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**“If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.”**

**California Government Code 12956.1**

**Updated 2012**

SMOKE TREE - BONITA OWNERS' ASSOCIATION, INC.

AMENDED BYLAWS 1994

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**AMENDED BYLAWS**  
**OF**  
**SMOKE TREE-BONITA OWNERS' ASSOCIATION, INC.**

**ARTICLE I**

**NAME AND LOCATION**

1.1 Name and Location. The name of the corporation is SMOKE TREE-BONITA OWNERS' ASSOCIATION, INC., hereinafter referred to as the "Association". The principal office of the Association shall be located at the project, or at such other place as may be designated by the Board.

**ARTICLE II**

**DEFINITIONS**

2.1 Definitions. The definitions contained in the Declaration are incorporated by reference herein.

2.2 Declaration. The word "Declaration" shall mean and refer to that certain Declaration of Covenants, Conditions and Restrictions recorded March 6, 1978 at file/page 78-088469 and all subsequent amendments thereto, filed in the office of the County Recorder for San Diego County, California.

2.3 Condominium Plan. The words "Condominium Plan" shall mean and refer to that certain Plan recorded March 6, 1978 at file/page 78-088495, and all subsequent amendments thereto, filed in the office of The County Recorder for San Diego County, California.

2.4 Bylaws The word "Bylaw" shall mean and refer to the Bylaws of the Association and all amendments thereto.

**ARTICLE III**

**MEETING OF MEMBERS AND VOTING**

3.1 Annual Meeting. The first meeting of the Members, whether an annual or a special meeting, shall be held within one (1) year from the date of incorporation of the Association. Subsequent regular annual meetings of the Members shall be held within thirty (30) days of the same day of the same month of each year thereafter. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following, which is not a legal holiday (excluding Saturday and Sunday).

3.1.1 At the annual meeting, Members shall elect Directors, consider reports of affairs of the Association and transact such other business as may properly be brought before the meeting.

3.2 Special Meetings. Special meetings of the Members shall be promptly scheduled at any time by the Board in response to the vote of a majority of the Board, or in response to a request by the President, or upon written request of the Members representing five percent (5%) of the total voting power of the Association.

3.3 Notice and Place of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or Manager, when the meeting has been called pursuant to section 3.2 above, by personal delivery or mailing a copy of such notice, first class mail, postage prepaid, at least ten (10) days but not more than ninety (90) days before such meeting to all Members, 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. If action is proposed to be taken at any meeting for approval for any of the following proposals, the notice shall also state the general nature of the proposal. Member action on such items is invalid unless the notice or written waiver of notice states the general nature of the proposal(s):

- (i) removing a Director without cause;
- (ii) filling vacancies in the Board by the Members;
- (iii) approving a contract or transaction in which a Director has a material financial interest. Meetings shall be held within the project or at a meeting place within the same county, as close to the project as possible.

3.3.1 Notices may be given by the Board or in the case of neglect or refusal by the Board, by any Officer, Director or Member. All notices shall be given either personally or by mail, sent to the last known address of each Member appearing on the books or supplied to the Association for the purpose of receiving notice.

A notice mailed or delivered as part of a newsletter, magazine or other circular regularly sent to Members shall constitute written notice when addressed and mailed to a Member(s) at the address appearing on the books of the Association for such Member(s).

3.4 Quorum. The presence either in person or by proxy, at any meeting, of Members entitled to cast one-third (1/3) of the total voting power of the Association (excluding the number of



votes where voting rights are suspended at the time of the subject meeting for disciplinary reasons or non-payment of assessment fees), shall constitute a quorum for any action except as otherwise provided in the Declaration, or these Bylaws.

3.4.1 If, however, such quorum shall not be present or represented at any meeting, a majority of the Members entitled to vote thereat shall have power to adjourn the meeting to a date not less than five (5) days and not more than thirty (30) days later, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that any action taken shall be approved by a majority of the Members required to constitute a quorum. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed for annual meetings.

3.4.2 Notwithstanding anything herein to the contrary, for purposes of obtaining membership approval of special assessments or increases in annual assessments as may be required by section 4.4 of the Declaration, the term "quorum" shall mean more than fifty percent (50%) of the Members of the Association. [Civ. Code §1366(b)]

3.4.3 Only persons who are Members of the Association shall be entitled to vote at a meeting of the Members. All owners of record are Members of the Association.

