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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, 1999, in San Diego, California.

Dated:

July 27 1999

Dean B. Smith
Secretary

If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates State and Federal Fair Housing Laws and is void. Any person holding an interest in this property may request that the county recorder remove the restrictive covenant language pursuant to subdivision (c) of Section 12956.1 of the Government Code.

WHEN RECORDED, RETURN TO:
WASSERMAN & GARD
8996 Miramar Road, Ste. 300
San Diego, California 92126

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY SMITH, COUNTY RECORDER
RF: 54.00 FEES: 154.00
AF: 99.00
MF: 1.00

AMENDED DECLARATION OF RESTRICTIONS

SMOKE TREE - BONITA OWNERS' ASSOCIATION

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

THIS DECLARATION, originally made and executed by SMOKE TREE - BONITA ASSOCIATES, a general partnership, herein referred to as "Declarant", is made with reference to the following facts:

WHEREAS, Declarant was the Owner of a certain tract of land located in the County of San Diego, State of California, more particularly described as:

Lots 4 and 5 of Bonita Views, in the County of San Diego, State of California, according to Map thereof No. 7729, filed in the Office of the County Recorder of said San Diego County, August 22, 1973.

WHEREAS, SMOKE TREE - BONITA OWNERS ASSOCIATION, hereafter referred to as "Association", is the successor in interest to Declarant; and

WHEREAS, the development shall be referred to as the "project" as defined in section 1.26 herein; and

WHEREAS, Association, and its successors, intends by this document to impose upon the property, mutually beneficial restrictions under a general plan of improvement for the benefit of all the condominiums and the Owners thereof and has obtained the requisite number of signatures to ratify and adopt said amendment;

NOW, THEREFORE, Declarant hereby declares that by this document, the hereinafter described property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold and improved, subject to the following declarations, limitations, covenants, conditions, restrictions and easements, all of which shall be imposed as equitable servitudes pursuant to a general plan for the development of the property for the purpose of enhancing and protecting the value and attractiveness of the property, and the project, and every part thereof, in accordance with the plan for the improvement of the property and the division thereof into condominiums. All of the limitations, covenants, conditions, restrictions and easements shall constitute covenants which shall run with the land and shall be binding upon Declarant and its successors and assigns, and all parties having or acquiring any right, title or interest in or to any part of the property or the project.

ARTICLE I

DEFINITIONS

1.1 **"Articles"** shall mean and refer to the Articles of Incorporation of the Association, as amended from time to time.

1.2 **"Assessment"** shall mean that portion of the cost of maintaining, improving, repairing, operating and managing the property which is to be paid by each condominium Owner as determined by the Association.

1.3 **"Association"** shall mean and refer to the SMOKE TREE - BONITA OWNERS' ASSOCIATION, INC., a California non-profit mutual benefit corporation, the Members of which shall be the Owners of condominiums in the project.

1.4 **"Board" or "Board of Directors"** shall mean and refer to the governing body of the Association.

1.5 **"Bylaws"** shall mean and refer to the Bylaws of the Association, as may be amended from time to time.

1.6 **"Common area"** shall mean and refer to all of the property (excepting there from, the individual condominium units) title to which is held by all of the Owners in common. The common area includes, without limitation, land, garage, parking and driveway areas; trash enclosures; lobbies, hallways, courtyard, stairs and storage areas; bearing walls, columns, girders, ceiling joists, subfloors, unfinished floors, roofs, and foundations; swimming area water heaters; reservoirs, tanks, pumps, motors, ducts, flues and chutes; conduits, pipes, plumbing, wires and other utility installations (except the outlets thereof when located within the unit), (and excepting utility installations located within the unit), required to provide power, light, telephone, gas, water, sewage, drainage, and exterior sprinklers and sprinkler pipes.

1.7 **"Common expenses"** means and includes the actual and estimated expenses of operating the common area and any reasonable reserve for such purposes as found and determined by the Board and all sums designated common expenses by or pursuant to the condominium documents including the actual and estimated expenses of periodic maintenance and testing of all built-in fire protection devices or equipment.

1.8 **"Common interest"** means the proportionate undivided interest in the common area that is a part of each condominium as set forth in this Declaration.

1.9 **"Condominium"** shall mean an estate in real property as defined in California Civil Code §§783 and 1351(f), consisting of an undivided interest in common in a portion of the common area and a separate interest in a unit.

1.10 "Condominium documents" shall mean the same as "project documents".

1.11 "Condominium Plan" shall mean and refer to the recorded three-dimensional plan of the condominiums built or to be built on the property which identifies the common area and each separate interest pursuant to Civil Code §1351, a copy of which Plan was recorded on the 6th day of March, 1978, at File/Page No. 78-088495 in the official records of the County of San Diego.

1.12 "Declarant" shall mean and refer to SMOKE TREE - BONITA ASSOCIATES, a California General Partnership, and its successors and assigns.

1.13 "Declaration" shall mean and refer to the Enabling Declaration originally recorded as File/Page 78-088496, recorded March 6, 1978, as may be amended or supplemented from time to time.

1.14 "Dividing wall" shall mean and refer to a partition wall that exists centered upon an interior unit boundary line between condominiums under separate ownership.

1.15 "First lender" shall mean any person, entity, bank, savings and loan association, insurance company, or financial institution holding a recorded first mortgage on any condominium.

1.16 "Interior unit boundary line" shall mean and refer to the interior portions of ownership as more particularly defined under "unit" herein.

1.17 "Member" shall mean and refer to a person entitled to membership in the Association as provided herein.

1.18 "Mortgage" shall include a Deed of Trust as well as a mortgage.

1.19 "Mortgagee" shall include a beneficiary or a holder of a deed of trust as well as a mortgagee.

1.20 "Mortgagor" shall include the trustor of a deed of trust as well as a mortgagor.

1.21 "Owner" or "Owners" shall mean and refer to the record holder or holders of title, if more than one (1), of a condominium in the project. This shall include any person having a fee simple title to any condominium, but shall exclude persons or entities having any interest merely as security for the performance of an obligation. If a condominium is sold under a contract of sale, the purchaser, rather than the fee Owners, shall be considered the "Owners" from and after the date the Association is provided a written copy of the contract or the date it is recorded, whichever shall occur first.

1.22 "Person" means a natural person, a corporation, a partnership, a trustee, or other legal entity.

1.23 "Project" shall mean and refer to the entire real property above described including all structures and improvements erected or to be erected thereon.

1.24 "Project documents" shall mean this Declaration, as amended from time to time, the exhibits, if any, attached hereto, together with the other basic documents used to create and govern the project, including the Map, the Articles of Incorporation, the Bylaws, the Condominium Plan, and any published rules and regulations, duly adopted by the Board or the Association, currently in effect.

1.25 "Property" or "properties" means and includes the real property above described and all improvements erected thereon and all property, real, personal or mixed intended for or used in connection with the condominium.

1.26 "Restricted common area" shall mean and refer to those portions of the common areas, if any, set aside for exclusive use of an Owner's, pursuant to Article II, section 2.3, and shall constitute "exclusive use common area" within the meaning of the California Civil Code §1351(i).

1.27 "Unit" shall mean and refer to the element of the condominium, as defined in section 2.1.1 which is not owned in common with the Owners of the other condominiums in the project.

ARTICLE II

DESCRIPTION OF PROJECT, DIVISION OF PROPERTY,

AND CREATION OF PROPERTY RIGHTS

2.1 Description of Project. The project is a condominium project consisting of the land, the condominiums and all other improvements thereon. Reference is made to the Condominium Plan for further details.

2.1.1 Each of the units as separately shown, numbered and designated in the Condominium Plan, consists of the space bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, and include windows, window frames, interior entry door frames and trim, the interior of the entry door of each unit and all interior doors, each of such spaces being defined and referred to herein as a "unit."

2.1.2 Bearing walls located within the interior of a unit are common area, not part of the unit, except for the finished surfaces thereof. All plumbing which projects into the unit from the interior surface of a wall shall, at the interior portion of the surface, become part of the unit.

2.2 Division of Property. The remainder of the property constitutes and shall be referred to herein as "common area" or "common areas", and includes, without limitation, all of the elements set forth in Article I, section 1.6. The common area is and shall be owned by the Owners/Members in equal fractional undivided interests as shown in Declarant's deed to each Owner.

2.2.1 Each Owner shall have appurtunant to his unit, an undivided interest in the common areas. In addition, each unit, in connection with its enjoyment, shall receive water, in reasonable amounts, and for domestic purposes only. The Board shall have the right to cause said water to be metered and charged to some or all of said units.

2.3 Restricted Common Areas. Certain portions of the common area, also referred to as "exclusive use common areas" are hereby set aside and allocated for the exclusive use of the Owner of the condominium to which they are (i) assigned, appurtunant to, or attached, and (ii) used for the purposes as deemed allowable by the Board. An interest in the exclusive use area shall be permissive, and cannot be transferred without the consent of the Board.

2.4 No Separate Conveyance of Undivided Interests. The foregoing interest are hereby established and are to be conveyed with the respective condominiums as indicated above and cannot be changed, except as herein set forth, and Declarant, its successors, assigns and grantees covenant and agree that the interest in the common areas and the respective units conveyed therewith, shall not be separated or separately conveyed, and such interests shall be deemed to be conveyed or encumbered with its respective unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the unit.

2.5 Duty to Maintain. The Association agrees to maintain and repair said restricted common area. The Owner must exercise reasonable care to preserve the appearance of said area and refrain from all conduct, inconsistent with maintaining a neat overall appearance.

2.6 Parking. In addition to the parking spaces assigned to condominiums on the Condominium Plan (restricted common areas) there are certain unassigned parking spaces. These spaces may be used only in a manner authorized pursuant to rules duly adopted by the Board. All parking spaces shall be used for parking of permitted vehicles only and not for the permanent parking or storage of boats, trailers or non-mobile vehicles of any description, as more fully described in Article VII hereafter. The Association may establish rules and regulations from time to time for the parking of motor vehicles on Association property.

2.7 Rights of Entry and Use. The units and common area (including restricted common area) shall be subject to the following rights of entry and use:

2.7.1 The right of the Association's agents or employees to enter any unit to cure any violation of this Declaration or the Bylaws, provided that the Owner has received notice and a hearing as required by the Bylaws, and the Owner has failed to cure the violation or take steps necessary to cure the violation within thirty (30) days after the finding of a violation by the Association.

2.7.2 The access rights of the Association to maintain, repair or replace improvements or property located in the common area as described in this Article.

2.7.3 The rights of the Owners, the Association, and the Declarant to install, maintain, repair or replace utilities as described in Article VI.

2.7.4 Any and all of the agents, employees and independent contractors of the Association shall have a non-exclusive easement to enter any unit in the project for the purpose of performing or satisfying the duties and obligations of the Association hereunder, provided that such entry shall occur (i) at a reasonable hour and (ii) after reasonable notice has been given to the Owner of such unit.

2.7.5 In the event there is an emergency, and no one is in the unit at the time, the agents, employees and independent contractors of the Association may enter such unit immediately and without notice, for the sole purpose of taking such action as is necessary under the circumstances.

