

BYLAWS
FOR
ARBOR HILL OWNERS ASSOCIATION

A California Non Profit Mutual Benefit Corporation

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1. NAME AND OFFICE LOCATION

The name of the association shall be the **ARBOR HILL OWNERS ASSOCIATION**, a California nonprofit mutual benefit corporation ("**Association**"), organized under the Nonprofit Mutual Benefit Corporation Law (California Corporations Code Sections 7110 et seq.), for the purpose of exercising the powers and functions set forth herein. The Association shall act as the management body for the Community, and shall be responsible for the operation, maintenance and control of the Common Area. By virtue of owning a Condominium in the Project, each Owner shall also have a membership in the Association, which membership shall be appurtenant to and pass with title to the Condominium.

2. DEFINITIONS

2.1. DECLARATION

Declaration shall mean and refer to the **RESTATED AND SUPERSEDING DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR "ARBOR HILL,"** recorded _____, as Document No. _____, all as shown in the Official records of the County Recorder of **San Diego** County, California, covering the **Arbor Hill** Condominium Project, including such amendments thereto as may from time to time be recorded.

2.2. OTHER DEFINITIONS

Each definition set forth in the Declaration Article entitled "**DEFINITIONS**" shall have the same meaning with these Bylaws, and each such definition is by this reference incorporated herein.

3. MEMBERS

The Association shall have two (2) classes of voting membership as set forth in the Declaration and the Articles.

4. MEETINGS OF MEMBERS

4.1. PLACE OF MEETING

All meetings of Members shall be held on the Project or at such other location in **San Diego** County, California, in reasonable proximity to the Project, as may be designated in the notice of meeting.

4.2. CONDUCT OF MEETINGS; PARLIAMENTARY PROCEDURE

All meetings of Members shall be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Members may adopt, pursuant to Civil Code §1363, as it may be amended from time to time.

4.3. ANNUAL MEETINGS OF MEMBERS

The first annual meeting of Members shall be held within six (6) months after the close of escrow for the sale of the first Condominium by Declarant, or within forty-five (45) days after close of escrow for the sale by Declarant of fifty-one percent (51%) of the Condominiums authorized for sale under the first Public Report for the Project, whichever shall first occur. Subsequent annual meetings of Members shall be held in each succeeding year within two weeks before or after the anniversary of the first annual meeting of Members on a day to be determined by the Board, which shall not be a legal holiday.

4.4. NOTICE OF ANNUAL MEETING

Written notice of each such annual meeting shall be given to each Member and, upon written request therefor, to all first Mortgagees. Such notice shall be delivered either personally or by sending a copy of the notice through the mail or by telegraph, charges prepaid, to the address appearing on the books of the Association or supplied to the Association for the purpose of notice. If no address is supplied, notice shall be deemed to have been given if mailed to the address of the Condominium owned by such Member or encumbered by the first Mortgagee, or published at least once in some newspaper of general circulation in the county of said principal office. All such notices shall be sent not less than ten (10) days (except in emergency situations in which case as much advance notice shall be given as is reasonably possible) and not more than ninety (90) days before each annual meeting, and shall specify the place, day and hour of such meeting and any matters the Board intends to present for action by the Members; the foregoing notwithstanding, any proper matter may be presented at such meeting for action.

4.5. SPECIAL MEETINGS

Special meetings of Members, for any purpose or purposes whatsoever, may be called and scheduled at any time by the Board in response to the vote of a majority of the Board of Directors, or in response to a request by the Chairman of the Board, the President, or upon written request of the Members representing five percent (5%) of the total voting power of the Association. Except in special cases where other express provision is made by statute, notice of such special meetings shall be given in the same manner as for annual meetings of Members. Notices of any special meeting shall specify in addition to the place, day and hour of such meeting, the general nature of the business to be transacted.

4.6. MORTGAGEE REPRESENTATION

First Mortgagees shall have the right to attend all membership meetings through a representative designated in writing and delivered to the Board.