3.5 Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his unit, or upon receipt of written notice by the Secretary of the Board of the death or judicially declared incompetence of a Member prior to the counting of the vote, or upon the expiration of eleven (11) months from the date of the proxy if no termination date is provided. In any event, the maximum term for a proxy shall be three years from the date of execution. Any form of proxy distributed by any person to the membership of the Association shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon. The proxy shall provide that, where the Member specifies a choice, the vote shall be cast in accordance with that choice. The proxy also shall identify the person or persons authorized to exercise the proxy and the length of time it will be valid. In addition, voting by proxy shall comply with any other applicable requirements of California Corporations Code §§7514 and 7613. [Corp. Code §7613; 10 Cal. Adm Code §2792.17(g)]

3.6 Action by Written Ballot: Any action which may be taken at any regular or special meeting of Members, except for an election in which positions on the Board are to be filled, may be taken without a meeting and without prior notice in accordance with the provisions of California Corporations Code §§7513 and 7516, if the Association distributes a written ballot to every Member entitled to vote on the matter. Such ballot shall provide for the following:

- (i) set forth the proposed action;
- (ii) indicate the number of responses needed to meet the quorum requirement;
- (iii) provide an opportunity to specify approval or disapproval of any proposal;
- (iv) state the percentage of approvals necessary to pass the proposal;
- (v) provide that where a Member specifies a choice with respect to the proposal, the vote shall be cast in accordance therewith; and
- (vi) provide a reasonable time within which to return the ballot to the Association and specify the time by which the ballot must be received in order to be counted.

3.6.1 Approval by written ballot pursuant to section 3.6 and its subparts, shall be valid only when the number of votes cast by ballot within the time period specified, equals or exceeds the quorum required to be present at a meeting authorizing the action and the number of approvals equals or exceeds the number of votes that would be required to approve the measure, if a meeting were called for such purpose. A written ballot cannot be revoked.

3.6.2 A written ballot at a meeting or otherwise solicited, shall be in accordance with the requirements of section 3.3. and 3.3.1 herein. All such solicitations shall indicate the number of responses needed to meet the quorum requirement and shall state the percentage of approvals necessary to pass the measure submitted. The solicitation for ballots without a meeting, must specify the time by which the ballot must be received in order to be counted.

3.6.3 On all matters, including the election of each Director, a Member shall have 1 (one) vote for each condominium owned by said Member.

3.6.4 When a quorum is present at any regular or special meeting of Members, the affirmative vote of a majority of the Members shall be required for Members to transact any business thereat except: (i) where the item of business is the

enforcement of obligations under a bond or other arrangement pursuant to section 2792.4 of Title 10 of the California Administrative Code, or (ii) as may otherwise be provided in these Bylaws.

3.6.5 If a membership is of record in the name of two or more persons, whether fiduciaries, Members of a partnership, joint tenants, tenants in common, husband and wife as community property, or for any other reason, unless the Secretary of the Association is given written notice to the contrary and is given a copy of the instrument or order creating the relationship, their voting will result in the following:

- (i) if only one member votes, such act binds all;
- (ii) if more than two members vote, the act of the majority binds all; and,
- (iii) if there are conflicting votes with no majority, the conflict will cancel out the other votes.

#### ARTICLE IV

##### BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE

4.1 Number. The affairs of this Association shall be managed by a Board consisting of three (3) Directors, all of whom must be resident Members of the Association. The initial Directors shall be appointed by the Declarant. All subsequent Directors are voted into office by the Association membership.

4.2 Term of Office. For purposes of this amendment and at all times thereafter, the Association Members shall elect three (3) Directors. Two Directors shall serve for a term of one (1) year; and one (1) Director shall serve for a term of two (2) years. On the next ballot, the Director receiving the most votes shall serve for two (2) years. At each annual meeting thereafter, the Members shall vote for the directorships whose terms have expired. And every other year, the Director receiving the most votes shall serve for two (2) years.

4.3 Removal; Vacancies. Unless the entire Board is removed from office by the vote of Association Members, an individual Director shall not be removed prior to the expiration of his term of office, if the votes cast against his removal would be sufficient to elect him if voted cumulatively, at an election at which the same total number of votes were cast, and the entire number of Directors authorized at the time of the most recent election of Directors were then being elected. A Director who was elected solely by the votes of Members may be removed from office prior to the expiration of his term only by the votes of a majority of Members. In the event of death, termination of residency within the Association or resignation of a Director, the vacancy shall be filled by approval of the Board at a duly held meeting, or by the sole remaining Director. The successor Director shall serve for the unexpired term of his or her

predecessor. The Members may elect a Director at any time to fill any vacancy not filled by the Directors. A vacancy created by removal of a Director can be filled only by election of the Members.

