Statute 33-1804.

Open meetings; exceptions

A. Notwithstanding any provision in the declaration, bylaws or other documents to the contrary, all meetings of the association and board of directors are open to all members of the association or any person designated by a member in writing as the member's representative and all members or designated representatives so desiring shall be permitted to attend and speak at an appropriate time during the deliberations and proceedings. The board may place reasonable time restrictions on those persons speaking during the meeting but shall permit a member or member's designated representative to speak before the board takes formal action on an item under discussion in addition to any other opportunities to speak. The board shall provide for a reasonable number of persons to speak on each side of an issue. Any portion of a meeting may be closed only if that closed portion of the meeting is limited to consideration of one or more of the following:

1. Legal advice from an attorney for the board or the association. On final resolution of any matter for which the board received legal advice or that concerned pending or contemplated litigation, the board may disclose information about that matter in an open meeting except for matters that are required to remain confidential by the terms of a settlement agreement or judgment.

2. Pending or contemplated litigation.

3. Personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association, including records of the association directly related to the personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association.

4. Matters relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the association or an individual employee of a contractor of the association who works under the direction of the association.

B. Notice to members of meetings of the board of directors shall be given at least forty-eight hours in advance of the meeting by newsletter, conspicuous posting or any other reasonable means as determined by the board of directors. An affidavit of notice by an officer of the corporation is prima facie evidence that notice was given as prescribed by this section. Notice to members of meetings of the board of directors is not required if emergency circumstances require action by the board before notice can be given. Any notice of a board meeting shall state the time and place of the meeting. The failure of any member to receive actual notice of a meeting of the board of directors does not affect the validity of any action taken at that meeting.

**SECTION 10. Removal of Directors.** Any Director elected may be removed by the affirmative vote of two-thirds of the number of votes cast in the previous annual election. A special election for this purpose shall be called by the Board of Directors upon receipt of a request signed by at least twenty percent of the association's eligible voters.

**SECTION 11. Compensation.** No compensation shall be paid to Directors for their services as Directors.

**SECTION 12. Quorum.** A majority of the Board shall constitute a quorum for the purpose of transacting business at any meeting.

**SECTION 13. Director's Conflict of Interest.** In the absence of fraud, no contract or other transaction between FOSCA and any other corporation and no act of FOSCA shall be in any way invalidated or otherwise affected by the fact that any one or more directors, of FOSCA are peculiarly interested in, or are directors, officers or stockholders of such other corporation, provided that the fact of such relationship shall be disclosed or shall have been made known to the Board of Directors or a majority of the members thereof; and any director of FOSCA who is also a director, officer or stockholder of such other corporation or who is so interested may be counted in determining the existence of a quorum at any meeting of the Board of Directors or any committee thereof which shall authorize any contract or transaction but may not vote thereat to authorize any such contract or transaction.

#### **ARTICLE IV**

##### **Powers of the Board**

**SECTION 1. General Powers.** The Board shall manage the business and affairs of FOSCA and may exercise all such authority and powers of FOSCA and do such lawful acts and things as are not forbidden by law, the Articles of Incorporation, these Bylaws or as reserved to be exercised or done by the members. The powers of the Board shall encompass, but not be limited to, all the rights and duties of the Boards as set forth elsewhere in these Bylaws and Articles of Incorporation.

**SECTION 2. Specific Powers.** The Board shall have the power to:

- A. Elect and remove officers of FOSCA as herein provided.
- B. Operate, manage and maintain all FOSCA property including common usage areas and FOSCA recreational facilities of the Fountain of the Sun Community controlled by FOSCA, to the extent permitted by applicable law, the Articles of Incorporation and these Bylaws.
- C. Engage the services of a manager or managing agent who shall manage and operate the FOSCA properties, common usage areas and FOSCA recreational facilities of the Fountain of the Sun Community controlled by FOSCA for all of the members, upon such terms and for such compensation and with such authority as the Board may approve.
- D. Formulate and adopt policies, procedures and charters for the administration, management and operation of the FOSCA common usage elements and FOSCA recreational facilities of the Fountain of the Sun Community controlled by FOSCA.