4.7. MEMBERSHIP AND VOTING

Membership shall be held as provided in the Declaration. Unless a contrary voting requirement is called for specific matters elsewhere in these Bylaws, the Declaration or Articles, any action by the Association which must have the approval of the Members before being undertaken shall require the vote or written assent of a majority of each class of membership. Where the vote or written assent of each class of membership is required, any requirement that the vote of Declarant be excluded is not applicable. After the conversion of Class B membership to Class A membership, any provision herein requiring the approval of Members other than Declarant shall mean the vote or written assent of a majority of the total voting power of the Association (including Declarant's votes) and the vote or written assent of a majority of the total voting power of Members other than the Declarant. Voting rights attributable to Condominiums shall not vest until Regular Assessments against those Condominiums have been levied by the Association. Except as provided in the Section entitled "*Election*" herein, voting of the Members on all matters may be done viva voce (vocally) or by ballot.

4.8. QUORUM; ADJOURNED MEETINGS AND NOTICE THEREOF

(a) Except as otherwise provided in the Articles of Incorporation or the Declaration, the presence in person or by proxy at any meeting of the Owners of a majority of the voting power of the Association (excluding the number of votes as to which voting rights are suspended at the time of the subject meeting) shall constitute a quorum for the transaction of any action at such meeting, except as otherwise provided in the Declaration or these Bylaws. In the absence of a quorum at a meeting, a majority of the Owners present in person or by proxy may adjourn the meeting to another time, but may not transact any other business. An adjournment for lack of a quorum shall be to a date not less than five (5) days and not more than thirty (30) days from the original meeting date, and the quorum for such resumed meeting shall be the presence in person or by proxy of twenty-five percent (25%) of the total voting power of the Association (excluding the number of votes as to which voting rights are suspended at the time of the subject meeting); provided, however, if after adjournment a new date is fixed for the adjourned meeting, notice of the time and place of the adjourned meeting shall be given to members in the manner described for regular meetings; provided further, that in the event the quorum requirement becomes twenty-five percent of the voting power of the membership, then the only matters that may be voted upon at any meeting actually attended in person or by proxy of one-third (1/3) or less of the voting power, are matters, notice of the general nature of which was given in the original notice of meeting.

(b) When any membership meeting, either annual or special, is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Except as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting other than by an announcement at the meeting at which such adjournment is taken.

4.9. CONSENT OF ABSENTEES

The transactions of any meeting of Members, either annual or special, however called and noticed, shall be as valid as though they occurred at a meeting duly held after regular call and notice if a quorum be present either in person or by proxy and if, either before or after the meeting, each of the Members entitled to vote, not present in person or by proxy, signs a written waiver of notice or a consent to the holding of such meeting or an approval of its correct minutes. All such waivers, consents or approvals shall be filed with the Association records or made a part of the minutes of the meeting.

4.10. ACTION WITHOUT MEETING

Any action on a matter that may be taken by the vote of Members at a regular or special meeting (except for the election of directors which must be conducted in accordance with the provisions of the **Section** entitled "*Election*" herein) may be taken without a meeting if, in compliance with Section 7513 of the California Corporations Code, including such amendments thereto as may from time to time be made, a ballot is distributed to every Member entitled to vote on the matter. Such ballot shall set forth the proposed action (including any known contrary opinions) provide an opportunity to specify approval or disapproval of any proposal, and provide a reasonable time frame within which to return the ballot to the Association. Approval by written ballot 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 at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All soliciting ballots 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.

4.11. PROXIES

At all meetings of Members (except at the first annual meeting described in **Section 4.3** above), 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 Condominium, or upon receipt of notice by the Secretary or the Board of the death or judicially declared incompetence of a Member, or upon the expiration of three (3) years from the date of the proxy. In addition, voting by proxy shall comply with any other applicable requirements of California Corporations Code Sections 7514 and 7613.

4.12. PROXY AND WRITTEN BALLOT, FORM

In addition to any other requirements, any form of proxy or written ballot 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. It shall not be mandatory that a candidate for election to the governing body be named in the proxy or written ballot. The proxy or written ballot shall provide that, where the member specifies a choice, the vote shall be cast in accordance with that choice. The proxy shall also identify the person or persons authorized to exercise the proxy and the length of time it will be valid.