4.4 Compensation. No Director shall receive compensation for any service he may render to the Association. However, any Director may be reimbursed for actual expenses, if reasonably incurred in the performance of his duties.

4.5 Indemnification of Corporate Agents. The Association shall indemnify any present or former Director, Officer, employee or other agent of the Association to the fullest extent authorized under California Corporations Code §7237, or any successor statute, and may advance to any such person funds to pay expenses that may be incurred in defending any action or proceeding; on receipt of an undertaking by or on behalf of such person to repay such amount unless it is ultimately determined that such person was entitled to indemnification under this provision.

## ARTICLE V

### NOMINATION AND ELECTION OF DIRECTORS

5.1 Nomination. Nomination for election to the Board shall be made by a Nominating Committee. Notice to the Members of the meeting shall include the names of all those who are nominees at the time the notice is sent. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a Member of the Board, and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the Board not less than thirty (30) days prior to each annual meeting of the Members, to serve until the close of such annual meeting. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. All candidates shall have reasonable opportunity to communicate their qualifications to Members and to solicit votes.

5.2 Election. The first election of the Board shall be conducted at the first meeting of the Association. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. All Members shall be entitled to accumulate their votes for one (1) or more candidates for the Board, if the candidate's name has been placed in nomination prior to voting, and if a Member has given notice at the meeting prior to the voting of his or her intention to accumulate votes. Voting for Directors shall be by secret written ballot.

## ARTICLE VI

### MEETING OF DIRECTORS

6.1 **Regular Meetings.** Regular meetings of the Board shall be held monthly at such place within the project, and at such hour as may be fixed from time to time by resolution of the Board. If a larger meeting room is required than exists within the project, the Board shall select a room as close as possible to the project. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday excluding Saturday and Sunday. Notice of the time and place of the meeting shall be posted at a prominent place within the common area, and shall be communicated to Directors not less than four (4) days prior to the meeting, provided, however, that notice of a meeting need not be given to any Director who has signed a waiver of notice or a written consent to the holding of said meeting.

6.2 **Special Meetings.** Special meetings of the Board shall be held when called by written notice signed by the President, Vice-President or Secretary of the Association, or by any two (2) Directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each Director by one of the following methods:

- (i) by personal delivery;
- (ii) written notice by first class mail, postage prepaid;
- (iii) by telephone communication, either directly to the Director or to a person at the Director's office who would reasonably be expected to communicate such notice promptly to the Director; or
- (iv) by telegram, charged prepaid. All such notices shall be given or sent to the Director's address or telephone number as shown on the records of the Association.

Such notice shall be posted at a prominent place within the common area not less than seventy-two (72) hours prior to the scheduled time of the meeting. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph shall be delivered, telephoned, or given to the telegraph company at least seventy-two (72) hours before the time set for the meeting.

6.3 **Quorum.** A majority of the Directors shall constitute a quorum for the transaction of business. Every act performed or decision 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. A meeting at which a quorum is initially

present may continue to transact business, notwithstanding the withdrawal of Directors, if the action taken at said meeting is still approved by a majority of the required quorum.

**6.4 Open Meetings.** All meetings of the Board shall be open to all Members, but Members other than Directors may not participate in any discussion or deliberation unless expressly so authorized by a majority of a quorum of the Board.

**6.5 Executive Session.** The Board may, with approval of a majority of its Members present at a meeting in which a quorum for the transaction of business has been established, or, if all Members of the governing body are present, by a majority vote of the Members, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

**6.6 Telephone Meetings.** Any meeting, regular or special, may be held by telephone conference or similar communication equipment, so long as all Directors participating in the meeting can hear one another, and all such Directors shall be deemed to be present in person at such meeting.

**6.7 Waiver of Notice.** The transaction of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if: (i) a quorum is present, and (ii) either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

**6.8 Notice of Adjourned Meeting.** Notice of the time and place of holding an adjourned meeting need not be given, unless the meeting is adjourned for more than twenty-four (24) hours, in which case personal notice of the time and place shall be given before the time of the adjourned meeting to the Directors who were not present at the time of the adjournment.