2.7.6 The rights of Owners to make improvements or alterations authorized by Civil Code § 1360(a)(2), subject to the provisions of Article VII hereafter.

2.7.7 The rights of the Association to enter a property to abate a nuisance.

2.7.8 Notwithstanding the foregoing, and under circumstances involving conduct that constitutes (i) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of neighboring Owners; (ii) a traffic or fire hazard; (iii) a threat of material damage to, or destruction of, the common area or common facilities; or (iv) a violation of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether a violation has occurred, the Board or its duly authorized agents may undertake immediate corrective or disciplinary action and, upon request of the offending Owner (which request must be received by the Association, in writing, within five (5) days following the Association's disciplinary action), or on its own initiative, conduct a hearing as soon thereafter as reasonably possible.

2.8 Partition Prohibited. The common areas shall remain undivided as set forth above. Except as provided by California Civil Code §1359, no Owner shall bring any action for partition,

it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the project. Judicial partition by sale of a single condominium owned by two (2) or more persons and division of the sale proceeds is not prohibited hereby but partition of title and boundaries to a single condominium is prohibited. [Civil Code §1359.]

2.8.1 No Owner shall voluntarily or involuntarily sever, one from the other(s), any of the component interests which comprise a condominium.

2.9 Use of Common Area. Each Owner, and the tenants and guests of such Owner, shall have the exclusive use of the parking space(s) which are appurtenant to such Owner's condominium. All common area except the buildings, shall be used only for (i) vehicular parking, (ii) vehicular and pedestrian movement within the project, including access to the units, (iii) recreational use by the Owners and occupants of units and their guests, subject to reasonable rules and regulations adopted by the Board, and (iv) beautification of the project and providing privacy to the residents thereof through landscaping and such other means as the Board may deem appropriate.

2.10 Personal Property. No Owner shall be entitled to maintain an exclusive interest in or too, any personal property of the Association. The right or interest obtained in said personal property by virtue of ones membership, is non-exclusive. No possessory interest is created to use said property, for recreational purposes or otherwise, except for usage in the ordinary manner at the location designated by the Board. Removal of said property is forbidden except at the direction of the Board.

ARTICLE III

ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND

VOTING RIGHTS

3.1 Association to Manage Common Areas. The management of the common area shall be vested in the Association in accordance with its Bylaws and rules and regulations as may be adopted from time to time. The Owners of all the condominiums, covenant and agree that the administration of the project shall be in accordance with the provision of this Declaration, the Articles, the Bylaws and rules and regulations of the Association.

3.2 Membership. The Owner of a condominium shall automatically upon becoming the Owner of same, be a Member of the Association, and shall remain a Member thereof until such time as the ownership ceases for any reason, at which time the membership in the Association shall automatically cease. Membership shall be held in accordance with the Articles and Bylaws of the Association and such rules and regulations as may be adopted.

3.3 Transferred Membership. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the sale or encumbrance of the condominium to which it is appurtenant, and then only to the purchaser, in the case of a sale, or mortgagee, in the case of an encumbrance of such condominium. On any transfer of title to an Owner's condominium, including a transfer on the death of an Owner, membership passes automatically with title to the transferee.

A mortgagee does not have membership rights until it obtains record title to the condominium. Any attempt to make a prohibited transfer is void. No Member may resign his or her membership. Any Owner acquiring a condominium in the Association must notify the Association in writing, of the acquisition. Upon notice of a transfer, the Association shall record the transfer on its books and may issue a reasonable charge therefor.

3.4 Membership and Voting Rights. Members shall be Owners and shall be entitled to one (1) vote for each unit owned. When more than one (1) person holds an interest in any condominium, all such persons shall be Members. The vote(s) for such condominium with multiple Members may be exercised as they among themselves determine, but in no event shall their cumulative vote amount to more than one (1) vote with respect to any single condominium.

3.5 Power to Levy Fines. The Board shall possess and be vested with the right and power to levy fines in amounts reasonable under the circumstances for the offense and subject to the following:

3.5.1 The fine must be for the violation of an existing provision of the Articles, Bylaws, rules and regulations and/or this Declaration.

3.5.2 The fine must be issued in good faith and in a fair and reasonable manner. The basis for the fine must be set forth in a written notice which shall be sent by first class mail for initial violations and registered mail, with return receipt requested for continuing violations, to the last known address of the Member, shown on the Association records.

3.5.3 Imposition of the fine shall be stayed for fifteen (15) days to give the Owner an opportunity to request a hearing and have an opportunity to be heard either orally or in writing prior to actual imposition of the fine. Upon a request for hearing by Owner, the Association agrees to delay imposition of the fine to a date not less than five (5) days after the date set for hearing before a properly convened meeting of the Board.

3.5.4 Any breach, for which a fine has been levied, that has not been remedied in the calendar month that the fine was issued, shall be deemed to constitute a new breach, each and every calendar month thereafter until the breach is corrected. The Board shall observe all terms, conditions and notice formalities of this Article, in issuing or levying a new fine.

3.5.5 In the event enforcement or collection should become necessary and the services of an attorney are required, the Association shall be entitled to recover such reasonable fees and any costs necessarily incurred, to obtain compliance with the provisions of this Article. It shall not be necessary that a matter be litigated for the Association to be entitled to recover fees reasonably incurred in the enforcement of these documents.

3.5.6 The Association may use any remedy at law and/or in equity to enforce the provisions of this Article. To the extent allowed by law, any legal fees and costs incurred to compel compliance with the governing documents, shall be deemed an assessment which may become a lien upon the property and foreclosed upon in the same manner as the right to foreclose for non-payment of regular and special assessments pursuant to §1366, et. seq., of the California Civil Code.

3.5.7 Should a sale take place pursuant to a foreclosure of lien rights by the Association, the Association shall have the right to bid at and credit the account of the foreclosed Owner, in the same manner as any other person.

3.6 The Governing Body. The Board shall initially consist of three (3) Members which can be increased at the will of the Board to five (5) Members and shall possess and be vested with the rights, powers and duties set forth in this Declaration, the Bylaws and the Articles.

ARTICLE IV

MAINTENANCE AND ASSESSMENTS

4.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner of one (1) or more (condominiums/lots) by acceptance of a deed or other conveyance therefor (whether or not it shall be so expressed in such deed or conveyance), covenants and agrees to pay to the Association (i) regular assessments, (ii) special assessments, and [(iii) special individual assessments. Each such assessment shall be established and collected as hereinafter provided.

4.1.1 The annual and special assessments, together with interest, late charges, collection costs and reasonable attorneys' fees, shall be a charge on the condominium and shall be a continuing lien upon the condominium against which each such assessment is made. The lien shall become effective upon recordation of a notice of delinquent assessment.

4.1.2 Each such assessment, together with interest, late charges, collection costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such condominium at the time when the assessment became due. No Owner shall be exempt from liability for payment of assessment by waiver of the use or enjoyment of any of the common areas or by the abandonment of the Owner's condominium.

4.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the economic interest, health, safety, and welfare of all the Owners and to enable the Association to perform its obligations hereunder.

4.3. Annual Assessments. The Board shall establish and levy annual assessments in an amount that the Board estimates will be sufficient to raise the funds needed to perform the duties of the Association during each fiscal year. This sum shall be assessed equally amongst all Members based upon their unit interests in ownership.

4.3.1 The annual assessment shall include a portion for reserves in such amounts as the Board in its discretion considers appropriate to meet the costs of the future repair, replacement or additions to the major improvements and fixtures that the Association is obligated to maintain and repair. Reserve funds shall be deposited in a separate account and the signatures of at least two (2) persons who shall either be Members of the Board or one (1) officer who is not a Member of the Board and a Member of the Board shall be required to withdraw monies from the reserve account.

4.3.2 Reserve funds may not be expended for any purpose other than repairing, replacing or adding to the major improvements or fixtures that the Association is obligated to maintain, without the consent of Owners holding a majority of the voting power either at a duly held meeting or by written ballot, in accordance with §1366 of the California Civil Code.

4.4 Special Assessments. The Board, at any time, may levy a special assessment in order to raise funds for unexpected operating or other costs, insufficient operating or reserve funds, or such other purposes as the Board in its discretion considers appropriate. Special assessments shall be allocated among the units in the same manner as annual assessments provided that: (i) Any special assessments against Owners to raise funds for the repair, replacement or addition of that portion of the common area that contains the units shall be levied amongst all Owners based upon the proportion that their fractional interest bears to the aggregate of all units interest in the project. (ii) The Board may levy a special assessment against a Member to reimburse the Association for costs incurred in bringing the Member and his unit into compliance with the provisions of the Project Documents, [Civ. Code §1366(b)] or to recover the deductible on any claim against the Association's insurance policy.

4.5 Reserves for Replacement. As part of the regular annual assessments for maintenance authorized above, the Board shall annually fix the amount to be contributed pro rata by each Member to reserve funds for the purpose of defraying, in whole or in part, the cost or estimated cost of any reconstruction, repair or replacement of improvements, including, fixtures and personal property related thereto. Such determination shall be made after consideration of the need for additional funds and of the

Association's capital position. The Board shall maintain a separate account for those reserve funds. The Board shall fix the method of payment of such assessments and shall be empowered to permit either lump sum or monthly payments.

4.5.1 Repair and maintenance funds shall be used solely for repair and maintenance within the project. Reserve funds shall be used solely for reconstruction or replacement of improvements, including fixtures and personal property.

4.6 Notice and Quorum for Any Action Authorized Under Sections 4.3 and 4.4. Any action authorized under these sections, which required a vote of the Membership, shall be taken at a meeting called for that purpose, written notice of which shall be sent to all Members not less than ten (10) nor more than ninety (90) days in advance of the meeting specifying the place, day and hour of the meeting and, in the case of a special meeting, the nature of the business to be undertaken. The action may also be taken without a meeting pursuant to the provisions of California Corporations Code §7513.

4.7 Division of Assessments. Except as provided in section 4.4(ii), all assessments, both annual and special, shall be equally shared.

4.7.1 Payments shall be due the first (1st) of each month and delinquent on the fifteenth (15th) unless a written notice is deposited in the U.S. Mail, and signed by the Board, postage prepaid, addressed respectively to each unit, at least sixty (60) days prior to the beginning of the fiscal year, modifying or changing the frequency of payment.

4.8 Date of Commencement of Annual Assessment Due Dates. The regular assessments provided for herein shall commence as to all condominiums covered by this Declaration on the first (1st) day of the month. Subject to the provisions of section 4.3 hereof and §1366 of the California Civil Code, the Board shall determine and fix the amount of the annual assessment against each condominium and send written notice thereof to every Owner at least forty-five (45) days in advance of each annual assessment period. The due dates shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified condominium have been paid. Only the possession of such a certificate shall be conclusive evidence of payment.

4.9 Effect of Nonpayment of Assessments. Any assessment not paid within fifteen (15) days after the due date shall bear interest at the rate of twelve percent (12%) per annum commencing thirty (30) days after the due date until paid, [Civ. Code §1366(c)(3)] and shall incur a late payment penalty in an amount to be determined by the Board, from time to time, but not in excess of the maximum permitted by §1366 (c)(2) of the California Civil Code.