- E. Provide for the operation, maintenance, repair, and replacement of the FOSCA common usage areas and the FOSCA recreational facilities and payments therefore, and to approve payment vouchers or to delegate such approval to the officers or managers or managing agent.
- F. Provide for the designation, hiring, supervision and removal of employees and such other personnel, including accountants and attorneys, and to engage or contract for the services of others and to make purchases for the maintenance, repair, replacement, administration, management and operation of the common usage areas and recreational facilities, and to delegate any such powers to the manager or managing agent (and any such employees or other personnel who may be the employees of a managing agent).
- G. Appoint committees of the Board and delegate to such committee's duties and responsibilities as determined by the Board.
- H. Prepare an itemized annual budget and provide the manner for assessing and collecting the assessment from the unit associations within the Fountain of the Sun Community, which have agreed by contract or otherwise, to compensate FOSCA for any expenses incurred in the operation and maintenance of the common areas and recreational facilities within the Fountain of the Sun Community.
- I. Such other powers as may be approved by a majority vote of the members.
- J. Suspend any member's voting rights and/or use privileges for non-payment of assessments to their association or for conduct unbecoming to a member. Any member so suspended may appeal to the Board in writing, for a hearing, which shall be automatically granted and held within two weeks after receipt of the appeal. The Board's decision will be final.

## **ARTICLE V**

### Officers

**SECTION 1.** Executive Officers. Executive officers of FOSCA shall be a President, one or more Vice Presidents, a Secretary, and a Treasurer elected by the Board of Directors from among its elected members.

**SECTION 2.** Subordinate Officers. The Board may appoint, in addition to executive officers, such subordinate officers or committees as the Board may deem necessary to carry out its responsibilities, each of whom shall hold office for such a period having such authority, and performing such duties as the Board may from time to time determine. Said appointed officers and committees shall serve at the pleasure of the Board of Directors.

**SECTION 3.** Removal and Vacancy. Any Executive Officer may be removed from office with or without cause by resolution adopted by a majority of the Board at any regular or special meeting of the Board provided that such purpose is duly noted in the notice of the meeting at which said action is presented. Any vacancy in the Executive offices shall be filled for the unexpired portion of the term of such office, by a vote of the majority of the Board.



**SECTION 4. President.** The President shall be the chief Executive Officer of FOSCA and shall have, subject to the control of the Board, general supervision over the business of FOSCA. He/She shall, if present, preside at each meeting of the Board as well as the annual and special meetings of the members. He/She may sign, with the Secretary or any other proper officer of the corporation authorized by the Board, deeds, leases, mortgages, bonds, contracts, or other legal instruments which the Board has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board or by these Bylaws to some other officer or agent of the corporation, or shall be required by law to be otherwise signed or executed. He/She shall see that all orders and resolutions of the Board are carried out. In general, he/she shall perform all duties incident to the office of the President, and such other duties assigned to him/her by these Bylaws and as may be assigned from time to time by the Board of Directors. The President shall also prepare an agenda for distribution to the Board members at least two days prior to each meeting. The agenda for all meetings must be posted on the Official Bulletin Board two days prior to such meetings.

**SECTION 5. Vice President.** The Vice President shall have the power to perform such duties as the Board or the President may from time to time prescribe, and shall perform such other duties as may be prescribed by these Bylaws. At the request of the President, or in a case of his/her absence or inability to act, the Vice President or if there shall be more than one Vice President then in office, then one of them who shall be designated for the purpose by the Board, shall perform the duties of the President and when so acting shall have all the powers and be subject to all the restriction upon the President. The Vice President, who has so been designated by the Board, shall automatically assume full responsibilities of the office of the President upon the absence of the President.