5. COMMENCEMENT OF ASSOCIATION; INTERIM OPERATION OF COMMON AREA

5.1. COMMENCEMENT OF ASSOCIATION

The Association shall not commence business until such time that a Board of Directors has been elected pursuant to the provisions therefor contained in these Bylaws. Notwithstanding the foregoing, the existence of the Association shall begin upon either (a) the filing of the Articles in the Office of the California Secretary of State, or, (b) in the event, for whatever reason, the Articles are not filed prior to the conveyance of the first Condominium in the Project, then, upon the conveyance of the first Condominium in the Project to a Purchaser or upon the execution of Articles of Incorporation by an "incorporator," whichever first occurs.

5.2. INTERIM OPERATION OF ASSOCIATION PROPERTY

Following the conveyance of the first Condominium to a Purchaser in the Project, and prior to the election of a Board of Directors of the Association as described in these Bylaws (hereafter "Interim Period"), the Declarant or its designated agent may operate and handle the affairs for the Common Area of the Project; provided, however, such operation shall specifically not commence the business of the Association. During such Interim Period, Declarant or its agent, may establish in the name of the Association and/or in Declarant's name in trust for the Association, one or more separate, segregated bank accounts in its name, in trust for the future Association, to collect Assessments from Owners and for the disbursement of proper expenditures necessary to operate the Common Area of the Project, including provisions for reserves in accordance with the Project Documents (hereafter "Interim Account"). During the Interim Period, Declarant or its appointed agent may be signatory on the Interim Account(s). All collections of Assessments and disbursement of funds attributable to the operation and maintenance of the Common Area during the Interim Period shall, to the fullest extent possible, be effected through the Interim Account(s). Declarant or its agent shall maintain or cause to be maintained, in accordance with generally accepted accounting practices, records of the following:

- (a) All Assessments paid into the Interim Account(s) by Declarant and Purchasers;
- (b) All expenditures paid out of the Interim Account(s);
- (c) All receipts, expenditures and disbursements attributable to the operation of the Common Area, and Common Expenses of the Association during the Interim Period; and

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(d) All expenditures claimed by the Declarant as offsets or credits against Assessments owed.

(e) The foregoing shall be called "Interim Account Records."

Upon the commencement of business of the Association, but not later than seven (7) days thereafter, Declarant or its agent shall transfer all funds of the Interim Account(s) to the Association, together with an accounting of the Interim Account Records.

The Interim Account Records shall be made available for examination, inspection and copying by the Association and the California Real Estate Commissioner, or their respective designated representative(s), upon request during regular business hours. Declarant's obligation to retain or cause to be retained the Interim Account Records shall terminate upon the earlier of (1) the conveyance of the last Condominium in the Project to a Purchaser under the authority of a Public Report, or (2) three years after the expiration of the most recent Public Report on the Project or any portion thereof.

6. BOARD OF DIRECTORS

6.1. NUMBER AND QUALIFICATIONS OF DIRECTORS

The affairs of the Association shall be managed by a Board of five (5) directors until changed by amendment to this Section of the Bylaws. Directors must be Members of the Association, or an officer, director, employee or agent of a Member, including Declarant; provided, however, if a Condominium is owned by more than one Person, each such Person being a Member of the Association, only one of such Members may be a director. The foregoing notwithstanding, the initial directors may be appointed by the Declarant or by the incorporator of the Association ("Sole Incorporator,") and shall hold office until the first meeting of the Members as described in the Section entitled "*Election*" herein and until their successors are elected.

6.2. TERM OF OFFICE

At the first annual meeting of Members, two (2) director shall be elected for a term of one year and three (3) directors for a term of two years. Thereafter, directors shall be elected at each annual meeting of Members to fill the vacancies of those directors whose term then expires and the term of each such director so elected shall be two (2) years. Unless vacated sooner, each director shall hold office until the director's term expires and a successor is elected. If any annual meeting is not held or the directors are not elected thereat, the directors may be elected at any special meeting of Members held for that purpose.