4.10 Transfer of Unit by Sale or Foreclosure. Sale or transfer of any condominium shall not affect an assessment lien. However, the sale of any unit pursuant to a foreclosure of a first mortgage shall extinguish the lien of such assessments (including attorney's fees, late charges, or interest levied in connection therewith) as to payments which become due prior to such sale or transfer (except for assessment liens recorded prior to the mortgage). No sale or transfer shall relieve such condominium from liability for any assessment thereafter becoming due or from the lien thereof.

4.10.1 Where the mortgagee of a mortgage of record or other purchaser of a condominium obtains title to the same as a result of foreclosure of any such mortgage, such acquirer of title, his successor and assigns, shall not be liable for the share of the assessments by the Association chargeable to such condominium which become due prior to the acquisition of title to such condominium by such acquirer (except for assessment liens recorded prior to the mortgage.) Such unpaid share of assessments shall be deemed to be common expenses collectible from all of the condominium Owners including such acquirer, his successors or assigns.

4.10.2 If a condominium is transferred subject to a lien, the grantor shall remain liable to the Association for all unpaid assessments against the condominium through and including the date of the transfer. The grantee shall be entitled to a statement from the Association, dated as of the date of transfer, setting forth the amount of the unpaid assessments against the condominium to be transferred and that the condominium shall not be subject to a lien for unpaid assessments in excess of the amount set forth in the statement, provided, however, the grantee shall be liable for any assessments that become due after the date of the transfer and all amounts contained in the lien or statement.

4.11 Priorities; Enforcement; Remedies. If an assessment is delinquent, the Association may record a notice of delinquent assessment and establish a lien against the condominium of the delinquent Owner superior to all other liens except such interests as are recorded prior to the filing of the Association's lien.

4.11.1 The notice of delinquent assessment shall state the amount of the assessment, collection costs, attorneys' fees, late charges and interest, a description of the condominium against which the assessment and other sums are levied, the name of the record Owners, and the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by any officer of the Association or any agent retained by the Association for such purpose.

4.11.2 An assessment lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to California Civil Code

§2934(a). Any sale by the trustee shall be conducted in accordance with the applicable provisions of the California Civil Code, including any successor statutes thereto, applicable to the foreclosure of a lien for delinquent assessment fees, or in any other manner permitted by law. Nothing herein shall preclude the Association from bringing an action directly against an Owner for breach of the personal obligation to pay assessments. [Civ. Code §1367(d)]

4.11.3 The Association, acting on behalf of the condominium Owners, shall have the power to bid for the condominium at foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same. Where the purchase (as opposed to foreclosure) of a condominium will result in a five percent (5%) or greater increase in assessments, the purchase shall require the vote or written consent of a majority of the total voting power of a quorum of the Association called for such a purpose.

4.11.4 During the period a condominium is owned by the Association, following foreclosure: (i) No right to vote shall be exercised on behalf of the condominium; (ii) No assessment shall be assessed or levied on the condominium; and (iii) Each other condominium shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged to such condominium had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid common expenses and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

4.11.5 After acquiring the title to the condominium at foreclosure sale following notice and publication, the Association may execute, acknowledge and record a deed conveying title to the condominium, to a bona fide purchaser, which deed shall be binding upon the Owners, successors, and all other parties.

4.11.6 The Board may temporarily suspend the voting rights of a Member who is in default in payment of any assessment, after notice and hearing, as provided in the Bylaws.

4.12 **Unallocated Taxes.** In the event that any taxes are assessed against the common area, or the personal property of the Association, rather than against the condominiums, the taxes shall be included in the assessments made under the provisions of section 4.1 and, if necessary, special assessments may be levied against the condominiums in an amount equal to the taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment. Owner's liability for taxes shall be that portion which is a fraction of the tax, equal to the Owner's fractional undivided interest in the common area.

4.13 **No Offsets.** All assessments shall be payable in the amount specified by the assessment and no offsets against such amount shall be permitted for any reason, including without limitation, as a result of a claim that the Association is not

properly exercising its duties and powers as provided in this Declaration.

ARTICLE V

DUTIES AND POWERS OF THE ASSOCIATION

5.1 Duties of the Association. In addition to the duties enumerated in its Bylaws, or elsewhere provided for in this Declaration, and without limiting the generality thereof, the Association shall perform the following duties:

5.1.1 Maintenance: Except as herein otherwise provided, the Association shall maintain, repair, replace, restore, operate and manage all of the common area and all facilities, improvements, furnishings, equipment and landscaping thereon, and all property that may be acquired by the Association, provided that each Owner shall keep the restricted common area appurtenant to that Owner's condominium in a neat and clean condition. Maintenance shall include (without limitation): painting, maintaining, cleaning, repairing and replacing of all common areas, including exterior doors, landscaping, garage and parking areas, public restrooms, stairs, and fire extinguishers located in the common area. The responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or omission of an Owner, or his guests, tenants, or invitees, the cost of which is not covered by insurance carried by the Association. Such repairs shall be made by the responsible Owner, provided the Board approves the person actually making the repairs and the method of repair. If the responsible Owner fails to take the necessary steps to make the repairs within a reasonable time under the circumstances, the Association shall make the repairs and charge the cost thereof to the responsible Owner, which cost shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by law) until paid in full. If an Owner disputes his or her responsibility for the repairs, the Owner shall be entitled to notice and a hearing as provided herein and in the Bylaws, before any charge may be imposed. Such expenses shall be collected from an individual Member, in the same manner as a special assessment, in conformance with section 4.4 of this document.

5.1.2 Insurance: The Association shall maintain such policy or policies of insurance as are required by section 8.8 of this Declaration.

5.1.3 Discharge of Liens: The Association shall discharge by payment, if necessary, any lien against the common area, and charge the cost thereof to the Member or Members responsible for the existence of the lien (after notice and a hearing, as provided in the Bylaws).

5.1.4 Assessments: The Association shall fix, levy, collect and enforce assessments as set forth in Article IV hereof.

5.1.5 Payment of Expenses: The Association shall 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.

5.1.6 Enforcement: The Association shall enforce this Declaration, the Bylaws, the Articles and the rules and regulations in a consistent and fair manner.

5.2 Powers: In addition to the powers enumerated in the Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall have the following powers:

5.2.1 Utility Service: The Association shall have the authority to obtain, for the benefit of all of the condominiums, all water, gas and electric service, and refuse collection and maintenance service. In the event any Owner disagrees with the Board's allocation of utility costs, that Owner may have the matter submitted to arbitration under the rules of Judicial Arbitration and Mediation Services, Inc.

5.2.2 Easements: The Association shall have authority, with the approval of two-thirds (2/3) of the total voting power of the Association, to grant easements in addition to those shown on the Map, where necessary for utilities, cable television, and sewer facilities over the common area to serve the common and open space areas and the condominiums.

5.2.3 Manager: The Association may employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, except for the responsibility to levy fines, impose discipline, hold hearings, file suit, record or foreclose liens, or make capital expenditures, provided that any contract with a firm or person appointed as a manager or managing agent shall not exceed a one (1) year term, shall provide for the right of the Association to terminate the same at the first annual meeting of the Members of the Association, and to terminate the same for cause on thirty (30) days' written notice.

5.2.4 Adoption of Rules: The Association or the Board may adopt reasonable rules not inconsistent with this Declaration relating to the use of the common area and all facilities thereon, and the conduct of Owners and their tenants and guests with respect to the property and other Owners.

5.2.5 Access: For the purpose of performing construction, maintenance or emergency repair for the benefit of the common area or the Owners in common, the Association's agents

or employees shall have the right, after reasonable notice (not less than twenty-four (24) hours except in emergencies) to the Owner thereof, to enter any unit or to enter any portion of the common area at reasonable hours. Such entry shall be made with as little inconvenience to the Owner as practicable and any damage caused by the Association shall be repaired at the expense of the Association.

5.2.6 Additional Penalties: In addition to other remedies contained herein, the Board may impose the following for non-payment of assessment fees and fines: Temporary suspension of voting rights, restrictions on use of recreational facilities or other appropriate discipline, provided that the Member is given notice and an opportunity for a hearing as provided herein and in the Bylaws, before the imposition of any fine or disciplinary action. In the event that the need for maintenance or repair, which would otherwise be the Association's responsibility hereunder is caused through the willful or negligent acts of an Owner, his or her family, guests, tenants, or invitees, and is not covered or paid for by Association insurance policies or any liability insurance maintained by the responsible Owner, the cost of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Special Individual Assessment against the offending Owner in accordance with Article IV, section 4.1 hereof.

5.2.7 Enforcement: The Association shall have the authority to enforce this Declaration pursuant to section 8.1 herein.

5.2.8 Acquisition and Disposition of Property: The Association shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the Association. Any transfer of property shall be by document signed or approved by two-thirds (2/3) of the total voting power of the Association.

5.2.9 Loans: The Association shall have the power to borrow money, and with the assent (by vote or written consent) of two-thirds (2/3) of the total voting power of the Association, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

5.2.10 Dedication: The Association shall have the power to dedicate all or any part of the common area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication shall be effective unless an instrument has been signed by two-thirds (2/3) of the total voting power of the Association, agreeing to such dedication.

5.2.11 Contracts: The Association shall have the power to contract for goods and/or services for the discharge of

its responsibilities, subject to the limitations of section 7.3 of the Bylaws, and as elsewhere set forth in the condominium documents.

5.2.12 Delegation: The Association, the Board, and the officers of the Association shall have the power to delegate their authority and powers to committees, officers or employees of the Association, or to a manager employed by the Association, provided that the Board shall not delegate its responsibility:

(i) To make expenditures for capital additions or improvements chargeable against the reserve funds;

(ii) To conduct hearings concerning compliance by an Owner or his tenants, lessee, guest or invitee with the Declaration, Bylaws or rules and regulations promulgated by the Board;

(iii) To make a decision to levy monetary fines, impose special assessments against individual condominiums, temporarily suspend an Owners's rights as a Member of the Association or otherwise impose discipline;

(iv) To make a decision to levy annual or special assessments; or

(v) To make a decision to bring suit, record a claim of lien or institute foreclosure proceedings for default in payment of assessments.

5.2.13 Security: The Association shall have the power (but not the obligation) to contract for security service for the common area.

5.2.14 Appointment of Trustee: The Association, or the Board acting on behalf of the Association, has the power to appoint or designate a trustee to enforce assessment liens by sale as provided in section 4.10 and in California Civil Code §1367(b).

5.2.15 Accounting: The Board shall maintain books of account of all its receipts and expenditures and shall cause such books to be examined at the close of the fiscal year and a report made thereon to the Association. The Board shall deliver a copy of such report to the Owner of each condominium unit within ninety (90) days after the end of such fiscal year. Each Owner (or the duly appointed representative) shall have the right at reasonable times, to inspect the books and records and have them examined at their expense by an attorney or an accountant of their choosing at the Association's place of record storage.