**6.9 Action Without Meeting.** Any action required or permitted to be taken by the Board may be taken without a meeting, if all Members of the Board, individually or collectively, consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

## ARTICLE VII

### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

**7.1 Duties.** Subject to the limitations of the governing documents, it shall be the duty of the Board to perform the following:

**7.1.1 Maintenance:** Perform the maintenance described in section 5.1.1 of the Declaration;

**7.1.2 Insurance:** Maintain insurance as required by section 8.8 of the Declaration;

**7.1.3 Discharge of Liens:** Discharge by payment, if necessary, any lien against the common area and assess the cost thereof to the Member or Members responsible for the existence of the lien (after notice and hearing as required by these Bylaws);

**7.1.4 Assessments:** Fix, levy, collect and enforce assessments as set forth in Article IV of the Declaration;

**7.1.5 Expenses and Obligations:** Pay all expenses and obligations incurred by the Association in the conduct of its business including, without limitation, all licenses, taxes or governmental charges levied or imposed against the property of the Association;

**7.1.6 Records:** Cause to be kept a complete record of all its acts and business affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing. Keep adequate and correct books and records of account, minutes of proceedings of its Members, Board and committees, and a record of its Members giving their names and addresses.

**7.1.7 Supervision:** Supervise all Officers, agents and employees of the Association, and to see that their duties are properly performed;

**7.1.8 Enforcement:** Enforce these Bylaws and the Declaration;

**7.1.9 Review of Financial Records:** Review on at least a quarterly basis a current reconciliation of the Association's operating and reserve accounts, the current year's actual reserve revenues and expenses compared to the current year's budget and an income and expense statement for the Association's operating and reserve accounts. In addition, the Board shall review the latest account statements prepared by the financial institutions where the Association has its operating and reserve accounts. For purposes herein, "reserve accounts" shall mean monies that the Association's Board has identified from its annual budget for use to defray the future repair or replacement of, or additions to, those major components which the Association is obligated to maintain.



**7.1.10 Bank Accounts:** The Board shall open bank accounts and do such banking business as is necessary in the interests of the Association and subject to the limitations of the governing documents. This shall include depositing, endorsing, receiving, negotiating, drafting, preparing, transporting, creating notes of indebtedness and such other financial transactions and in such a manner as the Board shall in its discretion, perform in accordance with all duly authorized resolutions.

**7.2 Powers.** The Board shall have power to:

**7.2.1 Manager:** Employ a manager as provided in section 5.2.3 of the Declaration;

**7.2.2 Adoption of Rules:** Adopt rules in accordance with section 5.2.4 of the Declaration;

**7.2.3 Assessments, Liens and Fines:** Levy and collect assessments and impose fines as provided in sections 3.5, 4.1 and 5.2.6, of the Declaration;

**7.2.4 Enforcement (Notice and Hearing):** Enforce these Bylaws and/or the Declaration in accordance with sections 5.2.7 and 8.1 thereof, provided that at least fifteen (15) days' prior notice of any charges (other than assessments) or potential discipline or fine and the reasons therefor are given to the Members affected, and that an opportunity is provided for the Member to be heard, orally or in writing not less than five (5) days before the imposition of the discipline or fine. Said hearing to be before the Board in accordance with sections 3.5 and 8.1.3 of the Declaration. Any notice required herein shall be given by any method reasonably calculated to provide actual notice. Any notice given by mail shall be sent by first class or registered mail, to the last address of the Member as shown on the Association's records;

**7.2.5 Contracts:** Contract for goods and/or services in accordance with section 5.2.11 of the Declaration and pay for the reconstruction of any portion(s) of the Project damaged or destroyed.

**7.2.6 Delegation:** Delegate its authority and powers to committees, Officers or employees of the Association or to a manager employed by the Association in accordance with section 5.2.12 of the Declaration. The Board may not delegate to the manager the authority to make expenditures for capital additions or improvements chargeable against the reserve funds; to conduct hearings concerning compliance by an owner or his tenant, lessee, guest or invitee with the Declaration or rules and regulations promulgated by the Board; or to make a decision to levy monetary fines; impose special assessments against individual units; temporarily suspend an owner's rights as a Member of the Association or otherwise impose discipline following any such hearing; to make a decision to levy regular or special assessment; or to make a decision to bring suit, record a claim



of lien, or institute foreclosure proceedings for default in payment of assessment. The Board may delegate to a manager any its other duties, powers or functions. Any such delegation shall be revocable by the Board at any time. Any such manager may be either a person or firm. The Members of the Board, individually or collectively, shall not be liable for any omission or improper exercise by the manager of any such duty, power or function so delegated by written instrument executed by a majority of the Board;

**7.2.7 Appointment of Trustee:** Appoint a trustee to enforce assessment liens by power of sale as provided in the Declaration and in California Civil Code §1367(b);

**7.2.8 Unit Entry:** To enter at all reasonable times, by it or its agents or independent contractors, any Unit when necessary in connection with maintenance, construction or emergency repair as to which the Association has rights hereunder.