6.3. REMOVAL; VACANCIES

(a) Unless the entire Board is removed from office by the vote of the Association Members, an individual director shall not be removed prior to the expiration of his term of office if the number of votes cast against his removal or not consenting in writing to his removal would be sufficient to elect the director 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 elected to office solely by the votes of Members other than Declarant may be removed from office prior to the expiration of his term only upon the vote of a simple majority of the voting power of Members other than Declarant. Provided, however, the Board may declare vacant the office of a director (a) who has been declared of unsound mind by final court order, (b) who has been convicted of a felony, or (c) who is no longer a Member of the Association. In the event of the death or

resignation of a director, his or her successor shall be appointed by the Board at a duly held meeting of the Board or by a sole remaining director, and shall serve for the unexpired term of his or her predecessor.

(b) A vacancy or vacancies shall be deemed to exist in case of death, resignation or removal of any director, or if the Members shall increase the authorized number of directors but shall fail, at the meeting at which such increase is authorized, or at any adjournment thereof, to elect the additional directors so provided for, or in case the Members fail at any time to elect the full number of authorized directors. The Members may elect a director at any time to fill any vacancy not filled by the directors, and may elect the additional directors at the meeting at which an amendment by the Bylaws is voted authorizing an increase in the number of Directors. A vacancy created by removal of a director can be filled only by election of the Members. No reduction of the number of directors shall have the effect of removing any director prior to the expiration of his or her term of office.

6.4. COMPENSATION AND FEES

Neither the directors nor the officers of the Association shall receive any monetary compensation for their services performed in the conduct of the business of the Association, except upon the vote or written consent of a majority of the voting power of the Association residing in members other than the Declarant. Nothing herein contained shall be construed or preclude any director or officer from serving the Association in any other capacity as an agent, employee or otherwise and receiving compensation therefor. Directors and officers of the Association may be reimbursed for expenses incurred in carrying on the business of the Association.

7. NOMINATION AND ELECTION OF DIRECTORS

7.1. NOMINATION

Nomination for election to the Board of Directors 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 of Directors 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.

7.2. ELECTION

The first election of the Board shall be conducted at the first meeting of the Association described in the Section entitled "*Annual Meetings of Members*" herein, at which time all positions on the Board shall be filled. 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. Cumulative voting is required for all elections in which more than two (2) directors are to be elected; provided, however, all Members shall be entitled to cumulate 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 cumulate votes. Voting for directors shall be by secret written ballot. So long as a majority of the voting power of the Association resides in the Declarant, or so long as there are two (2) outstanding classes of membership in the Association, not less than twenty percent (20%) of the incumbents on the Board shall have been elected solely by the votes of Owners other than the Declarant.

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8. MEETINGS OF DIRECTORS

8.1. DEFINITION OF "MEETING"

The word "meeting," as applied to "meeting of members of the Board of Directors," shall include any congregation of a majority of the members of the Board at the same time and place (including telephone meetings, in which case the Board members need not be present in the same place) to hear, discuss, or deliberate upon any item of business scheduled to be heard by the Board, except those matters that may be discussed in executive session.

8.2. PLACE OF MEETING

All meetings of the Board shall be held within the Project, or at such other location in the County, California, in reasonable proximity to the Project, as may be designated in the notice of meeting. Members of the Board may participate in a meeting through use of conference telephone, electronic video screen communication or similar communications equipment, so long as (a) all Board members participating in such meeting can communicate with all of the other Board members, (b) each Board member is provided the means of participating in all matters before the Board, including, without limitation, the capacity to propose, or to interpose an objection to a specific action to be taken by the Association, and (c) the Association adopts and implements some means of verifying both of the following: (i) a person participating in the meeting is, in fact, a director or other person entitled to participate in the Board meeting; and, (ii) all actions of, or votes by the Board are taken or cast only by the directors and not by persons who are not directors, were made by that director and not by another person not permitted to participate as a director .