5.2.16 Eviction Authority: Whether or not such right is stated in a rental agreement, every Owner who rents his or her [unit/residence] automatically grants to the Association the right to determine a tenant's default under the governing documents and of terminating the tenancy and evicting the tenant

for such default. If the Board takes such eviction action, either in its own name or in the name of the Owners, the Owner shall be responsible for all costs thereof, including reasonable attorneys' fees, and shall reimburse the Association upon demand for the entire amount of such costs. If the Owner refused to make such reimbursement, the sums shall constitute a ["special individual assessment"] for which a lien may be imposed against the owner's lot. The Association's right to maintain an eviction action hereunder is derived from §§1165 and 374 of the California Code of Civil Procedure and shall only arise if the tenant's or lessee's conduct involves damage or destruction of common areas or common facilities, or constitutes a nuisance or unreasonable interference with the quiet enjoyment of other residents.

5.2.17 Assignment of Rents: Each Owner does hereby presently assign to the Association, absolutely and regardless of possession of the property, all rents and other monies now due or hereafter to become due under any lease or agreement or otherwise for the use or occupation of any or all parts of (condominium/lot) owned by the Owner, now existing or hereafter made for the purpose of collecting all assessments due the Association pursuant to this Declaration which are in default. The Association hereby confers on each Owner the authority to collect and retain the rents and other monies derived from any such lease or agreement as they become due and payable, provided that the Association at its sole discretion, may revoke such authority at any time, upon written notice to the Owner of a default in the payment of any assessment due hereunder. Upon revocation of such authority the Association may, pursuant to court order or by court-appointed receiver, collect and retain such monies, whether past due and unpaid or current. The Association's rights under this section 13 shall be subordinate to the rights of any first mortgagee.

5.3 Other Powers. In addition to the power contained herein, the Association may exercise the powers granted to a non-profit mutual benefit corporation under California Corporations Code §7140.

ARTICLE VI

UTILITIES

6.1 Owner's Rights and Duties. The rights and duties of the Owners of condominiums within the project with respect to sanitary sewer, water, drainage, electric, gas, television receiving, telephone equipment, cables and lines, exhaust flues, and heating and air conditioning facilities (hereinafter referred to, collectively, as "utility facilities") shall be as follows:

6.1.1 Whenever utility facilities are installed within the property, which utility facilities or any portion thereof lie in or upon condominiums owned by other than the Owner of a condominium served by the utility facilities, the Owners of any condominium served by the utility facilities shall have the

right of reasonable access for themselves or utility companies to repair, replace and generally maintain the utility facilities as and when necessary.

6.1.2 Whenever utility facilities are installed within the property which utility facilities serve more than one (1) condominium, the Owner of each condominium served by the utility facilities shall be entitled to the full use and enjoyment of such portions of the utility facilities as service the condominium.

6.1.3 In the event of a dispute between Owners with respect to the repair, maintenance, or rebuilding of the utility facilities, or with respect to the sharing of the cost thereof, then, upon written request of one (1) of such Owners addressed to the Association, the matter shall be submitted to arbitration pursuant to rules of the Judicial Arbitration and Mediation Services, Inc., and the decision of the arbitrator(s) shall be final and conclusive on the parties.

6.1.4 Common area utilities costs and utilities included on a master meter and billed to the Association shall be included in assessments and shall be prorated as set forth in Exhibit "A", unless the Board makes a special allocation of such costs as provided in section 5.1.1.

6.2 Easements for Utilities and Maintenance. Easements over and under the property for the installation, repair, and maintenance of electric, telephone, water, gas, sanitary sewer lines and facilities, heating, cable or master television antenna lines, drainage facilities, walkaways, and landscaping as shown on the recorded Map of the property, and as may be hereafter required or needed to service the property, are hereby reserved by Declarant and its successors and assigns, until the sale of the first condominium, and thereafter by the Association, together with the right to grant and transfer the same. Said easement shall be in favor of Declarant, and its successors and assigns for the benefit of the project, and for the benefit of the Association.

6.3 Association's Duties. The Association shall maintain all utility facilities located in the common area except for those facilities maintained by utility companies, public, private, or municipal and those maintained by the Owners as described in section 8.7. The Association shall pay all charges for utilities supplied to the project except those metered or charged separately to the condominiums. Each unit shall have a separate meter for its gas (if any) and electricity, and the Owner shall be responsible for payment of all charges based on said meter.

ARTICLE VII

USE RESTRICTIONS

In addition to all of the covenants contained herein, the use of the property and each condominium therein is subject to the following:

7.1 Window Coverings. No shutter, screen, blind, curtain, drape, covering, object or appurtenance shall be constructed, maintained or permitted in or on any window or door without the express written consent of the Board.

7.2 Water furniture. No waterbeds or water furniture shall be permitted or maintained in a unit.

7.3 Pets. Each condominium may keep in the unit, (i) not more than one (1) domesticated dog, cat or other commonly accepted household pet, provided such animal does not exceed thirty (30) pounds in weight at mature growth, (ii) any number of birds in one (1) or more cages, (iii) any number of fish in household aquariums of reasonable size; provided however, that such pets and other animals, including birds and fish, must be kept for non-commercial purposes. In the event that the Board determines that any such pet(s) create an unreasonable annoyance or nuisance to other Owners, the raising or keeping thereof shall be discontinued within a reasonable time thereafter. The Board shall endeavor to provide an Owner of a disruptive pet, an opportunity to cure the problem whenever possible. Pets of any kind shall not be permitted in the common area except as specifically allowed by the rules and regulations adopted by the Board. No dogs shall be allowed on the common area without a leash. Any unleashed dog shall be removed to the pound at owners expense.

7.4 Parking Spaces. Each Owner and the tenants and guests of Owner, shall have the right to the exclusive use of the parking space(s) which constitutes the exclusive use area(s) appurtenant to such condominium for the parking of vehicles not inconsistent with the remainder of this section. The Board may from time to time adopt rules and regulations for parking.

7.4.1 Vehicle Maintenance: No motor vehicle shall be constructed, reconstructed or repaired within the Properties and no dilapidated or inoperable vehicle, including vehicles without wheel(s) or an engine, shall be stored on the Properties; provided, however, that the provisions of this section shall not apply to emergency vehicle repairs.

7.4.2 Vehicle Parking: Notwithstanding the foregoing provisions of this Declaration, no (i) pickup truck having a gross vehicle weight in excess of ten thousand (10,000) pounds, (ii) tractor, (iii) truck "cab", (iv) bus (v) boat, (vi) dune buggy, (vii) trailer, (viii) recreational vehicle, (ix) mobile home or motor home, or (x) camper shell whether on the vehicle or detached, shall be stored on any portion of the common area or

the restricted common area; however, the Board may give written authorization to any Owner, permitting the temporary parking of any such vehicle or equipment upon the common area.

7.4.3 The Association may install a sign at each vehicular entrance to the project containing a statement that public parking is prohibited and that all vehicles not authorized to park on the project will be removed at the Owner's expense. The sign shall contain the telephone number of the local traffic law enforcement agency and shall not be less than 17 x 22 inches in size with lettering not less than one (1) inch in height.

7.4.4 The Association may cause the removal of any vehicle that interferes with the flow or movement of traffic or is wrongfully parked on the property. If the identity of the registered Owner of the vehicle is known or readily ascertainable, the President of the Association or his or her designee shall, within a reasonable time thereafter, notify the Owner of the removal in writing by personal delivery or first class mail. In addition, notice of the removal shall be given to the local traffic law enforcement agency immediately after the vehicle has been removed. The notice shall include a description of the vehicle, the license plate number and the address from where the vehicle was removed. If the identity of the Owner is not known or readily ascertainable and the vehicle has not been returned to the Owner within one hundred twenty (120) hours after its removal, the Association immediately shall send or cause to be sent a written report of the removal by mail to the California Department of Justice in Sacramento, California and shall file a copy of the notice with the proprietor of the public garage in which the vehicle is stored. The report shall be made on a form furnished by the Department of Justice and shall include a complete description of the vehicle, the date, time and place from which the vehicle was removed, the amount of mileage on the vehicle at the time of removal, the grounds for removal and the name of the garage or place where the vehicle is stored.

7.4.5 Notwithstanding the foregoing, the Association may cause the removal, without notice, of any vehicle parked in a marked fire lane, within fifteen (15) feet of a fire hydrant, in a parking space designated for handicapped without proper authority or in a manner which interferes with any entrance to, or exit from, the project or any condominium parking space or garage located thereon. The Association shall not be liable for any damages incurred by the vehicle Owner because of the removal in compliance with this section or for any damage to the vehicle caused by the removal, unless such damage resulted from the intentional or negligent act of the Association or any person causing the removal of or removing the vehicle. If requested by the Owner of the vehicle, the Association shall state the grounds for the removal of the vehicle.

7.5 Condominium Use. No condominium shall be occupied and used except for residential purposes by the Owners, their tenants, and invitees and no business or trade shall be conducted therein.

7.5.1 Residential purposes shall mean, (i) no more than two (2) unrelated persons living in a one (1) bedroom unit, (ii) no more than three (3) unrelated persons residing in a two (2) bedroom unit, (iii) no more than four (4) unrelated persons residing in a three (3) bedroom unit, (iv) no more than five (5) unrelated persons residing in a four (4) bedroom unit. Unrelated persons shall mean those persons who are not related by blood, marriage, legal adoption or guardianship.

Notwithstanding the above, there may reside in said unit, one (1) domestic assistant and one (1) foster child.

7.5.2 Each Owner shall maintain and repair the interior of the unit, all utilities servicing the unit, all windows and doors (excepting entry doors) appurtunant to his unit, and all appliances therein, including heaters, plumbing and light fixtures.

7.5.3 The Association shall maintain central water heating facilities serving more than one (1) condominium. Individual water heaters (if any) located within the unit served thereby, shall be maintained by the Owner of the condominium.

7.6 Nuisances. No noxious, illegal or seriously offensive activities or conditions shall be carried on or maintained, within or upon, any condominium, or in any part of the property, nor shall anything be done thereon which may be or may become a serious annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of the Owner's condominium or which shall in any way increase the rate of insurance for the project, or cause any insurance policy to be canceled or to cause a refusal to renew the same, or which will impair the structural integrity of any building, or which will endanger the lives or health of occupants.

7.7 Signs. No signs shall be displayed in the public view on any condominiums or on any portion of the property except such signs as are approved by the Board or committee appointed by the Board. Signs shall conform to all applicable local ordinances and regulations, and any regulations established by the Association. No advertising or promotional activities such as pennants, lights, amplified sound or music, shall be permitted without the prior consent of the Board. Approval shall not be necessary for a sign no larger than 12"x12", placed in one (1) window only, for use in conjunction with the sale and/or rental of a unit, so long as best efforts are utilized to rent or sell said unit and remove the sign, as quickly as possible.