**SECTION 6. Treasurer.** The Treasurer, with the assistance of the Management Staff, shall have charge and custody of and be responsible for all funds, assets and securities of FOSCA and shall keep full and accurate account of receipts and disbursements in books belonging to FOSCA and shall deposit all monies and all other valuable effects in the name of and to the credit of FOSCA in such federally insured banks or other depositories as may be designated by the Board; he/she shall disburse funds of FOSCA as may be ordered by the Board, taking proper vouchers for such disbursements, and shall certify in writing to the President and Directors, as a part of the monthly Balance Sheet, that he/she has personally verified the amounts reflected by the bank statement against FOSCA's check balances, Money Market Accounts, CD's and other depositories and that such bank balances were reconciled and found to be in agreement for the current month. In general, he/she shall perform all the duties incident to the office of Treasurer and such other duties as may from time to time be assigned by the Board.

**SECTION 7. Secretary.** The Secretary, with the assistance of the Management Staff, shall act as secretary of, and keep the minutes of, all meetings of the Board and of the members; he/she shall cause notice to be given of all meetings of the Board and of the members; he/she shall have full charge of the books, records and documents of FOSCA relating to its

organization as a corporation and shall see that the reports, statements, and other documents required by law are properly kept and filed in orderly fashion; he shall in general perform all the duties incident to the office of Secretary including the signing of all minutes of the Board; he/she shall have such powers and perform such other duties as may be assigned to him/her by the Board of Directors. A recording Secretary may be appointed by the Board to take and transcribe the minutes of each meeting.

**SECTION 8. Compensation.** No salaries or other compensation shall be paid to an officer, Board Member or Chairperson for their services. Prior authorization for expenses to be incurred by any officer, Board Member or Chairperson in the performance of their duties may be paid only after approval by the majority vote of the Board.

**SECTION 9. Bonding.** The Board shall require that all officers and employees of the Corporation signing checks, handling funds, dealing with the assets or property shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Corporation.

**ARTICLE VI**  
Resignation

Any Director or officer may resign his/her position at any time by giving written notice of such resignation to the Board of Directors. Such resignation shall take effect at the time specified therein or, if no time is specified therein, the effective date shall be the time of receipt thereof. No Act of acceptance by the Board shall be necessary.

**ARTICLE VII**  
Exempt Property

The private property of each and every member, officer, director, and incorporator of FOSCA real or personal, tangible or intangible, now owned or hereafter acquired by any of them, is and forever shall be exempt from all debts and obligations of the corporation of any kind whatsoever.

**ARTICLE VIII**  
Indemnification

Any person made a party to any action, suit or proceeding, as an individual or a personal representative by reason of the fact that he/she or his/her predecessor in interest is or was an incorporator, director, officer, employee of FOSCA or of any corporation in which he/she served as such at the request of FOSCA shall be indemnified against judgments, attorney's fees, costs and penalties rendered or levied against any such person and the reasonable expenses, including attorney's fees actually and necessarily incurred by him/her in connection with any appeal thereof, provided that the Board of Directors 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, suit or proceedings.

**ARTICLE IX**  
Budget

**SECTION 1. Annual Budget.** The Board of Directors shall cause to be prepared an annual budget for each fiscal year of FOSCA. This budget should be prepared by the Finance Committee and presented to the FOSCA Board for review. This budget shall include all anticipated expenses and cash requirements for the year, including funds for capital improvements and reserves for contingencies for repairs or replacement of equipment or facilities. Income from operations and other sources shall be estimated, after which income from assessment of members required to provide a balanced budget shall be established. The annual per member assessment shall be determined by dividing the planned assessment income by the total number of units. The annual per member assessment shall in no case be increased by more than ten percent (10%) over the previous year without the prior approval of the members by a majority of the votes cast at a meeting having that as a matter of business. The budget shall be completed and approved by the Board no later than October 31 of each year.

**SECTION 2. Supplemental Budget.** In the event that, during the course of any year, it shall appear to the Board that the cash income is not adequate to cover the estimated expenses for the remainder of the year, the Board shall prepare and approve a supplemental budget covering the estimated deficiency for the remainder of the year. Copies of this supplemental budget shall be furnished by the Board to each association of unit owners within Fountain of the Sun within ten days of its approval, together with a notice of any additional assessment to be levied. Any supplemental assessment shall be subject to limitation imposed under Section 1 above.

