

# El Conquistador Resort Patio Homes Association, Inc.

## By-Laws

### As Amended and Restated

#### Table of Contents

Article 1 – Name .....	1
Article 2 – Definitions .....	1
Article 3 – Meetings .....	1
Section 1: Meetings .....	1
Section 2: Annual Meetings .....	1
Section 3: Special Meetings .....	1
Section 4: Notice of Annual and Special Meetings .....	1
Section 5: Absentee Voting .....	2
Section 6: Quorum .....	2
Section 7: Voting .....	2
Section 8: Conduct of Meetings .....	2
Article 4 – Board of Directors .....	2
Section 1: Number .....	2
Section 2: Term of Office .....	2
Section 3: Removal of Board Member: Special Meeting ...	2 - 3
Section 4: Compensation .....	3
Section 5: Action Without a Meeting .....	3
Article 5 – Nomination and Election of Directors .....	3
Section 1: Nomination .....	3
Section 2: Election .....	4
Article 6 – Meetings of Directors .....	4
Section 1: Regular Meetings .....	4
Section 2: Special Meetings .....	4

Section 3: Waiver of Notice .....	4
Section 4: Notice to Owners .....	4
Section 5: Emergency Meetings .....	4
Section 6: Quorum .....	4
Section 7 Telephonic Meetings .....	4
Section 8: Conduct of Meeting .....	5
Section 9: Executive Sessions .....	5
Article 7 – Powers and Duties of Board of Directors .....	5
Section 1: Powers .....	5
Section 2: Duties .....	6
Section 3: Rules and Regulations .....	7
Article 8 – Officers and Their Duties .....	7
Section 1: Enumeration of Officers .....	7
Section 2: Selection of Officers .....	7
Section 3: Term .....	7
Section 4: Special Appointments .....	7
Section 5: Resignation and Removal .....	7
Section 6: Vacancies .....	7
Section 7: Multiple Offices .....	8
Section 8: Duties .....	8
President .....	9
Vice President .....	9
Secretary .....	9
Treasurer .....	10
Accounting Practices .....	11
Reserves .....	11
Article 9 – Committees .....	12
Section 1: Standing Committees.....	12
Article 10 – Indemnification .....	12
Article 11 – Books, Records and Documents .....	12

Article 12 – Amendments ..... 13  
Article 13 – Fiscal Year ..... 13  
Approval and Signatures ..... 13

## **Article 1 - Name**

The name of the corporation is El Conquistador Resort Patio Homes Association, Inc. hereinafter referred to as the "Association". The business address of the Association is:

El Conquistador Resort Patio HOA  
PMB 331  
12995 N. Oracle Rd., Suite 141  
Tucson, AZ 85739

## **Article 2 - Definitions**

Definitions are as stated in Article 1 of the Conditions, Covenants and Restrictions (CC&R's).

## **Article 3 - Meetings**

### **Section 1: Meetings**

Except as provided in A.R.S. Section 33-1804. A, meetings of owners and directors will be open to all owners and will be held at such places within the state of Arizona, County of Pima, as designated by the Board of Directors.

### **Section 2: Annual Meetings**

The annual meeting of the Owners shall be held in February at a date, time and place as designated by the Board of Directors.

### **Section 3: Special Meetings**

Special meetings may be called at any time by the President or a majority of Directors or upon written request of twenty five per cent of the owners who are entitled to vote. The purpose of the meeting shall be specified and discussion limited to the specified subjects.

### **Section 4: Notice of Annual and Special Meetings**

Written notice of the annual or any special meeting 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, at least 30 days before such meeting, to each owner entitled to vote thereat, addressed to the owner's address last appearing on the books of the Association, or supplied by such owner to the Association for the purpose of notice. Such notice shall specify the place, date and hour of the meeting and, in the case of a special meeting, the purpose of the meeting.

**Section 5: Absentee Voting**

Each eligible owner may vote in person or by absentee ballot. An absentee ballot form will be included with the Notice of Annual and Special Meetings. All completed and signed absentee ballots will be filed with the Secretary no later than 5 days prior to the date set for the meeting.

**Section 6: Quorum**

The presence at the meeting in person or by absentee ballot of twenty five percent (25 percent) of the owners who are entitled to vote shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws.

**Section 7: Voting**

Voting rights shall be determined as provided for in the Declaration.

**Section 8: Conduct of Meetings**

Meetings shall be presided over by the President or if he/she is not present, by the Vice President, or if he/she is not present, by a chairman to be chosen at the meeting. The Secretary or in his/her absence, a person chosen at the meeting shall act as secretary of the meeting.