7.8 Garbage and Refuse Disposal. All rubbish, trash and garbage shall be regularly removed from the property, and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. All equipment, garbage cans, or storage piles shall be kept screened and concealed from

view of other condominiums, streets and common areas. The Association shall be responsible for removal of garbage and waste material from the central pickup point(s). No toxic or hazardous materials shall be disposed of within the project in any manner.

7.9 Radio and Television Antennas. No Owner may be permitted to construct and/or use and operate his own external radio and/or television antenna or satellite dish, without the consent of the Board. In considering whether to approve applications, the Board shall consider and give great weight to considerations of aesthetics and uniformity of appearance in the project.

7.10 Architectural Control. No fence, wall, obstruction, outside or exterior wiring, balcony, screen, awning, improvement or structure of any kind shall be commenced, installed, erected, painted, repainted or maintained upon the property, nor shall any alteration or improvement of any kind be made thereto until the same has been approved in writing by the Board, or by an Architectural Control Committee appointed by the Board.

7.10.1 Complete plans and specifications showing the nature, kind, shape, color, size, materials and location of any proposed improvements, or alterations shall be submitted to the Board or to the Architectural Control Committee for approval as to quality of workmanship and design and harmony of external design with existing structures.

7.10.2 The Architectural Control Committee shall consist of three (3) Members or the Board. A majority of the Architectural Control Committee may designate a representative to act for it. In the event of death or resignation of any Member of the Committee, the successor shall be appointed by the person, entity or group which appointed such Member. In the event the Committee fails to approve or disapprove plans and specifications within ninety (90) days after the same have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with.

7.10.3 Before commencement of any alteration or improvements approved by the Architectural Control Committee, the Owner shall comply with all appropriate governmental laws and regulations. Approval by the Committee does not satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction.

7.10.4 The Association shall not cause to be made, or permit any changes in the exterior or structural portion of a building which materially affects the outward appearance of the building or its structural integrity.

7.11 Interior Modifications. Each Owner shall have the exclusive right to (i) paint, repaint, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, doors and fences in or bounding such Owner's unit, provided that the floors of the unit shall at all times be

covered by a cushioned floor tile or carpeting over a heavy duty foam pad, having a thickness of at least one-half (1/2) inch, and (ii) alter such Owner's unit, provided such alteration shall not affect the common area, any other unit, or the structural portions of any building, wall or fence.

7.12 Drapes. All drapes, curtains, window coverings, shutters, or blinds visible from the street or common areas shall be of colors, materials and patterns which are approved by the Board or its authorized committee.

7.13 Balconies. No Owner shall cause it's terrace, balcony or patio to be maintained so as to allow wearing apparel, garments, linens, towels, laundry or the like to accumulate or be laundered or dried thereon. No Owner shall allow a terrace, balcony or patio to be enclosed without the prior consent of the Board. Owner agrees to abide by the rules and regulations that may from time to time be adopted with reference to the maintenance of the terrace, balconies and patio areas.

7.14 Liability of Owners for Damage to Common Area. The Owner of each condominium shall be liable to the Association for all damage to the common area or improvements thereon, to the extent described in Article V, section 5.1.1 herein.

7.14.1 No Owner of a unit shall make any alteration or improvement to the common area including the addition of fixed sports apparatus nor remove any planting, structure, furnishing or other object therefrom, except with the written consent of the Board.

7.14.2 The Owner of each unit shall be liable to the Association for all damages to the common area or any improvement thereon or thereto, including but without limitation to, buildings, walls, fences, recreational facilities, or any adjacent properties, caused by such Owner, its guests, tenants or any other occupant of said unit.

7.15 Insurance. No unit shall be occupied or used for any purpose or in any manner which shall cause any structure in the project to be uninsurable against loss by fire or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or cause any policy or policies providing such insurance, to be canceled or suspended, or the company issuing the same to refuse renewal thereof.

ARTICLE VIII

GENERAL PROVISIONS

8.1 Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, the Articles, the Bylaws, and rules and regulations, and in such action shall be entitled to recover reasonable

attorneys' fees as are ordered by court. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

8.1.1 Breach of any limitation, restriction, covenant or condition contained in the governing documents may be enjoined, abated or remedied by appropriate legal proceedings by any of the following: (i) the Association, (ii) any Owner or the successors in interest of the Owner after the interest vests in title, (iii) any mortgagee in protection of their security.

8.1.2 The condition caused by any violation of the governing documents shall constitute a nuisance. Every remedy at law or in equity available against a public or private nuisance may be exercised by an enforcing person.

8.1.3 No action to enforce this Declaration or the governing documents may be instituted (except for the collection of delinquent assessment fees and the enforcement thereof), unless and until written notice of the breach is sent to the Owner by personal delivery or registered mail and said Owner is given a reasonable amount of time to cure. A reasonable time shall not be less than five (5) days except in an emergency situation.

8.1.4 The prevailing party in any action at law or in equity, instituted to enforce or interpret the governing documents, shall be entitled to all costs incurred in connection therewith, including but not limited to reasonable attorneys' fees.

8.2 **Invalidity of Any Provision.** Should any provision or portion hereof be declared invalid or in conflict with any law of the jurisdiction where this project is situated, the offending provision may be deemed stricken and the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect and interpreted independent of the offending portion.

8.3 **Term.** The covenants and restrictions of this Declaration shall run with the land and bind the property, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date the first Declaration was recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless an instrument in writing, signed by a majority of the then Owners of the condominiums, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change the covenants and restrictions in whole or in part, or to terminate the same.

8.4 Amendments: This Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of Members representing fifty-one percent (51%) of the total voting power of the Association. However, the percentage of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be certified in a writing executed and acknowledged by the President or Vice President of the Association and recorded in the Recorder's Office of the County of San Diego, [Civ. Code §1355].

8.4.1 Any amendment of this document that materially affects the rights of First Mortgagees shall require the approval of seventy-five percent (75%) of all First Mortgagees (unless said amount may be reduced by a court of competent jurisdiction), or said amendment shall not serve to modify the original rights of said holders.

8.4.2 To the extent that this document inadvertently deletes or alters the rights of the first mortgage lenders in relation to the original declaration, the language and intent of the first declaration shall control for that purpose only.

8.5 Encroachment Rights. If any portion of the common area encroaches on any unit or any part thereof or any portion of a unit encroaches on any common area due to engineering errors, errors or adjustments in original construction, reconstruction, repair, settlement, shifting, or movement of the building, or any other cause, the Owner of the encroachment shall have the right to maintain, repair, or replace the encroachment, as long as it exists, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that no right shall be created in favor of an Owner or Owners if said encroachment occurred due to the intentional conduct of said Owner or Owners other than adjustments by Declarant in the original construction. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners agree that minor encroachments over adjoining condominiums or common area shall be permitted and that there shall be appropriate rights for the maintenance of said encroachments so long as they shall exist. In the event that an error in engineering, design or construction results in an encroachment of a building into the common area, or into or onto an adjoining lot, or into a required setback area, a correcting modification may be made in the subdivision map and/or condominium plan. Said modification shall be in the form of a certificate of correction and shall be executed by Declarant (so long as Declarant is the sole Owner of the property) and by Declarant's engineer (in the case of a condominium plan) and, in addition, by the city engineer (in the case of a subdivision map or parcel map). If the correction occurs after title to the common area has been conveyed to the Association, the Association shall also execute the certificate of correction. The Board may, by vote or written approval of a majority of the Board, authorize the execution of the certificate of correction.

8.6 Rights of First Lenders. No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall render invalid the lien of any first mortgage (meaning a mortgage with first priority over any other mortgage) on any condominium made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise.

Except as set forth in this Article or when provided by statute as in the case of condemnation or substantial loss to the units and/or common area, neither the Owners or the Association shall, by act or omission, without the prior written consent of at least two-thirds (2/3) of all first mortgagees (based upon one vote for each first mortgage or deed of trust), be entitled to:

(i) Abandon or terminate the condominium character of the project;

(ii) Change the pro rata interest or obligations of any individual condominium for the purpose of levying assessments or charges, or allocating distributions of hazard insurance proceeds or condemnation awards, or determining the pro rata share of ownership of the common area which is to be appurtunant to and part of each condominium;

(iii) As an association, seek to partition or subdivide any condominium;

(iv) Abandon, partition, subdivide, encumber, sell or transfer the common area; or

(v) Use hazard insurance proceeds for losses to any condominium property (whether to units or the common area) for other than the repair, replacement or reconstruction of such condominium property.

Notwithstanding any provision in the condominium documents to the contrary, first lenders shall have the following rights:

8.6.1 Copies of Project Documents: The Association shall make available to condominium Owners and first lenders (upon request), and to holders, insurers or guarantors of any first mortgage, current copies of the Declaration, Bylaws, Articles or other rules concerning the project and the books, records and financial statements of the Association. "Available" means available for inspection and copying, upon request, during normal business hours or under other reasonable circumstances. The Board may impose a fee for providing the foregoing which may not exceed the reasonable cost to prepare and reproduce the requested documents.

8.6.2 Audited Statement: The holders of fifty-one percent (51%) or more of first mortgages shall be entitled, upon written request, to have an audited financial statement for the

immediately preceding fiscal year prepared at their expense if one is not otherwise available. Such statement shall be furnished within a reasonable time following such request.

8.6.3 Notice of Action: Upon written request to the Association, identifying the name and address of the first lender, and the condominium number of address, such first lender will be entitled to timely written notice of: (i) Any condemnation loss or any casualty loss which affects a material portion of the project or any condominium on which there is a first mortgage held, insured, or guaranteed by such first lender, as applicable; (ii) Any default in performance of obligation under the project documents or delinquency in the payment of assessment or charges owed by an Owner of a condominium subject to a first mortgage held, insured or guaranteed by such first lender, which remains uncured for a period of sixty (60) days; (iii) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; or (iv) Any proposed action which would require the consent of a specified percentage of first lenders as specified in section 8.6. The Association shall discharge its obligation to notify first lenders by sending written notices required herein to such parties, at the address given on the current request for notice, in the manner prescribed by section 8.12.

8.6.4 Reserves: Condominium dues or charges shall include an adequate reserve fund for maintenance, repairs and replacement of those improvements which the Association is obligated to maintain that must be replaced on a periodic basis, and shall be payable in regular installments rather than by special assessments.

8.6.5 Priority of Liens: Each holder of a first mortgage lien on a condominium who comes into possession of the condominium by virtue of foreclosure of the mortgage, or any purchaser at a foreclosure sale under a first deed of trust, will take the condominium free of any claims for unpaid assessments and fees, late charges, fines or interest levied in connection therewith, against the condominium which accrue prior to the time such holder comes into possession of the condominium, except for claims for a pro rata share of such assessments or charges to all project condominiums including the subject condominium, and except for assessment liens recorded prior to any mortgage.

8.6.6 Distribution of Insurance or Condemnation Proceeds: No provision of the condominium documents gives a condominium Owner, or any other party, priority over any rights of first mortgagees of condominiums pursuant to their mortgages in the case of a distribution to condominium Owners of insurance proceeds or condemnation awards for losses to or taking of condominium and/or common elements.