**SECTION 3. Collection of Assessments.** FOSCA shall bill each association of unit owners within Fountain of the Sun on the first day of each month, for one-twelfth of the annual association share of the assessments, as determined herein, times the number of units within each of the associations. Each billing so made by FOSCA shall be due and payable upon receipt. FOSCA shall have no responsibility for the collection of these amounts from the individual owners of units, and shall look only to the unit associations for payment of amounts assessed. It will be the responsibility of the unit associations to collect the FOSCA assessment from their members and to take such action as their Articles of Incorporation or Bylaws permit in case of nonpayment.

**SECTION 4. Suspensions.** Any member of FOSCA who fails to follow the rules and regulations for the use of FOSCA facilities or services may have the right or privilege of such use suspended after written notice of the violation and failure to remedy the same. The suspension shall be by vote of the Board of Directors. A suspended member may be reinstated by the Board upon petition by the member. If any association shall fail to pay assessments within thirty days after the assessment was due and payable on the first day of the month, the Board may, by majority vote of a quorum then present, suspend the rights and privileges of use of all of the members of the non-paying association until such time as the association pays the assessments in full. Upon payment in full of the association assessment the rights and privileges for the members of that association shall be reinstated.

**SECTION 5. Reports.** An annual report shall be prepared by the Board to include such information pertaining to the past year's operation as they may deem desirable. A financial report shall be prepared after the close of each fiscal year, showing the receipts, disbursement, cash position, and such other information pertaining to the corporation as the Board may deem desirable. Said financial report shall be published in a manner to be determined by the Board, together with the finalized budget prior to the annual meeting, and both shall be available for inspection at the meeting.

FOSCA's books and records shall be audited by a Certified Public Accountant following the close of each fiscal year or on request of the Board. The certified audit report is to be published and made a part of the Board Minutes of the Board Meeting following receipt of the audit report.

**SECTION 6. Partial Year or Month.** FOSCA billings for owners of Horizontal Property Regime (HPR) units shall be prorated from the date of occupancy by the purchaser, or the close of escrow pertaining to the unit, whichever is earlier. FOSCA shall bill the appropriate Horizontal Property Regime (HPR) Association and the Association shall pay FOSCA the applicable FOSCA assessment for the month, or part of a month, and for succeeding months, when a Unit(s) within that Association is complete and ready for sale. (A Unit is considered ready for sale when the landscaping is complete or the interior is ready for occupancy.)

**SECTION 7. Deposits.** All funds of FOSCA not otherwise employed shall be deposited from time to time to the credit of FOSCA in such federally insured banks, trust companies, or other depositories as the Board may select. For the purpose of such deposits, the President, Vice President, the Treasurer, the Secretary, or any other officer, agent, or employee of FOSCA to whom such power has been delegated by the Board, may endorse for deposit, and deliver checks, drafts and other orders for the payment of monies which are payable to the order of FOSCA.

**SECTION 8. Special Assessments.** Whenever capital improvements have been approved by the membership as stated in Article X, the Board of Directors may levy a special assessment upon each association according to its prorated share of the overall annual budget and require the special assessment to be collected by each association from its members and paid to FOSCA within sixty (60) days after the levy of the special assessment by the Board of Directors. The Special Assessment shall be due and payable as directed by the Board of Directors, but shall not be payable in monthly installments unless approved and authorized by the Board of Directors. The responsibility for collection of any special assessment from the members of FOSCA and the associations will be the responsibility of each individual association and not FOSCA. Each individual association will assess its members in accordance with its own Articles of Incorporation, Bylaws or Covenants, Conditions and Restrictions. Failure to pay an assessment within the time limit set forth by the Board will result in FOSCA suspending that Association and its members from all further use and participation in common area facilities, services, equipment and other privileges and rights as otherwise allowed by these Bylaws or any other agreement.