8.3. ORGANIZATIONAL MEETING

Immediately following each annual meeting of Members, the Board shall hold a regular meeting for the purpose of organization, election of officers and the transaction of other business. Notice of such meeting is hereby dispensed with.

8.4. REGULAR MEETINGS

Regular meetings of the Board shall be held without call bimonthly, or at such time as the Board shall determine; provided, however, should said day fall upon a legal holiday, then said meeting shall be held at the same time on the next day thereafter ensuing which is not a legal holiday. The meeting place shall ordinarily be within the Project itself unless, in the judgment of the Board, a larger meeting room is required than exists within the Project, in which case, the meeting room selected shall be as close as possible to the Project.

8.5. SPECIAL MEETINGS

Special meetings of the Board for any purpose or purposes may be called at any time by the President, or, if he is absent or unable or refuses to act, by any Vice President, or by any two (2) Directors other than the President.

8.6. NOTICE OF MEETINGS

"Except for emergency meetings, all Members shall be given notice of the time and place of all meetings of the Board at least four (4) days prior to the meeting. Notice may be given by posting the notice in a prominent place or places within the Project, by mail or delivery of the Notice to each Unit in the Project, or by newsletter or similar means of communication. Notice of special Board meetings shall include the nature of any special business to be considered. Notice to members of the Board shall be

not less than four (4) days prior to the meeting; provided, however, 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 the meeting.”

8.7. EMERGENCY MEETINGS

Emergency meetings of the Board may be called by the President or by any two members of the Board other than the President, if there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the Board, and which of necessity make it impracticable to provide notice as required by the **Section** immediately above entitled “*Notice of Meetings.*”

8.8. QUORUM

A majority of the directors shall be necessary to constitute a quorum for the transaction of business, except to adjourn as hereinafter provided. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board.

8.9. ADJOURNMENT

A quorum of the directors may adjourn any directors’ meeting to meet again at a stated day and hour; provided, however, that in the absence of a quorum, a majority of the directors present at the directors’ meeting, either regular or special, may adjourn from time to time until the time fixed for the next regular meeting of the Board.

8.10. NOTICE OF ADJOURNMENT

Notice of adjournment of any Directors’ meeting, either regular or special, need not be given to absent Directors if the time and place are fixed at the meeting adjourned.

8.11. MEMBERS’ ATTENDANCE AT MEETINGS

Any Member of the Association may attend meetings of the Board, except as provided in the **Section** hereinbelow entitled “*Executive Sessions.*”

8.12. EXECUTIVE SESSIONS

(a) The Board may, upon the vote of a majority of its members present at a meeting in which a quorum for the transaction of business has been established, 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. Any matter discussed in executive session shall be generally noted in the minutes of the Board.

(b) Members of the Association may attend executive sessions of the Board, except when the Board adjourns to consider litigation, matters relating to the formation of contracts with third parties, Member discipline or personnel matters. The Board shall permit any Member to speak at any meeting, except for meetings of the Board held in executive session. A reasonable time limit for all Members of the Association to speak to the Board or before a meeting of the Association (i.e. to speak openly during a meeting of the Board other than at an executive session of the Board) shall be established by the Board. A Member of the Association who may be subject to a fine, penalty or other form of discipline, may request that the Board consider such Member’s fine, penalty or other form of discipline in executive session, which meeting such requesting Member shall be entitled to attend.

8.13. 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 shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. Such actions by written consent shall have the same force and effect as a unanimous vote of the Board of Directors. An explanation of the action to be taken or actually taken by the Board shall be given to the members of the Association within three (3) days after all written consents have been obtained. Said explanation shall be given in the same manner as provided for the giving of notice of regular meetings of the Board. Failure to give such notice shall not, however, render the action to be taken or actually taken invalid.

8.14. ENTRY OF NOTICE

Whenever any director has been absent from any special meeting of the Board, an entry in the minutes to the effect that notice has been duly given shall be conclusive and incontrovertible evidence that due notice of such special meeting was given to such Director as required by law and these Bylaws.