**7.2.9 Partition and Sale:** To sell, at such price and terms as the Board may determine, the entire Project for the benefit of all of the Owners and mortgagees thereof, as their interests shall appear. Power to sell shall be exercisable only after the following: (i) when partition of the Project may be had under California Civil Code Section 1354 and (ii) after recordation of a certificate by those Owners consenting to the exercise of said power to sell (in accordance with said Section 1354).

**7.2.10 Take Legal Action:** To prosecute or defend, in the name of the Association, any action affecting or relating to the Common Area, or any action in which all of the Owners have an interest in the subject thereof.

**7.2.11 Methods of Enforcement:** To temporarily suspend the: (i) right of an Owner to use any recreational facilities within the Common Area, and (ii) voting privileges of an Owner, for default in the payment of any regular or special assessment levied by the Association pursuant to the Declaration, or for violating any regulations adopted by or established by the Board to govern the use of and activity in the Common Area, or for breaching any provision of the Declaration, the Articles or the Bylaws. Any suspension must be done in good faith and in a fair and reasonable manner. The Member must be given notice fifteen (15) days prior to the actual suspension. Notice must set forth the reasons for the suspension and may be given by any method reasonably calculated to provide actual notice. Any notice given by mail must be given by first-class or registered mail sent to the last address of the Member shown on the Association's records. The Member must be provided an opportunity to be heard, orally or in writing, not less than five (5) days before the effective date of the suspension by a properly convened meeting of the Board.

**7.2.12 Power to Fine:** To impose a reasonable monetary fine(s), as provided in the Declaration, upon an Owner for any breach of any of the following:

(i) the limitations, restrictions, conditions or covenants set forth in the Declaration (other than a breach by failure to pay an assessment(s)],

(ii) the provisions of the Articles or the Bylaws of the Association; or

(iii) the rules and regulations adopted and established by the Board pursuant to the Declaration, the Articles or the Bylaws.

The imposition of such fine(s) must be done in good faith and in a fair and reasonable manner. The Member must be given fifteen (15) days prior notice of the imposition of the fine(s). Notice must set forth reasons for the imposition of a fine(s) and may be given by any method reasonably calculated to provide actual notice. Any notice given by mail must be given by first-class or registered mail sent to the last address of the Member shown on the Association's records. The Member must be provided an opportunity to be heard orally or in writing in accordance with sections 3.5 and 8.1 of the Declaration.

**7.2.13 Contract Validity:** Any contract entered into, or instrument executed, by any two or more Directors pursuant to resolution of the Board shall be: (i) valid and subsisting according to the tenor of such contract or instrument, and (ii) a charge upon all cash, bank accounts and other personal property under the control of the Board. Any transfer, assignment or conveyance to, or any contract right in favor of, the Board shall vest in the Board, for the benefit of the owners in the same proportion as their respective interests in the Common Area. So long as he acts within the scope of his authority as a Director, no Director shall have any personal liability under any such contract or instrument; however, the foregoing shall not be construed to relieve any Director, who is also an Owner, from liability as such Owner.

**7.2.14 Contract Limitations:** Notwithstanding anything to the contrary in this Article, the Board may not, without the vote of Members entitled to exercise a majority of the voting power, do the following:

(i) enter into a contract with a third person for materials and/or services benefiting the Common Area or the Association for a term in excess of one (1) year, except: (a) any management contract, the terms of which have been approved by the Federal Housing Administration or Veterans' Administration, (b) any contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission provided, however, that the term of the contract shall not exceed the shortest

term for which the supplier will contract at the regulated rate, and (c) any prepaid casualty and/or liability insurance policy(ies) which do not exceed three (3) years' duration, provided that any policy(ies) permits short rate cancellation by the insured;

(ii) incur aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for such fiscal year;

(iii) sell, during any fiscal year of the Association, property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;

(iv) fill a vacancy on the Board created by the removal of a Director; or

(v) pay any compensation to any Director or Officer of the Association for services performed in the conduct of the Association's business, however, the Board of Directors may reimburse any such Director or Officer for expenses incurred by him in carrying on the business of the Association.