8.6.7 Restoration or Repair: Any restoration or repair of the project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in

accordance with the Declaration and the original plans and specifications, unless other action is approved by affected first mortgage holders holding mortgages on condominiums which have at least fifty-one percent (51%) of the votes of condominiums subject to first mortgages.

8.7 Owner's Obligation to Maintain and Repair. Except for those portions of the project which the Association is required to maintain and repair, each condominium Owner shall, at his own cost and expense, maintain, repair and keep the unit in good condition.

8.8 Insurance; Damage or Destruction. The Association shall obtain and continue in effect a master policy of insurance covering all of the personal property and supplies of the Association, and all of the real property and improvements of the project, including the common area and all fixtures and building service equipment thereon, and the units and any fixtures, equipment, or property thereon, covered by a first mortgage on the unit, and protecting the interests of the Association and its Members, including, without limitation, fire and extended broad coverage and insuring one hundred percent (100%) of current replacement cost of all improvements in the project, including the units, comprehensive general liability insurance insuring the Association and each Owner for his liability for the common area. The insuring carrier shall have a financial rating by Best's insurance reports, of class IV or better and be authorized to transact business in the State of California.

8.8.1 The master policy shall be issued in the name of the Association for the use and benefit of the Owners. All insurance shall contain waiver of subrogation as to the Association, officers, directors, and Members, and if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured.

8.8.2 Each Owner appoints the Association, or any insurance trustee to be designated by the Association, as attorney in fact for the purpose of purchasing and maintaining the Association's insurance, including: The collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability required for payment of insurance proceeds; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association or any insurance trustee shall be required to receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for Owners and their first mortgage holders, as their interests may appear.

8.8.3 The minimum limits on the liability insurance policy shall be One Million Dollars (\$1,000,000) single limit and shall include personal injury, bodily injury, property damage and liability for non-owned automobiles. In addition, the Association shall obtain and continue in effect additional umbrella coverage of One Million Dollars (\$1,000,000), or, as an alternative may carry a Two Million Dollar (\$2,000,000) single

limit policy. Workers' compensation insurance shall at all time be carried to the extent required to comply with any applicable law. Officers' and directors' liability insurance shall be carried by the Association to cover persons serving in such capacities (and to cover committee Members, if such coverage is available at reasonable cost).

8.8.4 No Owner shall separately insure his or her condominium against loss by fire or other casualty covered by any insurance carried by the Association. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under the Association's policies that results from the existence of such other insurance will be chargeable to the Owner who acquired other insurance, and such Owner will be liable to the Association to the extent of any such diminution. Insurance maintained by the Association does not cover any personal property contained in the units nor does any insurance maintained by the Association provide liability protection against injuries or damages to persons or property occurring within the unit. An Owner can insure his personal property against loss and obtain any personal liability insurance that he or she desires. In addition, any improvements made by an Owner within his unit may be separately insured by the Owner, but the insurance is to be limited to the type and nature of coverage commonly known as "tenant's improvements". All such insurance that is individually carried must contain a waiver of subrogation rights by the insurer as to other Owners, the Association, Declarant, and first lenders.

8.8.5 Insurance premiums for the master policy shall be a common expense to be included in the monthly assessments levied by the Association and the portion of such payment necessary for the insurance premiums may be held in a separate account of the Association and shall be used solely for the payment of the master insurance policy premiums as such premiums become due.

8.8.6 Each buyer of a condominium shall pay the portion of the premium(s) attributable to his condominium (prorated to the date of close of escrow) for the policy or policies purchased by Declarant for the Association.

8.8.7 All insurance policies maintained by the Association shall be reviewed at least annually by the Board in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs and replacement of the property which might be damaged or destroyed.

8.8.8 If project improvements are damaged or destroyed by fire or other casualty, the improvements shall be repaired or reconstructed substantially in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction and subject to such alterations or upgrades as may be approved by the Architectural Control Committee, unless either of the following occurs: (i) the

cost of repair or reconstruction is more than fifty percent (50%) of the current replacement costs of all project improvements, available insurance proceeds are not sufficient to pay for at least eighty-five percent (85%) of the cost of such repairs or reconstruction, and three-fourths (3/4) of the total voting power of the Association residing in Members and their first lenders vote against such repair and reconstruction; or (ii) available insurance proceeds are not sufficient to substantially repair or reconstruct the improvements within a reasonable time as determined by the Board, a special assessment levied to supplement the insurance fails to receive the requisite approval (if such approval is required) as provided in section 4.3, and the Board, without the requirement of approval by the Owners, is unable to supplement the insurance by borrowing on behalf of the Association sufficient monies to enable the improvements to be substantially repaired or reconstructed within a reasonable time.

8.8.9 If the improvement is to repair or reconstruct and the cost for repair or reconstruction is in excess of twenty-five percent (25%) of the current replacement cost of all the common area improvements, the Board shall designate a construction consultant, a general contractor, and an architect for the repair or reconstruction. All insurance proceeds, Association monies allocated for the repair or reconstruction, and any borrowings by the Association for the repair or reconstruction shall be deposited with a commercial lending institution experienced in the disbursement of construction loan funds (the "depository") as selected by the Board. Funds shall be disbursed in accordance with the normal construction loan practices of the depository that require as a minimum that the construction consultant, general contractor and architect certify within ten (10) days prior to any disbursement substantially the following:

(i) That all of the work completed as of the date of such request for disbursement has been done in compliance with the approved plans and specifications;

(ii) That such disbursement request represents monies which either have been paid by or on behalf of the construction consultant, the general contractor or the architect and/or are justly due to contractors, subcontractors, materialmen, engineers, or other persons (whose name and address shall be stated) who have rendered or furnished certain services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the respective amounts paid or due to each of said persons in respect thereof and stating the progress of the work up to the date of said certificate;

(iii) That the sum then requested to be disbursed plus all sums previously disbursed does not exceed the cost of the work insofar as actually accomplished up to the date of such certificate;

(iv) That no part of the cost of the services and materials described in the foregoing paragraph (i) has been or is being made the basis for the disbursement of any funds in any previous or then pending application; and

(v) That the amount held by the depository, after payment of the amount requested in the pending disbursement request, will be sufficient to pay in full the costs necessary to complete the repair or reconstruction.

8.8.10 If the cost of repair or reconstruction is less than twenty-five percent (25%) of the current replacement cost of all the common area improvements, the Board shall disburse the available funds for the repair and reconstruction under such procedures as the Board deems appropriate under the circumstances.

8.8.11 The Association shall give notice in writing to (i) all first mortgagees in the event of any loss or "appropriation" affecting the common area which exceeds Ten Thousand Dollars (10,000.00), and (ii) all "affected" first mortgagees in the event damage to a unit exceeds One Thousand Dollars (\$1,000.00). The repair or reconstruction shall commence no later than ninety (90) days after the date of such damage or destruction and shall be completed no later than one hundred eighty (180) days after commencement of reconstruction, subject to delays that are beyond the control of the party responsible for making the repairs. The Owner of the damaged or destroyed improvement immediately shall take such steps as may be reasonably necessary to secure any hazardous condition and to screen any unsightly views resulting from the damage or destruction.

8.8.12 If the improvements are not repaired or reconstructed in accordance with the foregoing, all available insurance proceeds shall be disbursed among all Owners and their respective mortgagees in proportion to the respective fair market values of their condominiums as of the date immediately preceding the date of damage or destruction as determined by a qualified independent appraiser selected by the Board, after first applying the proceeds to the cost of mitigating hazardous conditions on the property, making provision for the continuance of public liability insurance to protect the interests of the Owners until the property can be sold, and complying with all other applicable requirements of governmental agencies.

8.8.13 If the failure to repair or reconstruct results in a material alteration of the use of the project from its use immediately preceding the damage or destruction as determined by the Board (a material alternation shall be conclusively presumed if repair or reconstruction costs exceed twenty-five percent (25%) of the current replacement cost of all project improvements), the project shall be sold in its entirety under such terms and conditions as the Board deems appropriate. If any Owner or first lender disputes the Board's determination as to a material alteration, the dispute shall be submitted to

arbitration pursuant to the rules of Judicial Arbitration and Mediation Services, Inc., and the decision of the arbitrator shall be conclusive and binding on all Owners and their mortgagees.

8.8.14 If the project is sold, the sales proceeds shall be distributed to all Owners and their respective mortgagees in proportion to the respective fair market values of the condominiums as of the date immediately preceding the date of damage or destruction as determined by the independent appraisal procedure described above. For the purpose of effecting a sale under section 8.8, et. al., each Owner grants to the Association an irrevocable power of attorney to sell the entire project for the benefit of the Owners, to terminate the Declaration and to dissolve the Association. In the event the Association fails to take the necessary steps to sell the entire project as required hereunder within sixty (60) days following the date of a determination by the Board or arbitrator of a material alteration, or within one hundred twenty (120) days following the date of damage or destruction if the Board has failed to make a determination as to a material alteration, any Owner may file a partition action as to the entire project under California Civil Code §1359, or any successor statute, and the court shall order partition by sale of the entire project and distribution of the sale proceeds as provided herein.

8.8.15 Notwithstanding anything herein to the contrary, any Owner or group of Owners shall have a right of first refusal to match the terms and conditions of any offer made to the Association in the event of a sale of the project under this section 8.8, provided this right is exercised within ten (10) days of receipt by the Owners of a notice from the Association containing the terms and conditions of any offer it has received. If the Owner or group of Owners subsequently default on their offer to purchase, they shall be liable to the other Owners and their respective mortgagees for any damages resulting from the default. If more than one (1) Owner or group elects to exercise this right, the Board shall accept the offer that in its determination is the best offer.

8.9 Condemnation. In the event of any conflict between the provisions of this section and those of any other portion of this Declaration, the provisions of this Article shall govern and control.

8.9.1 In this Article, the following words and phrases shall have, respectively, the following meanings:

(i) "Appropriation" means any taking of or damage to any part of the project (or any interest therein) by reason of any exercise of the power of eminent domain (whether by condemnation proceedings, inverse condemnation or otherwise) or by reason of any transfer of any part of the project (or any interest therein) made in avoidance of such an exercise.

(ii) "Condemnor" means any governmental entity or person possessing the right and power of eminent domain which exercises said right and power, or threatens so to do, with respect to any part of the project (or any interest therein).

(iii) "Award" means compensation paid by a condemnor for an appropriation, including but not limited to monetary and other consideration paid in avoidance of the exercise of said right and power of eminent domain.

(iv) "Condominium Total Value" means the cash fair market value of a condominium the unit of which is determined (pursuant to Paragraph 8.4) to be, as a result of (i) an appropriation, and (ii) the use to which appropriated land will thereafter be put, and (iii) restoration and repair of any common area damaged or destroyed as a result of such appropriations, unsuitable for the purpose intended.

(v) "Condominium Partial Value" means the diminution in cash fair market value of a Condominium the Unit as determined as a result of (i) an appropriation and (ii) the use to which the land appropriated will thereafter be put and (iii) restoration and repair of any Common Area damaged or destroyed as a result of such appropriation, suitable for the purpose of which it was intended.