8.15. WAIVER OF NOTICE

The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice if a quorum be present and if, either before or after the meeting, each of the directors not present signs a written waiver of notice or a consent to holding such meeting or an approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the Association records or made a part of the minutes of the meeting.

8.16. MINUTES OF BOARD MEETINGS

(a) The minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes of any meeting of the Board, other than an executive session, shall be available to Association Members within thirty (30) days of the meeting. The minutes, proposed minutes, or summary minutes shall be distributed to any Member upon request and upon reimbursement of the Association's cost in making that distribution.

(b) Association Members shall be notified in writing at the time that the pro forma budget described in the Financial Reports **Section** entitled "**Budgets**" hereinafter is distributed or at the time of any general mailing to the entire membership of the Association of their right to have copies of the minutes of meetings of the Board and how and where those minutes may be obtained.

9. POWERS AND DUTIES OF THE BOARD

9.1. POWER EXERCISED BY BOARD

Subject to other provisions of the Declaration and to the limitations of the Articles of Incorporation, these Bylaws and the California Nonprofit Mutual Benefit Corporations Code as to action to be authorized or approved by the Members, all corporate powers shall be exercised by or under the authority of, and the business and affairs of the Association shall be controlled by, the Board.

9.2. EXTENT

The powers expressly provided within this Article are without prejudice to the general powers of the Section immediately above, but shall be subject to the same limitations.

9.3. ENFORCEMENT

The Board's powers and duties relating to enforcement shall be as follows:

(a) To enforce the provisions of the Declaration, the Articles of Incorporation and Bylaws of the Association, the rules and regulations adopted by the Board and the provisions of any agreement to which the Association is a party; and,

(b) To initiate and execute disciplinary proceedings against members of the Association, as set forth in the Declaration, for violation of the provisions of the Articles, Bylaws, the Declaration and the rules and regulations adopted by the Board.

9.4. MANAGEMENT AND CONTROL

With respect to the business and property of the Association, the Board shall have the following powers and duties:

9.4.1. CONDUCT, MANAGE THE ASSOCIATION

To conduct, manage and control the affairs and business of the Association, and to make such rules and regulations therefor not inconsistent with law, the Articles of Incorporation, the Bylaws or the Declaration as they deem best, including rules and regulations for the operation of the Common Area by the Association, including limiting the number of an Owner's guests who may use any recreational facilities;

9.4.2. MAINTAIN THE ASSOCIATION PROPERTY; CAPITAL IMPROVEMENTS

To manage, operate, maintain and repair the Common Area and all improvements located thereon, including the restoration and replacement of any or all of the buildings, structures or improvements which are part of the Common Area at any time and from time to time as the Board may determine desirable or necessary; and to make capital expenditures for and on behalf of the Association; provided, that the Association may not incur aggregate expenditures for capital improvements construction, installation or acquisition to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the vote or written assent of a majority of the voting power of the Association residing in members other than the Declarant, except as allowed in the Declaration upon damage or destruction; and,

9.4.3. ENTER ANY CONDOMINIUM

To enter into any Condominium as may be necessary for the purpose of carrying out any of the powers or duties of the Board as herein set forth and as set forth in the Declaration, including such entry as may be necessary in connection with the construction, maintenance or emergency repair of the Common Area, at any reasonable hour and, except in the case of emergency, after reasonable notice as more fully described in the Declaration.

9.5. INDEBTEDNESS; SALE OF PROPERTY

The Board shall have the power to borrow money and incur indebtedness for the purposes of the Association, and to cause to be executed and delivered therefor, in the Association name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidences of debt and securities therefor, and to sell Common Area for the benefit of all of the Owners and their Mortgagees, as their respective interests may appear, at such price and upon such terms as the Board may determine reasonable; provided, however, that the Board shall not have the power to borrow money for the Association during any fiscal year in excess of the aggregate sum of, nor to sell during any fiscal year 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 without the vote or written assent of a majority of the voting power of each class of Members of the Association. After conversion of the Class B membership to Class A membership, the Board shall not have the power to borrow money for the Association during any fiscal year in excess of the aggregate sum of, nor to sell during any fiscal year 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 without the vote or written consent of (i) a majority of the total voting power of the Association and (ii) a majority of the total voting power of the Members other than the Declarant.