**7.2.15 Contract Termination:** Notwithstanding anything to the contrary in this Article, the Board shall not have the power to: (i) authorize or approve any contract for the professional management of the Project, which does not permit the Association to terminate said manager, without cause, upon payment of a termination fee, on ninety (90) days' or less written notice and/or enter a contract that has a term greater than three (3) years or (ii) grant to anyone easements or use rights which affect the Common Area.

**7.2.16 Delegation.** The duties referenced herein, may be delegated to a manager appointed by the Board.

**7.2.17 Other Powers:** In addition to any other power contained herein, the Association may exercise the powers granted to a non-profit mutual benefit corporation as enumerated in California Corporations Code §7140.

**7.3 Duties of a Director.** No right or power conferred to the Board by this Article shall be construed as a duty, obligation or disability charged upon the Board or any Director. If any right or power granted herein is exercised, any Director so exercising or voting for such exercise shall act in good faith, in a manner as such Director believes to be in the best interest of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

## ARTICLE VIII

### OFFICERS AND THEIR DUTIES

8.1 **Enumeration of Officers.** The Officers of this Association shall be a President and Vice-President, who shall at all times be Members of the Board, a Secretary, and a Chief Financial Officer, and such other Officers as the Board may from time to time create by resolution.

8.2 **Appointment of Officers.** The appointment of Officers shall take place annually and they shall be chosen by the Board and each shall hold office until a successor is appointed, unless an earlier resignation, removal or disqualification occurs.

8.3 **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.

8.4 **Resignation and Removal:** Any Officer may be removed from office (but not from the Board, if the Officer is also a Board Member) by the Board with or without cause. 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 unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

8.5 **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.

8.6 **Duties.** The duties of the Officers are as follows:

8.6.1 **President.** The President shall preside at all meetings of the Board; see that orders and resolutions of the Board are carried out; sign all leases, mortgages, hypothecations, deeds and other written instruments; and, sign all promissory notes. The President shall have the general powers and duties of management usually vested in the office of the President of a California nonprofit mutual benefit corporation, and shall have such powers and duties as may be prescribed by the Board or by these Bylaws.

8.6.2 **Vice-President.** The Vice-President shall act in the place and stead of the President in the event of his or her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board.

8.6.3 **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 the addresses; and, shall perform such other duties as required by the Board.

**8.6.4 Chief Financial Officer.** The Chief Financial Officer shall receive and deposit in appropriate bank accounts all monies of the Association and disburse such funds as directed by resolution of the Board; sign all promissory notes of the Association; keep proper books of account; and, prepare and distribute budgets and financial statements to each Member as follows:

(A) A pro forma operating budget for each fiscal year shall be distributed not less than forty-five (45) or more than sixty (60) days before the beginning of the fiscal year consisting of at least the following: (i) estimated revenue and expenses on an accrual basis; (ii) the amount of the total cash reserves of the Association currently available for the replacement or major repair of common facilities and for contingencies; (iii) an estimate of the current replacement costs of, and the estimated remaining useful life of, and the methods of funding used to defray the future repair, replacement, or additions to, those major components of the common area or facilities which the Association is obligated to maintain; (iv) a general statement setting forth the procedures used in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the common areas and facilities for which the Association is responsible. In lieu of the distribution of the pro forma operating budget, the Board may elect to distribute a summary of the statements to all the Members, with written notice that the budget is available at the business office of the Association or at another suitable location within the boundaries of the development and that copies will be provided upon request and at the expense of the Association. If any Member requests a copy of the pro form operating budget to be mailed to the Member, the Association shall provide the copy to the Member by first-class United States mail at the expense of the Association and delivered within five (5) days. The written notice that is distributed to each of the Association Members shall be in at least 10-point bold type on the front page of the summary of the statement; [Civ. Code §1365(a)]

(B) A balance sheet with an accounting date which is the last day of the month closest in time to six (6) months from the date of closing of the first sale of a unit in the project, and an operating statement for the period from the date of the first closing to the said accounting date, shall be distributed within sixty (60) days after the accounting date. This operating statement shall include a schedule of assessments received and receivable identified by the numbers of

the condominium units and the name or names of the owners assessed; [Civ Code §1365(b)]