**SECTION 9. Impact Fee.** Notwithstanding any other provision of the 1983 Agreement, the Articles of Incorporation of FOSCA of the Bylaws of FOSCA, all Owners of Lots in any of the Associations shall pay an Impact Fee ("Impact Fee") at the time of voluntary conveyance of ownership rights in the Lot (including buyers under agreements for sale) directly to FOSCA. Unless otherwise directed by the conveyer [the seller] and conveyee [the buyer] of a Lot, FOSCA shall collect the Impact Fee owed by the conveyee through the close of escrow if FOSCA is notified of the conveyance and if a title company is used to facilitate a particular conveyance of a Lot. The conveyer and conveyee may allocate the payment of the Impact Fee through the escrow process between the conveyer and conveyee in any manner. The failure of the Association to be notified of a conveyance shall not affect the obligation of the new Owner to pay the entire Impact Fee.

No impact fee shall be payable with respect to: 1. the transfer or conveyance of a Lot by devise or intestate succession; 2. a transfer or conveyance of a Lot for estate planning purposes; or 3. a transfer or conveyance to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment for the Impact Fee in which event an Impact Fee shall be payable with respect to such transfer of conveyance.

Any and all Impact Fees collected shall not be used to pay for operational expenditures. Rather, a budgeted percent of the Impact Fees shall be used for funding a reserve fund for repair and maintenance of facilities and/or applied towards capital improvements/capital expenditures.

The Impact Fee provided for herein shall be One Thousand Dollars (\$1,000.00) per conveyance of a Lot effective January 1, 2006. Thereafter, the Impact Fee may be increased by Twenty-five Dollars (\$25.00) each calendar year at the discretion of the Board.

## **ARTICLE X**

### Capital Improvements/Expenditures

**SECTION 1. Limitations.** Except as otherwise provided, the Board of Directors shall not allocate funds for any of the following purposes or take the specified action without the prior approval of a majority of the members present in person, or absentee ballot at a meeting of the members called for that purpose, and at which a quorum exists as defined in Article II, Section 5, of these Bylaws.

- A. Contract or approve the expenditure for capital improvements costing more than \$40,000.00 for any complete project during the year of 2013. Beginning January 1, 2014, and continuing until such time as these Bylaws are amended, the expenditure for capital improvements shall be adjusted, on an annual basis, by five percent.
- B. Purchase, lease as a lessee or sublease as a sublessee any property within or without the Fountain of the Sun Community with an annual cost of more than \$40,000.00 for any complete project during the year of 2013. Beginning January 1, 2014, and continuing until such time as these Bylaws are amended, the expenditure for purchasing,

leasing or subleasing any property shall be adjusted on an annual basis, by five percent.

- C. The Board shall establish and maintain a Capital Improvement/Expenditure Fund.

**SECTION 2. Restrictions.** In addition, the Board shall not take the following actions without prior membership approval:

- A. Mortgage, encumber or dispose of any property, real or personal, owned or controlled by FOSCA with a value in excess of \$40,000.00.

## **ARTICLE XI**

### **Reserves**

Subject to the provisions of the Articles of Incorporation or these Bylaws, and to the extent permitted by law, the Board may determine and fix such sum or sums as the Board may deem proper as a reserve fund to meet contingencies, or for repairing, maintaining or replacing any property of FOSCA. For Capital Improvement Reserves see Article IX, SECTION 9. IMPACT FEES.

## **ARTICLE XII**

### **Bingo Games**

**SECTION 1. Bingo.**

- A. A Bingo Manager(s) appointed by the Board of Directors shall manage and operate the Games for the benefit of Fountain of the Sun. The Arizona Revised Statutes, Title 5, Chapter 4, as amended shall be used as guidelines in operating the Games and the provisions of the Articles of Incorporation and these Bylaws shall be met.
- B. Procedures used in operating the Games shall conform with the Arizona Revised Statutes, including but not limited to the accounting and safekeeping of Bingo Funds. Monies earned in Bingo Games shall be expended on FOSCA common use areas, activities, programs and recreational facilities serving the general welfare, comfort and convenience of the members. The limitations and restrictions applicable to Capital Improvements in Article X, Section 1A shall not apply to the use of Bingo funds. Bingo funds will not be included in the valuation of a project when determining the cost for purposes of Article X, Section 1A, of these Bylaws.