9.6. MONETARY OBLIGATIONS

Provided the areas herein apply to this Project, the Board shall have the following powers and duties:

- (a) To pay all charges for water, electricity, gas, CATV and other utility services for the Association
- (b) Property and, to the extent not separately metered or charged, for each Condominium; and,
- (c) To pay any taxes and governmental special assessments which are or could become a lien on the Common Area or any portion thereof.
- (d) To fix, levy, collect and enforce Assessments as set forth in the Declaration.

9.7. USE OF RESERVE FUNDS

(a) The Board shall not expend funds designated as reserve funds for any purpose other than the 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, provided the Board has made a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one (1) year of the date of the initial transfer, except that the Board may, upon making a finding supported by documentation that a temporary delay would be in the best interests of the Project, temporarily delay the restoration until the time which the Board reasonably determines to be necessary. The Board shall exercise prudent fiscal management in delaying restoration of these 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 herein. This Special Assessment is subject to the limitation imposed by Civil Code §1366. The Board may, at its discretion, extend the date the payment on the Special Assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid Special Assessment.

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(b) When the decision is made to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the Association shall notify the Members of that decision pursuant to Corporation Code §5016, as it may from time to time be amended, within thirty (30) days from the date of such decision, and of the availability of ongoing accountings of those expenses. The Board shall make an accounting of expenses related to the litigation on at least a quarterly basis, which accounting(s) shall be distributed to all Members via U.S. Mail in the same manner as prescribed for "Notice" in accordance with the provisions therefor contained in the Section entitled "Notice" of the Declaration.

9.8. CONTRACTS

9.8.1. INSURANCE RELATED CONTRACTS

The Board, with the appropriate assent, shall have the power and duty to contract and pay for fire, casualty, liability, fidelity and other insurance adequately insuring the Association and Owners with respect to the Common Area and the affairs of the Association, which shall include bonding of the Members of any management body. Any provision to the contrary herein notwithstanding, so long as FNMA or FHLMC holds a Mortgage on or owns a Condominium, the Association shall continuously maintain in effect such casualty and liability insurance and fidelity bond, meeting all requirements and containing such coverage and endorsements as may be required from time to time by FNMA or FHLMC. Such casualty insurance shall include, but not be limited to, a master or blanket policy with full replacement cost coverage and an agreed value endorsement. Whether or not FNMA or FHLMC holds any Mortgage, fidelity insurance shall be in the form of a bond, naming the Association as obligee, written in an amount equal to at least the estimated maximum of funds, including reserves in the custody of the Association or the management agent at any given time during the term of the fidelity bond, to protect against misuse and misappropriation of Association property by Members of the Board, officers and employees of the Association, any administrator and any management agent and his employees whether or not any such persons are compensated for their services. However, the bond should not be less than a sum equal to three (3) months aggregate Regular Assessments on all Condominiums plus reserve funds; and,

9.8.2. ASSOCIATION GOODS AND SERVICES

The Board, with the appropriate assent, shall have the power and duty to contract and pay for goods and services relating to the Common Area, and to employ personnel necessary for the operation and maintenance of the same, including legal and accounting services. Anything herein to the contrary notwithstanding:

A. CONTRACT WITH A THIRD PERSON.

That the term of any contract with a third person for supplying goods or services to the Common Area or for the Association shall not exceed a term of one (1) year unless a longer term is approved with the assent, by vote at a meeting of the Association or by written ballot without a meeting pursuant to Corporations Code §7513, of a simple majority of the membership, other than the Declarant, constituting a quorum consisting of more than 50 percent of the voting power of the Association other than the Declarant, with the following exceptions:

B. CONTRACT WITH A PUBLIC UTILITY.

A contract with a public utility company for materials or services the rates for which are regulated by the Public Utilities Commission may exceed a term of one (1) year so long as it does not exceed the shortest term for which the public utility contracts at the regulated rate;