(C) A report consisting of the following shall be distributed within one hundred twenty (120) days after the close of the fiscal year: (i) a balance sheet as of the end of the fiscal year; (ii) an operating (income) statement for the fiscal year; (iii) for any fiscal year in which the gross income to the Association exceeds Seventy-Five Thousand Dollars (\$75,000.00), a copy of a review of the financial statement of the Association prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy; (iv) a statement of changes in financial position for the fiscal year; (v) any information required to be reported under §8322 of the California Corporations Code; [Civ. Code §1365(b)]

(D) If the report referred to in D(3), above is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized Officer of the Association that the statement was prepared from the books and records of the Association without audit or review; [Civ. Code §1365(c)]

(E) A statement describing the Association's policies and practices in enforcing lien rights, or other legal remedies for default in payment of its assessments against its Members, and a statement of the place where the names and addresses of the current Members are located shall be distributed annually to the Members during the sixty (60) day period immediately preceding the beginning of the Association's fiscal year.

8.7 Statutory Duty. The entire Board of Directors is required by the provisions of Section 1365.5 of the California Civil Code to do all of the following:

8.7.1 Review a current reconciliation report of the Association's operating accounts on at least a quarterly basis.

8.7.2 Review a current reconciliation report of the Association's reserve accounts on at least a quarterly basis.

8.7.3 Review, on at least a quarterly basis, the current year's actual reserve revenues and expenses compared to the the current year's budget.

8.7.4 Review the latest accounting statements prepared by the financial institutions where the Association has it's operating and reserve accounts.

8.7.5 Review an income and expense statement for the Association's operating and reserve accounts on at least a quarterly basis.

8.7.6 Require that at least two (2) signatures be needed for the withdrawal of monies from the Association's reserve accounts, who either shall be Members of the Board or one (1) Member of the Board and one (1) Officer who is not a Member of the Board.

8.7.7 The Board shall not expend funds designated as reserve funds for any purpose other than repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components which the Association is obligated to repair, restore, replace or maintain and for which the reserve fund was established. However, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements or other expenses. The transferred funds shall be restored to the reserve fund within three (3) years of the date of the initial transfer, except that the Board may, upon making a finding supported by documentation that a delay would be in the best interests of the common interest development, delay the restoration until the time which the Board reasonably determines to be necessary. The Board shall exercise prudent fiscal management delaying restoration of these funds and in restoring the expended funds to the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits required by this section. This special assessment is not subject to the limitation imposed by Section 1366.

8.7.8 At least once every three (3) years, the Board of Directors shall cause a study of the reserve account requirements of the Association to be conducted if the current replacement value of the major components which the Association is obligated to repair, replace, restore, or maintain is equal to or greater than one-half of the gross budget of the Association for any fiscal year. The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review.

The study required by this subdivision shall at a minimum include:

(i) Identification of the major components which the Association is obligated to repair, replace, restore, or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years.

(ii) Identification of the probable remaining useful life of the components identified in paragraph (1) as of the date of the study.

(iii) An estimate of the cost of repair, replacement, restoration, or maintenance of each major

component identified in paragraph (1) during and at the end of its useful life.

(iv) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

8.7.9 As used in this section, "reserve accounts" means monies that the Association's Board of Directors has identified for the use to defray the future repair or replacement of, or additions to, those major components which the Association is obligated to maintain.

8.7.10 As used in this section, "reserve account requirements" means the estimated funds which the Association's Board of Directors has determined are required to be available at a specified point in time to repair, replace, or restore those major components which the Association is obligated to maintain.

## ARTICLE IX

### COMMITTEES

9.1 Committees. The Board shall appoint an Architectural Control Committee, as provided in the Declaration at section 7.10, and a Nominating Committee, as provided in these Bylaws. In addition, the Board shall appoint other committees as deemed appropriate in carrying out its purpose. No committee, regardless of Board resolution, may:

(i) take any final action on matters which, under the Nonprofit Corporation Law of California, also requires Members' approval;

(ii) fill vacancies on the Board or in any committee;

(iii) amend or repeal Bylaws or adopt new Bylaws;

(iv) amend or repeal any resolution of the Board;

(v) appoint any other committees of the Board or the Members of those committees;

(vi) approve any transaction to which the Association is a party and in which one (1) or more Directors have a material financial interest.