8.9.2 The Board is hereby appointed the attorney in fact for every Owner to (i) negotiate with any condemnor for settlement of an award for any appropriation, (ii) defend any action brought for an appropriation, and to engage and compensate counsel and expert witnesses therefor or to aid said director in the exercise of any of its powers under this Article, (iii) receive in the name of the Association any award and to retain the same, pending its disbursement, in a noninterest-bearing bank account in the name of the Association and (iv) disburse the same as soon as may be practicable, pursuant to the following paragraphs of this Article. Notwithstanding any provision herein to the contrary, mortgagees shall automatically be entitled to join in any appropriation proceedings. No settlement of an award negotiated by the Association on behalf of the Owners shall be binding upon said mortgagees without their prior written consent.

8.9.3 In the event of any appropriation, the Board shall within ten (10) days of the initiation of such proceedings, notify all mortgagees (whose security interest shall be affected by such appropriation) thereof; and as soon as may be practicable, shall determine upon competent evidence satisfactory to it:

(i) Whether, as to each unit, the same will be suitable or unsuitable for the purpose for which it was intended, as a result of and after an appropriation and/or the use to which the land appropriated will thereafter be put.

(ii) As to any unit so determined to be unsuitable for the purpose for which it was intended, the

identify, description and the total value of the condominium of which such unit is a part.

(iii) As to any unit so determined to be suitable for the purpose for which it was intended, the identity, description and the Condominium Partial Value, if any, of the condominium of which such unit is a part.

8.9.4 Any determination made by the Board pursuant to section 8.9.3 shall be binding upon all Owners. Nothing herein contained shall be construed to preclude the Board from reconsidering, and changing, any such determination.

8.9.5 As soon as may be practicable after the receipt by the Association of any award, the Board will disburse the same pursuant to the following:

(i) First, to mortgagees as their interests may appear.

(ii) Second, the contractors, subcontractors, materialmen and others for the costs of the repair or restoration of damage or destruction to the common area caused by appropriation, or to the Association in reimbursement for such costs; the balance of the award is hereinafter referred to as "award balance".

(iii) Third, the award balance to Owners as follows:

(1) If the award balance equals or exceeds the aggregate of Condominium Total Values and Condominium Partial Values (i) to each Owner the amount of the Condominium Total Value or Condominium Partial Value, if any, determined, pursuant to section 8.9.3, for such Owner's condominium and (ii) to the Association, the remainder of the award balance.

(2) If the award balance is less than the aggregate of Condominium Total Values and Condominium Partial Values, to each Owner that portion of the award balance which bears to the award balance the same ratio as the Condominium Total Value (or Condominium Partial Value), if any, determined, pursuant to section 8.9.3, for such Owner's condominium bears to the aggregate of Condominium Total Values and Condominium Partial Values.

8.9.6 In the event there shall be any express or implied conflict between any provision of this Article and any provision of a note or deed of trust held by a mortgagee, the provisions of said note or deed of trust shall govern and prevail.

8.10 Owners' Compliance: Each Owner, tenant or occupant of a condominium shall comply with the provisions of this Declaration, and (to the extent they are not in conflict with the Declaration) the Articles and Bylaws, and the decisions and

resolutions of the Association or the Board, as lawfully amended from time to time. Failure to comply with any such provisions, decisions, or resolutions shall be grounds for an action (i) to recover sums due; (ii) for damages; (iii) for injunctive relief; (iv) for costs and attorneys fees, (v) any combination of the foregoing, or (vi) any other relief allowed by law.

All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the Articles or the the Bylaws, shall be deemed to be binding on all Owners of condominiums, their successors and assigns.

8.10.1 Arbitration Preferred: If the Association and an Owner are unsuccessful at resolving a dispute, the preference expressed by this document is that the dispute shall be submitted to, and conclusively determined by, binding arbitration in accordance with this Article, provided however, that the provisions of this section shall not preclude any party from seeking injunctive or other provisional or equitable relief in order to preserve the status quo of the parties pending resolution of the dispute, and the filing of an action seeking injunctive or other provisional relief shall not be construed as a waiver of that party's arbitration rights.

8.10.2 Selection of Arbitrator: The arbitrators shall be selected by the parties from individuals affiliated with the Judicial Arbitration and Mediation Service, Inc. or the list of arbitrators maintained by Court Services for the Superior Court for the County of San Diego.

8.10.3 Rules of Arbitration: The parties shall submit to the arbitrator, all written documentary, or other evidence and oral testimony as is reasonably necessary for a proper resolution of the dispute. Copies of all written submittals shall be provided to the arbitrator(s) and both parties. The arbitrator(s) shall conduct such hearings as (s)he/they consider necessary, may require the submission of briefs or points and authorities and may submit written questions to the parties. The parties shall respond to such questions in writing. If a question is addressed to less than all of the parties, copies of the question and the answer thereto shall be served on the other parties.

8.10.4 Waiver of Formal Rules of Procedure and Evidence: At the hearing, any relevant evidence may be presented by any party and the formal rules of evidence applicable to judicial proceedings shall not govern. Evidence shall be admitted or excluded in the sole discretion of the arbitrator(s). Except as provided above, the arbitration procedures set forth in the California arbitration act statutes (CCP §§1282-1294.2) shall apply to the arbitration. The arbitration shall proceed with due dispatch and a decision shall be rendered within one hundred twenty (120) days after appointment of the arbitrator(s) unless mutually extended by the parties. The arbitrator(s)' decision shall be in writing and in a form sufficient for entry of

judgment in a court of competent jurisdiction in the State of California.

8.10.5 Scope of Authority: The arbitrator(s)' decision shall pertain, and shall be limited to, the granting of damages not to exceed any party's actual out-of-pocket expenses and the costs of undertaking any repairs, maintenance or reconstruction relating to the dispute and the award of any injunction or other equitable relief. While attorneys' fees may be awarded to a prevailing party, in no event shall the arbitrator(s)' award include any component for punitive or exemplary damages. Costs of the arbitration proceeding shall be borne as determined by the arbitrator(s).

8.11 Notice: Any notice permitted or required by the Declaration, the Articles or Bylaws may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered ninety-six (96) hours after a copy of the same has been deposited in the United States mail, first class or registered, postage prepaid, addressed to the person to be notified at the current address given by such person to the Secretary of the Board or addressed to the condominium of such person if no address has been given to the Secretary.

8.12 Tenant's Rights: A tenant lawfully in possession of a condominium shall have the same right to use the common area as an Owner in possession of the condominium would have and shall be subject to all of the provisions of the project documents and any rules and regulations adopted by the Board or the Association. No Owner shall, either directly or indirectly, forbid or restrict such use of the common area by such a tenant.

8.12.1 All leases shall obligate tenants to comply with the condominium documents and with all rules and regulations adopted by the Board, and shall provide that any violation of the provisions thereof constitutes a default under the lease.

8.12.2 Any Owner desiring to lease or rent it's condominium shall deliver to the Board, (i) a written notice expressing such intention and (ii) a copy of the proposed lease or rental agreement at least fourteen (14) days prior to the date such lease or rental agreement is to become effective or binding upon the parties thereto.

8.12.3 All leases and rental agreements of condominiums within the project shall (i) be in writing, (ii) provide that the terms thereof are subject to the provisions of this Declaration, the Articles, the Bylaws and the rules and regulations, if any, adopted by the Board relating to the use of, and activities upon, the common areas, and (iii) provide that any failure by the tenant thereunder to comply with the terms of said documents, shall constitute a breach under such lease or rental agreement.

8.12.4 No Owner shall lease to a tenant, less than the right of non-exclusive use of the entire condominium.

8.12.5 No Owner shall lease its condominium for a term of less than thirty (30) days, except an Owner who is a lender in possession of a condominium following (i) a default in a first mortgage, (ii) a foreclosure proceeding, or (iii) any deed or other arrangement in lieu of foreclosure.

8.13 Rights of Mortgagees. Any Owner may voluntarily or involuntarily encumber his condominium with or by a real property mortgage, deed of trust or other instrument of hypothecation.

8.13.1 A breach of any of the foregoing limitations, restrictions, conditions or covenants (except as provided in this Article with respect to a breach by failure to pay any assessment) shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to a condominium; provided, however, such limitations, restrictions, conditions and covenants shall be binding upon and effective against any person whose title to said condominium is acquired by foreclosure, trustee's sale or otherwise.

8.13.2 Each and every lien created by or pursuant to this Declaration, including but not limited to, the assessment liens described in Article IV, is and shall be subordinate, inferior and subject to the lien and charge of any (i) real property mortgage or deed of trust of record prior to the date of said assessment lien encumbering any condominium and given for value and (ii) any blanket construction (including acquisition) mortgage(s) or deed(s) of trust encumbering all or any part of the project which mortgage(s) or deed(s) of trust may have been expressly subordinated to this Declaration.

(i) Any person who acquires title to any condominium by purchasing the same at a foreclosure or trustee's sale conducted in behalf of a mortgagee whose recorded deed is superior in interest and recordation to the Association, shall take title to such condominium free of any claims by or on behalf of the Association for unpaid assessment, charges and/or fines (if any) levied by the Association which accrue prior to the time such purchaser takes title to such condominium, and any assessment lien and/or other lien of the Association then encumbering any such condominium shall be subordinate, inferior and subject to said purchaser's title to such condominium. Such unpaid assessment shall be reallocated among all the Owners.

(ii) In the event any mortgagee (i) shall acquire title to any condominium by judicial foreclosure, exercise of power of sale contained in any real property mortgage or deed of trust, or deed in lieu of foreclosure and (ii) shall thereafter sell and convey such condominium, any real property mortgage or deed of trust received by such lender as security for all or a portion of the purchase price of such condominium shall be incontrovertibly deemed "given for value". Notwithstanding the provisions of this section, any lien created by or pursuant to this Declaration, which lien arises from the failure to pay assessment(s) accruing during the period of such mortgagee's

holding of title to said condominium, shall be a lien superior to the lien of said real property mortgage or deed of trust received to secure a portion of said purchase price.

8.13.3 In the event of any breach or default hereunder by any Owner, and in the further event such breach or default is not cured within sixty (60) days after its occurrence, the Board shall, if any first mortgagee of such Owner shall have so requested of the Association, immediately notify, in writing, such first mortgagee of said default; provided, however, failure to give such notice shall in no way affect any right or remedy of any enforcing person.

8.13.4 Each first mortgagee shall be entitled, upon request, to (i) receive notice of any and all meetings of the Association and (ii) designate a representative to attend such meetings on its behalf.

8.13.5 In the event there shall be any express or implied conflict between any provision of section 8.13, et al., and any other provision of this Declaration, the provisions of this section shall govern and prevail.

8.14 No Waiver. Failure by the Association or by any Member to enforce any covenant, condition or restriction herein contained, or the Articles, Bylaws or Association rules in any certain instance or on any particular occasion, shall not be deemed a waiver of such right on any such future breach of the same or any other covenant, condition or restriction.