Owners shall be permitted to speak at an appropriate time during the deliberations and proceedings. The Board may place a reasonable time restriction on those persons during the meeting, but shall provide for a reasonable number of persons to speak on each side of an issue.

**Article 4 - Board of Directors**

**Section 1: Number**

The affairs of this Association shall be managed by a Board of not less than three nor more than nine Directors. Only persons who are owners of at least one unit in the Association are eligible to be a director. Each year at the annual meeting, prior to the election of directors, the owners may vote to increase or decrease the number of directorships.

**Section 2: Term of Office**

Each Director shall serve for a term of three years.

**Section 3: Removal of Board Member: Special Meeting**

Notwithstanding any provision of the declaration or bylaws to the contrary, the owners, by a majority vote of owners entitled to vote and voting on the matter at a meeting called pursuant to this section at which a quorum is present, may remove any member of the board of directors with or without cause. For purposes of calling for removal of a member of the board of directors, the following apply:

1. On receipt of a petition that calls for removal of a member of the board of directors and that is signed by the number of persons who are entitled to cast at least twenty-five per cent of the votes in the association or one hundred votes in the association, whichever is less, the board shall call and provide written notice of a special meeting of the association as prescribed by Arizona Law.
2. The special meeting shall be called, noticed and held within thirty days after receipt of the petition.
3. For purposes of a special meeting called pursuant to this subsection, a quorum is present if the number of owners to whom at least twenty per cent of the votes are allocated is present at the meeting in person.
4. If a civil action is filed regarding the removal of a board member, the prevailing party in the civil action shall be awarded its reasonable attorney fees and costs.
5. A petition that calls for the removal of the same member of the Board of Directors shall not be submitted more than once during each term of office for that member.

#### **Section 4: Compensation**

No Director shall receive compensation for any service he/she may render to the Association. However, any Director may be reimbursed for his/her actual expenses incurred in the performance of his/her duties.

#### **Section 5: Action Without a Meeting**

The Directors 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 directors. Any action so approved shall have the same effect as though taken at a meeting. Any such actions taken under the provisions of this section shall be an agenda item at the next regularly scheduled Board meeting and shall be included in the minutes of that meeting.

### **Article 5 - Nomination and Election of Directors**

#### **Section 1: Nomination**

Nomination for election to the Board of Directors shall be made by a Nominating Committee. The Nominating Committee shall consist of up to 3 persons. This committee shall elect a Chairperson. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the owners, to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, for each of the vacancies that are to be filled. Such nominations shall be made from among the owners of the Association.

**Section 2: Election**

Voting on election to the Board of Directors shall be made at the annual meeting in person or by absentee ballot with respect to each vacancy. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

**Article 6 - Meetings of Directors**

**Section 1: Regular Meetings**

Regular meetings of the Board of Directors shall be held no less than six (6) times a year at a date and time selected by the Board of Directors. Except as provided in A. R. S. Section 33-1804. A, these meetings shall be open to all Association owners.

**Section 2: Special Meetings**

Special meetings of the Board of Directors shall be held when called by the President of the Association, or by at least 20 percent of the Directors after not less than two days' notice to each director and member.

**Section 3: Waiver of Notice**

Attendance by a Director at any meeting shall be deemed a waiver of notice.

**Section 4: Notice to Owners**

Notice to owners of meetings of the Board of Directors shall be given at least 48 hours in advance of the meeting by newsletter, conspicuous posting or any other reasonable means as determined by the Board of Directors. The failure of any owner to receive actual notice of a meeting declared an emergency of the Board of Directors does not affect the validity of any action taken at that meeting. The time and place of such meeting shall be noted.

**Section 5: Emergency Meetings**

Notice to owners of meetings by the Board of Directors is not required if emergency circumstances require action by the Board before notice can be given.

**Section 6: 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 7: Telephonic Meetings**

Meetings of the Board of Directors may be held with one or more directors participating by telephone or other electronic device by which person(s) participating in the meetings can hear each other.

**Section 8: Conduct of Meeting**

At all meetings of the Board, the President, or in his/her absence, the Vice President, or in his/her absence, a chairman chosen by the directors present, shall preside. The Secretary, or in his/her absence, any person appointed by the chairman, shall act as secretary of the meeting. Meeting will be held in compliance with Arizona Open Meetings statutes.