## ARTICLE X

### BOOKS AND RECORDS

10.1 Inspection by Members. The membership register (including names, mailing addresses, telephone numbers, and voting rights), books of account and minutes of meetings of the



Members of the Board, and of committees shall be made available for inspection and copying by any Member of the Association, or by his duly appointed representative, at any reasonable time and for a purpose reasonably related to his interest as a Member, at the office of the Association or at such other place within the project as the Board shall prescribe [Cal. Corp. Code §8330].

**10.2 Rules for Inspection.** The Board shall establish reasonable rules with respect to:

**10.2.1** Notice to be given to the custodian of the records by the Member desiring to make the inspection;

**10.2.2** Hours and days of the week when such an inspection may be made;

**10.2.3** Payment of the cost of reproducing copies of documents requested by a Member.

**10.3 Inspection by Directors.** Every Director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extracts and copies of documents, at the expense of the Association.

**10.4 Documents Provided by Board:** Upon written request, the Board shall, within ten (10) days of the mailing or delivery of such request, provide the owner of a unit with a copy of the governing documents of the project, a copy of the most recent financial statement of the Association distributed pursuant to section 8.6.4 (C)(i), together with a true statement in writing from an authorized representative of the Association as to the amount of any assessments levied upon the condominium which are unpaid on the date of the statement, including late charges, interest, and costs of collection which, as of the date of the statement, are or may be made a lien upon the condominium. [Civ. Code §1368(a)]

The Board may impose a fee for providing such documents and statement, but in no event shall the fee exceed the reasonable cost to prepare and reproduce the requested documents. [Civ. Code §1368(b)]

**10.5 Pro forma Budget:** The Board shall cause a pro forma operating statement (budget) for each fiscal year to be sent to Members not less than sixty (60) days prior to the beginning of such fiscal year. The pro forma operating statement shall include a statement of: (i) all contemplated expenses and costs for such fiscal year, and (ii) all contemplated receipts from assessments and income for such fiscal year.

**10.6 Financial Report:** The Board shall cause an initial financial report to be sent to Members which shall include: (i) a balance sheet as of an accounting date (the "Accounting Date") which is the last day of the month closest in time to six (6)

months from the date of closing of the first sale of a Condominium in the Project, and (ii) an operating statement for the period from the date of the first closing of the Accounting date. The operating statement shall include a schedule of assessments received and receivable itemized by the Unit number and by the name of the Owner so assessed.

**10.7 Annual Report:** The Association shall notify each Member, on a yearly basis, of the Member's right to receive an annual report pursuant to this subdivision. Upon written request of a Member and compensation for the duplication and mailing thereof, the Board shall promptly cause the most recent annual report to be sent to the requesting Member. An annual report shall be prepared no later than one hundred twenty (120) days after the close of the Association's fiscal or calendar year.

## **ARTICLE XI**

### **MISCELLANEOUS**

**11.1 Amendments:** These Bylaws may be amended, only by the affirmative vote (in person or by proxy) or by written consent of Members representing a majority of the total voting power of the Association. However, the percentage of voting power necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. All duly adopted amendments shall thereafter be recorded in the Corporate Record of the Association by the Secretary.

**11.2 Conflicts:** In the case of any conflict between the Articles of Incorporation and the Bylaws, the Articles shall control and in the case of any conflict between the Declaration, the Articles and these Bylaws, the Declaration shall control.

**11.3 Fiscal Year.** The fiscal year of the Association shall begin on the first day of January and end on the thirty-first (31st) day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

**11.4 Corporate Seal:** The Association's corporate seal shall be circular in form, and shall have inscribed thereon the name "Smoke Tree-Bonita Owners' Association, Inc.", the date of formation and the word "California".

## **ARTICLE XII**

### **AMENDMENTS TO ARTICLES**

**12.1 AMENDMENTS:** The Articles of Incorporation of the Association may be amended by a vote in the affirmative of a majority of the Members, entitled to vote therefor. Upon a duly adopted amendment, the Association shall record such amendments in the Association Record and file such amendments with the Secretary of State.

CERTIFICATE

I, the undersigned, the duly elected and acting Secretary of SMOKE TREE - BONITA OWNERS' ASSOCIATION, INC. a California nonprofit mutual benefit corporation, do hereby certify that the foregoing Bylaws, as amended herein, were adopted as the Bylaws of the Association on July 27, 1994, in San Diego, California.

Dated:

July 27 1994

Jean B. Smith  
Secretary