8.15 Estoppel Certificates: Upon the written request of any Owner, the Board shall provide the Owner with a written certificate stating that, to the best of its actual knowledge, the Owner is not in violation of any of the provisions of this Declaration and the Board has not received written notice from any Owners stating that the Owner is in violation of this Declaration, or if there are any such violations or the Board has received such notices, setting forth in sufficient detail the nature of such violations. The certificate shall be delivered to the Owner no later than thirty (30) days after such request by an Owner. The Board may charge the Owner a reasonable fee to recover its costs in researching and preparing the certificate. Any prospective purchaser or mortgagee shall be entitled to rely on the information contained in the certificate; provided, however, that such reliance may not extend to any violations of this Declaration of which the Board does not have actual knowledge, or which have not been brought to its attention by written notice of an Owner. To the fullest extent permitted by law and provided the Board and the Association, any committee of the Association or Board, any Members thereof, and any officers of the Association or Board, acted in good faith and consistent with what they reasonably believed to be within the scope of their authority and duties, then neither the Board, the Association, any committees of the Association or Board shall be liable to the Owner requesting the certificate or any other Owner for any damage, loss or prejudice suffered or claimed on account

of the failure to supply such certificate or on the account of any information contained in the certificate being incomplete or inaccurate and said was actually unknown to any of the above entities or persons.

8.16 Number; Gender. The singular and plural number and the masculine, feminine and neuter gender shall each include the other where the context requires.

8.17 Interpretation. This Declaration and the other governing documents shall be liberally construed to facilitate the harmony and operation of Association concerns.

IN WITNESS WHEREOF, the undersigned, being the President of the non-profit mutual benefit corporation which is successor of Declarant herein, has executed this Declaration this 27 day of JULY 1994, on behalf of said Association having met the conditions contained herein and evidencing such by affixing the signature hereto.

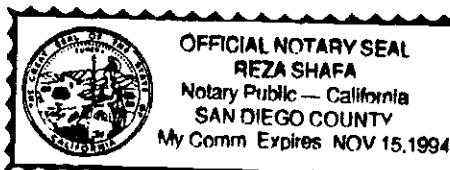
Joan B. Smithey
BY: JOAN B. SMITHEY / PRES.

ALL-PURPOSE ACKNOWLEDGMENT

NO 209

State of California
County of San Diego }
On July 27, 94 before me, Reza Shafa, Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"
personally appeared Joan B. Smithey
NAME(S) OF SIGNER(S)

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Witness my hand and official seal.

Reza Shafa
SIGNATURE OF NOTARY

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL(S)
☒ CORPORATE Smoke Tree Bonita
OFFICER(S) President TITLE(S)
☐ PARTNER(S)
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ SUBSCRIBING WITNESS
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

NOTICE:

“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***



***RULES &
REGULATIONS***

H I G H L I G H T S

Revised October, 1996

October, 2000

SMOKE TREE BONITA OWNERS' ASSOCIATION

Rules & Regulations Highlights

New Residents of Smoke Tree Bonita Condominiums:

The Board of Directors welcomes you to our community. We want to get to know you, and we urge all homeowners to attend the Association's monthly meetings. They are held the third Monday of each month, and the time and location is posted by each mailbox station.

Your realtor or landlord has given you the rules and regulations of the complex. All rules are to be adhered to. We have highlighted a few of the rules that are a "bone of contention" to condominium dwellers.

PARKING

Parking is allowed in designated spaces only (this is not only a condo rule, but is a mandate of the Fire Department). Parking, other than in a designated spot, will result in your vehicle being towed, at your expense.

No parking is allowed on the streets.

Each condominium has space for two cars. If you have more than two vehicles, the other(s) must be parked outside of the complex. Your garage is for your car, not for storage. No motor maintenance is allowed on the properties. (CC&R's, 7.4.1.)

Authorized guests may park in Visitors' parking areas up to 72 hours.

New residents are permitted to park 30 days in designated parking with notification and permission, when garage is used for unpacking.

For authorized permission to park longer, call Fern at PMC, 528-4200.

Residents may not park in Visitor's parking. There will be designated parking for guests and residents. Guest spaces will be white. Resident spaces will be yellow.

1st Offense: Letter of Warning/Ticket.

2nd Offense: \$50.00 Fine.

3rd Offense: Vehicle will be towed.

POOL

SAFETY FIRST AT ALL TIMES. The Health Department and common sense dictate that the pool gate remains shut and locked before and after using the pool. The gate is not to be left open for ANY reason. Only four guests at a time for each resident, and children under the age of fourteen must have an

adult in attendance while in the pool area. (The adult must be 18 or older.) The rules are posted and must be followed. The Pool is for everyone's enjoyment, so please, NO PETS, NO GLASS, and only small toys.

If you bring food to the pool area, it must be eaten in the sheltered area. Please be considerate and do not play loud music.

PETS

Only ONE household pet, per unit. Dogs must be leashed at all times while in the common areas. It is mandatory to clean up after your pet. (CC&R's, 7.3) This will also keep you in the "Good Neighbor" status.

IMPORTANT REMINDERS

- **TRASH is picked up on Monday, and must not be put out before 6:00 p.m., on Sunday.**
- **ALL NOISE is to be contained within the unit.**
- **GARAGE DOORS are to be kept closed.**
- **PATIOS are to be kept clear of clothes lines, etc.**
- **OUTSIDE LANDSCAPING must not be added to, nor plants removed by anyone other than the gardener without permission by the Board.**
- **NO GARAGE SALES; NO ESTATE SALES.**

- **NO SKATING OF ANY KIND** - no skateboards, no roller blades, no in-line skates, no roller skates. If a new skating device is invented, that's a NO-NO, too.
- **CHILDREN** should not play in the streets.

As homeowners, we are responsible for any damage to the common area caused by resident or guests.

MONETARY FINE SCHEDULE FOR ANY VIOLATION

- a. **Courtesy Notice/Warning Letter;**
- b. **1st Fine, \$ 50.00,**
2nd Fine, \$100.00
3rd Fine, \$200.00.
- c. **Turned over to attorney.**

Again, we welcome you to Smoke Tree Bonita, and hope to see you at the monthly meetings. There is always an opportunity for homeowners to serve on any of the committees. This is an opportunity to get to know the Board and your neighbors. Also, any "beefs or bouquets" can be stated, but you don't have to wait for a monthly meeting if you have a problem or concern. You may contact Fern Einhorn, Association Manager, at 528-4200. Renters are to contact their landlords.

Smoke Tree Bonita HOA

Rules & Regulations Highlights - March 2005

Welcome to our community. Monthly association meetings are held the third Monday of each month, the time and location is posted by the mailboxes. Your realtor or landlord has given you the rules and regulations of the complex. All rules are to be adhered to. Here are the main points.

PARKING

Parking is allowed in designated spaces only. Parking in other than a designated space could result in your vehicle being towed, at your expense.

- No parking is allowed on streets, in fire lanes, or in front of garages.
- Each unit has space for two vehicles, these vehicles get blue stickers. A third vehicle gets a maroon sticker and is allowed to park in a space marked "Resident." Additional vehicles must park off association property. All vehicles must be registered with the property manager. Your garage is for vehicle parking, not storage.
- No motor vehicle shall be constructed, reconstructed or repaired within the properties.
- Authorized guests may park in a "Guest" space up to 72 hours.
- New residents are permitted to park, up to 30 days, in designated parking with notification and permission; when the garage is being used for unpacking. For authorized permission, contact the property manager, Fern, at PMC (619) 528-4200.
- Guest spaces are white and resident spaces are yellow.

POOL

Safety first at all times. The Health Department requires that the pool gate remain closed at all times. The gate is not to be left open for ANY reason. Only four guests at a time for each resident, and children under the age of fourteen must have an adult resident (18 or older) in attendance while in the pool area. The rules are posted and must be followed. The pool is for everyone's enjoyment, please NO PETS or GLASS CONTAINERS. Only small pool toys are allowed.

If you bring food or drink to the pool area, it must be kept in the sheltered area. Please be considerate: No loud music, yelling, running, or horseplay.

PETS

Only one household pet per unit. Dogs must be leashed at all times while in the common area. It is mandatory to clean up after your pet.

IMPORTANT REMINDERS

- Trash is picked up on Mondays. Trash goes out no earlier than the night before and bring in trash cans by Monday evening.
- All noise is to be contained within the unit.
- Garage doors are to be kept closed, unless you are working in the garage.

(OVER)

- No hanging things over the fences or balcony railings: Towels, clothes, bathing suits, rugs, etc.
- Clothes lines are not permitted.
- Only potted plants, with a dish under to catch the water, are allowed on the fences.
- The speed limit is 10 MPH.
- Please do not play loud music while driving through the complex.
- Outside landscaping must not be added to, nor plants removed, by anyone other than the gardeners; without permission by the Board.
- Exterior alterations are not permitted without the written consent of the Board.
- No garage sales or estate sales.
- No skating of any kind: No roller skating, roller blading, skate boarding, or motorized scooters. Bicycles and non-motorized scooters are permitted. If a new skating device is invented, it is not allowed.
- Anyone under the age of 18 riding a bicycle MUST wear a helmet. Riding on sidewalks or through the landscaping is not permitted. If riding at night, the bicycle must be equipped with lights. A single bicycle can only have one person on it.
- Children should not play in the landscaping. Also, watch for vehicles when riding bicycles or non-motorized scooters.

Homeowners are responsible for any damage to the common area caused by residents or guests.

MONETARY FINE SCHEDULE

For any violation.

- a. Courtesy Notice/Warning Letter
- b. 1st fine, \$25.00
2nd fine, \$50.00
3rd fine, \$100.00
- c. Turned over to the attorney

Again, welcome to Smoke Tree Bonita. If you have a concern or problem, you may contact the property manager, Fern Einhorn, at (619) 528-4200. Renters are to contact their landlords.

SMOKE TREE BONITA PARKING POLICY

July, 2003

- 1) Each residence MUST have the first two (2) vehicles parked in the garage or garage and carport. These vehicles will have a Blue Sticker.
- 2) Each residence will receive a MAROON NUMBERED STICKER FOR USE ONLY in a third (3rd) vehicle registered at the home address.
- 3) Resident-designated spaces can only be used by a third (3rd) vehicle and MUST have the MAROON NUMBERED STICKER displayed and visible. If you do not have a 3rd vehicle you are not eligible for a MAROON Sticker.
- 4) All vehicles belonging to each resident MUST BE REGISTERED.
- 5) Residents are NOT permitted to use a visitor space at any time.
- 6) Tandem parking is NOT permitted. NO EXCEPTIONS!
- 7) There is NO PARKING in the Fire Lane, Red Zones, Blocking Driveways, Blocking Garages, or Double Parked. Vehicles with expired license tags will be towed. Inoperable vehicles will be towed.
- 8) Any vehicles over three (3) at a residence must be parked off Association property.
- 9) The Association uses Western Towing – 619-297-8697

PLEASE NOTE! THE MAROON PARKING STICKER MUST BE DISPLAYED ON YOUR THIRD (3RD) VEHICLE.

For the Board of Directors,
Fern Einhorn, Association Manager, 619-528-4200 ext. 110
Revised 7/03