**Section 9: Executive Sessions**

The Board is permitted to use an executive session (No non-Board member owners permitted to attend) to discuss certain limited matters that are specifically defined by the Arizona statutes. Executive sessions to discuss Association business shall not be used unless the topics to be discussed are specifically permitted by those Arizona Statutes.

**Article 7 - Powers and Duties of the Board of Directors**

**Section 1: Powers**

The Board of Directors has all of the powers of a Board of Directors of an Arizona Non-profit corporation, subject only to those limitations set forth in the Association's Articles of Incorporation, these By-Laws, and the Declaration. The Board has the power to do any and all lawful acts which may be authorized by the articles, these By-Laws, and the Declaration and any acts which may be necessary or incidental to the exercise of any of the express powers of the Association. In addition to any other powers, the Board of Directors has the specific power to:

1. Suspend the voting rights of an owner during any period in which such owner shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing for infraction of published rules and regulations;
2. Exercise for the Association all powers, duties and authority vested in or delegated to this Association, and not reserved to the owners by other provisions of these By-Laws, the Article of Incorporation, or the Declaration;
3. Declare the office of a Director to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors;
4. Employ a manager, an independent contractor, or employees as they deem necessary, and to prescribe their duties.

The employment of a "manager" or a "professional management company" to handle the affairs of the Association does not, in any way, relieve the individual Directors from the fiduciary duties and responsibilities that would apply to them in the absence of such a manager or professional management company.

5. To do all other acts and things required by applicable law or statute or authorized in the Declaration but not explicitly set out above.

## **Section 2: Duties**

As more fully set forth in the Declaration, the Board of Directors has the duty to:

1. Supervise all officers, agents and employees of the Association, and to see that their duties are properly performed
2. As more fully provided in the Declaration, to:
  - (a) Fix the amount of the annual or any special assessment against each lot;
  - (b) Send written notice of each annual or special assessment to every owner at least 30 days prior to the first due date of such assessments.
  - (c) Review and approve the annual budget submitted by the Treasurer for the following fiscal year. In no event will the written notice of the annual assessment amount for the coming year be sent to the owners until the Board has voted to approve and adopt the budget for that coming year.
  - (d) Use any lawful means to collect delinquent accounts in accordance with provisions stated in these By-Laws and the Conditions, Covenants and Restrictions. In all such matters, the Board shall follow the provisions of the laws of the state of Arizona.
  - (e) Issue, or cause an appropriate officer to issue, upon request by any owner, a certificate setting forth whether or not his/her assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates.
  - (f) Procure and maintain adequate liability and hazard insurance on property owned by the Association in amounts determined by the Board of Directors in its sole discretion.
  - (g) Cause the common areas and all other areas for which the Association is responsible to be maintained.
  - (h) Cause the exterior of the dwelling units for which the owner is responsible to be maintained.

### **Section 3. Rules and Regulations**

The Board of Directors has the power to adopt and publish rules and regulations which govern the use of the common areas and the conduct of the owners which affects the other owners, and to impose sanctions for violations of such rules and regulations. Rules and regulations adopted by the Association shall be binding on all the owners including the members of their family, their guests, tenants, licensees and invitees.

If proposed rules and regulations are in conflict with the Arizona Statutes or the CC&R's or the By-Laws, the Statutes, CC&R's and By-Laws govern in that order.

## **Article 8 - Officers and Their Duties**

### **Section 1: Enumeration of Offices**

The officers of this Association shall be President, Vice President, Secretary and Treasurer, who shall at all times be members of the Board of Directors, and such other officers as the Board may from time to time create by resolution.

### **Section 2: Selection of Officers**

The selection of officer positions shall take place at the first meeting of the Board of Directors following each annual meeting of the owners. If this meeting is not a regularly scheduled board meeting, but rather a special meeting, then appropriate notice will be given so that owners may attend. In no event will the selection of officers take place in an executive session.

### **Section 3: Term**

The officer positions of this Association shall be elected annually by the Board, and each shall hold office for one (1) year, unless he/she resigns, is removed or is otherwise disqualified to serve.

### **Section 4: Special Appointments**

The Board may elect such other officers as the affairs of the Association may require; each of whom shall hold office for such period, have such authority, and 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 a majority vote of the Board. Any officer may resign at any time, 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 unless otherwise specified therein, 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 he replaces.