**SECTION 2. Reserves.** Subject to the provisions of the Arizona Revised Statutes, Title 5, Chapter 4, as amended, the Articles of Incorporation and these Bylaws, the Board may determine and fix such sum or sums as the Board may deem proper as reserve funds to meet contingencies, or for repairing, maintaining or replacing any Bingo equipment.

## **ARTICLE XIII**

### **Offices and Books**

**SECTION 1. Offices.** The principal office of FOSCA shall be 540 S. 80th Street, Mesa, Arizona 85208, or such other place in Maricopa County, as the Board may determine.

**SECTION 2. Books.** There shall be kept at the office of FOSCA or such other place as designated by the Board, correct books of all business and transactions of FOSCA. These books are maintained as computer files and are available as computer print-outs. There shall be kept at the office of FOSCA a copy of all financial statements, a copy of the Articles of Incorporations and Bylaws and the membership book of FOSCA, which shall contain the names, places of residence, unit or units owned, with their addresses, and the date when the owners thereof became members of FOSCA. The draft minutes of every regular or special meeting of FOSCA membership or Board of Directors shall be available for inspection at the offices of FOSCA, and copies thereof shall be prominently posted within four days of adjournment of each such meeting.

**ARTICLE XIV**

Fiscal Year

The fiscal year of FOSCA shall be from January 1 through December 31 of each year.

**ARTICLE XV**

Waiver of Notice

Whenever under the provisions of any law of the State of Arizona, the Articles of Incorporation, these Bylaws, or any resolution of the Board, the corporation or the Board of Directors is authorized to take any action after notice to members or Directors, or after the lapse of a prescribed period of time, such action may be taken without notice and without the lapse of said period of time, if at any time before or after such action shall be completed, such notice or lapse of time shall be waived in writing by the person or persons entitled to such notice or entitled to participate in the action to be taken, or in the case of a member, by an attorney-in-fact thereunto authorized.

Any meeting of members or the Board at which all members or all Directors, respectively, are present, or with respect to which notice is waived by all absent members or Directors, may be held at any time for any purpose and at any place, and shall be deemed to have been validly called and held, and all acts done and business conducted at any such meeting shall be deemed valid in all respects.

**ARTICLE XVI**

Termination of Corporate Existence

Upon the dissolution of the corporation, the assets, both real and personal of the Corporation, after rebate to members of excess membership dues, fees and assessments (and not net earnings) shall be dedicated to an appropriate non-profit corporation or public agency. *Notwithstanding anything to the contrary within these Bylaws, upon dissolution of the corporation, the Board shall have the right to transfer all of the corporation's assets to the Fountain of the Sun Homeowners Association or any other non-profit corporation.*

**ARTICLE XVII**  
Miscellaneous

**SECTION 1.** Headings and Titles. Headings and titles in these Bylaws, including those of Articles or Sections, are intended solely for convenience or reference, and the same shall not, nor shall any of them, affect that which is set forth in such Articles or Sections, nor any of the terms or provisions of these Bylaws or the meaning thereof.

**SECTION 2.** Notices. Any entry in the minutes of a meeting of the Board to the effect that notice has been duly given shall be prima facie evidence that due notice of such meeting was given as required by law and these Bylaws. No mistake, inadvertence or excusable neglect in the giving of any notice required by these Bylaws, nor the contents of any thereof, shall affect the validity of any meeting called thereby, or of any proceedings at any such meeting.

**SECTION 3.** Singular and Plural, Masculine and Feminine. In these Bylaws the singular includes the plural and the plural includes the singular, unless the context required the contrary, and the masculine, feminine and neuter gender each includes the masculine, feminine or neuter gender as the context required.