### **Section 7: Multiple Offices**

In the event there are only three (3) persons on the Board, the offices of Secretary and Treasurer, or President and Treasurer, may be held by the same person. Otherwise, no person shall simultaneously hold more than one of any of the other offices except in the case of special offices pursuant to Section (4) of this article, and in case of the offices of Secretary & Treasurer, which may be held by the same person.

### **Section 8: Duties**

The duties of the officers are as follows:

#### **President**

The President shall preside at all meetings of the Board of Directors. The President shall see that orders and resolutions of the Board are carried out. The President shall sign all leases, mortgages, deeds and other written instruments and agreements and shall also sign, along with the Treasurer, all promissory notes of the Association.

The President shall be responsible for ensuring that the business of the Association is carried out in a totally transparent manner and shall cause to be maintained, an association website accessible by all homeowners with access to the internet.

Specifically, the President is responsible for ensuring that:

Executive meetings of the Board of Directors, wherein attendance by non-director homeowners is prohibited, are held only in those instances specifically permitted by the Arizona statutes.

In the month following their occurrence, there shall be posted on the website the approved minutes of all monthly board meetings, annual meetings of the owners and any special meetings.

Each month, the year to date financial statements of the Association shall be posted to the web site. These shall include a balance sheet and a statement of Income. A statement of operating expenses versus the approved budget shall also be provided.

Each month, a copy of all Association bank statements and any statements/documents substantiating investments included on the balance sheet will be posted to the web site with the financials.

The website shall also include all newsletters issued by the Association.

The President is specifically responsible for ensuring that the following administrative tasks have been completed for each fiscal year:

El Conquistador Resort Patio Homes Association, Inc.  
By-Laws as Amended and Restated

The required annual filing and fee payment with the Arizona Corporation Commission has been made.

All required federal and state Income tax returns have been filed on a timely basis and all payments for such returns have been made.

All real estate tax filings and payments have been made to Pima County.

All required inspections of the irrigation system components have been made and the appropriate required reports have been filed with the Town of Oro Valley.

The preparation of either a financial audit, or a review or a compilation has been completed on a timely basis.

A once a year board review of Association insurance coverage has been made and discussed at a regular scheduled monthly board meeting.

Any proof of insurance coverage required by an agreement with a contractor has been received on a timely basis from the party providing such coverage.

All other legal filings required to be made to all applicable governing agencies that may not be listed above, have been made on a timely basis.

Once each fiscal year, the President shall, at an open regularly scheduled Board Meeting, certify to the Board and owners that all such legally required filing requirements have been made on a timely basis.

### **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 by the Board.

### **Secretary**

The Secretary shall be responsible for recording the votes and keeping the minutes of all meetings and proceedings of the Board and of the owners; keeping the corporate seal of the Association, and affixing it on all papers requiring said seal; providing notice of meetings of the Board and of the owners; keeping appropriate current records showing the owners of the Association, together with their addresses and contact information and shall perform such other duties as required by the Board.

## **Treasurer**

The Treasurer shall be responsible for receiving and depositing in appropriate bank accounts all monies of the Association, and shall disburse such funds as directed by resolution of the Board of Directors, provided, however, that a resolution of the Board of Directors shall not be necessary for disbursements made in the ordinary course of business conducted within the limits of a budget or contract adopted by the Board.

The Treasurer shall keep, or cause to be kept, proper books of account.

The Treasurer shall prepare, or cause to be prepared, the monthly year-to-date financial statements referred to in the above section of "Duties of the President".

The Treasurer shall also prepare, for inclusion on the website with the monthly financial statements, a brief treasurer's report, which at a minimum shall include the status of any overdue homeowner assessments.

The Treasurer, along with the President, shall be an authorized signer for all promissory notes of the Association.

The Treasurer shall sign Association checks except those which are paid by a paying agent such as a bank. In the absence of the Treasurer, Association checks may be signed by another board member who is an authorized check signer.

In accordance with the laws of the State of Arizona, the Treasurer shall cause an annual financial compilation of the Association books to be made at the completion of each fiscal year. The Board may vote to have a review or a financial audit for any given year. In that case such a review or audit shall displace the need for a compilation for that year.

The Treasurer shall prepare a balance sheet, an income statement and a statement comparing the actual income and expenditures to the amounts budgeted for the year just completed. These statements, together with a budget for the new year, will be delivered via postal mail to the owners prior to the regular annual meeting.

The Treasurer shall notify all Board Members when the financial statements have been posted to the website each month. That provides the Board Members with the opportunity to review the statements for which they will be voting approval at the next Board meeting.

### **Accounting Practices**

The Treasurer shall insure that the books of account are recorded using the accrual method of accounting.

The Treasurer shall insure that invoices for any goods or services are recorded on the books in the fiscal period in which the goods or service was delivered whether or not payment for such goods and services has been made in that fiscal period.

The Treasurer shall insure that home owner assessments (received and deposited) that are applicable to a future fiscal year are not spent for any purpose before the start of the fiscal year to which they are applicable.

### **Reserves**

The Treasurer shall ensure that reserve funds are kept in a bank account(s) separate from the bank account(s) used for operating fund purposes and that any interest earned by such reserve account funds is credited to the reserve fund and not to any other fund.

The Treasurer shall ensure that allocations to the reserve fund of owner assessments are in fact made to the reserve fund bank account(s) in the amounts and periods budgeted for the fiscal year.

With the approval of the Board (at an open regular scheduled board meeting), the Treasurer may borrow a specific amount of funds from the reserve funds for use by the operating fund for a specific purpose. Any such borrowings shall be accomplished via a funds transfer from the reserve bank account to the operating bank account. The funds transfer shall be recorded on the books as an inter-fund payable/receivable transaction and shall be shown as such on the fund balance sheets posted to the website each month until repayment is made.

If any balance of such a transaction remains unpaid at the end of the year in which it occurs, the unpaid amount must be included in the budget for the following year as a use of funds from the following year's income and the amount must be paid back to the reserve fund in that following year.

Funds for such repayment shall not be provided for by recording another inter-fund transaction or by reducing the annual contributions to the reserve fund below what is called for in the published reserve study.

## **Article 9 - Committees**

### **Section 1: Standing Committees**

The standing committees of the Association shall be:

1. The Nominating Committee
2. The Architectural Committee
3. The Covenants Committee
4. The Landscape Committee

In addition, the Board of Directors shall appoint any other committees which it deems appropriate in carrying out the purposes of this Association

## **Article 10 - Indemnification**

Every officer or director of the Association may be indemnified by the Association against all expenses, liabilities and penalties, including counsel fees, reasonably incurred by or imposed upon him/her in connection with any proceeding to which he/she may be made a party or in which he/she may become involved by reason of any acts or omissions alleged to have been committed by him/her while acting within the scope of his/her employment as a director or officer of the Association, including any settlement thereof, provided that the Board of Directors determines that such person acted in good faith and did not act, fail to act or refuse to act willfully or negligently or with fraudulent or criminal intent in regard to the matter involved in the action or proceeding.

The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a director or officer of the Association or was serving at the request of the Association as a director or officer against any liability asserted against him/her and incurred by him/her in any such capacity or arising out of his/her status as such, whether or not the Association would have the power to indemnify him against such liability under this article.

The right of indemnification hereinabove provided shall not be exclusive of any rights to which any director or officer of the Association may otherwise be entitled by law.

## **Article 11 – Books, Records and Documents**

The books, records and papers of the Association shall be made available to owners upon request following the rules, conditions and regulations as enumerated in the laws of the State of Arizona.

**Article 12 - Amendments**

These By-Laws may be amended by a vote of a majority of the owners present in person or by absentee ballot at any regular or special meeting of the Association.

**Article 13 - Fiscal Year**

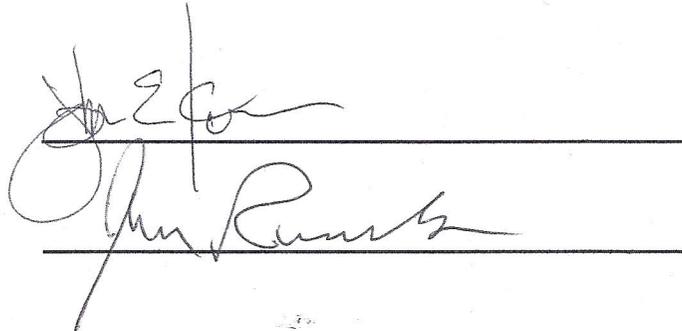
The fiscal year of the Association shall begin on the first day of January and end on the last day of December of each year.

**Approval and Signatures**

In witness whereof, we, being the President and Secretary of The El Conquistador Resort Patio Homes Association, Inc. have set our hands this 20 day of December, 2010.

**John Kovacs**      **President**

**James Russell**      **Secretary**



The image shows two handwritten signatures in black ink. The top signature is for John Kovacs, and the bottom signature is for James Russell. Each signature is written over a solid horizontal line.