C. CONTRACT FOR PREPAID INSURANCE.

A contract for prepaid casualty and/or liability insurance policies may be for a term of not to exceed three (3) years, provided that the policy permits short rate cancellation by the Association;

D. CABLE OR SATELLITE TELEVISION SERVICES.

Agreements for cable television services and equipment or satellite dish television services and equipment of not to exceed five (5) years duration, provided that the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

E. SALE OR LEASE OF ALARM SYSTEMS.

Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and service not to exceed five (5) years duration, provided that the supplier or suppliers are not entities in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

F. CONTRACT TERMINATION.

A contract for a term not to exceed three years that is terminable by the Association after no longer than one year without cause, penalty or other obligation upon ninety (90) days written notice of termination to the other party.

G. VA OR FHA APPROVED MANAGEMENT CONTRACTS.

A management contract, the terms of which have been approved by the U.S. Department of Veterans Affairs or the Federal Housing Administration may exceed a term of one (1) year.

9.8.3. CONTRACT TERMINATION

Any agreement for management of the Project, and any other contract providing for services by the Declarant, shall be terminable for cause upon thirty (30) days written notice, and without cause or payment of a termination fee upon ninety (90) days, or fewer, written notice and shall have a term of not more than one (1) year, renewable with the consent of the Association and the management agent.

9.8.4. TERMINATION OF PROFESSIONAL MANAGEMENT

The Board shall not terminate professional management or administration of the Project and assume self-management, when professional management had been required previously by an Eligible Mortgage Holder, without the prior written approval of Mortgagees holding seventy-five percent (75%) or more of the First Mortgages on Condominiums;

9.9. NOTIFICATION

Provided that FNMA or FHLMC, or any Eligible Mortgage Holder or Eligible Insurer have any mortgage secured by any part of the Project, the Board shall have the following powers and duties:

**9.9.1. NOTICE TO ELIGIBLE MORTGAGE HOLDERS;
ELIGIBLE INSURERS**

To provide any Eligible Mortgage Holder or Eligible Insurer, after written request therefrom to the Association, identifying the name and address of the holder, insurer or guarantor and the Condominium number or address, with timely written notice of:

(a) 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 Eligible Mortgage Holder or Eligible Insurer, as applicable.

(b) Any default in the performance by an Owner of any obligation under the Project Documents not cured within sixty (60) days.

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as required in these Bylaws or the Declaration.

9.9.2. NOTICE TO FHLMC

To give timely written notice to FHLMC (in care of the servicers of FHLMC loans on Condominiums) of any loss to or taking of the Common Area if such loss or taking exceeds \$10,000, and of any damage to a Condominium if such damage exceeds \$1,000; provided FHLMC funds are secured by any part of the Project.

**9.9.3. NOTICE OF SUBSTANTIAL DAMAGE OR
DESTRUCTION**

To give timely written notice to all Eligible Mortgage Holders of any substantial damage to or destruction of any Condominium or any part of the Common Area and, if any Condominium, or any portion thereof, or the Common Area, or any portion thereof, is made the subject of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, to give timely written notice to all Eligible Mortgages Holders of any such proceeding or proposed acquisition.

9.10. FINANCIAL REPORTS

With regards to the financial reports for the Project, the Board shall have the following powers and duties:

9.10.1. BUDGET

To prepare or cause to be prepared a pro-forma operating budget ("Budget") for the Association for the immediately ensuing and each succeeding fiscal year of the Association, a copy of which shall be distributed personally or by mail to each of the Members of the Association not fewer than forty-five (45) days nor more than sixty (60) days prior to the beginning of the fiscal year to which the budget relates. Said Budget shall include all of the following:

(a) The estimated revenue and expenses on an accrual basis.

(b) A summary of the Association's reserves based upon the most recent review or study conducted pursuant to the **Section** entitled "**Reserve Study**" hereinafter, which shall be printed in bold type and include the following:

(1) The current estimated replacement cost, estimated remaining life and estimated useful life of each Component ("Component," for purposes of this Section shall be as defined in the **Section** hereinafter entitled "**Reserve Study**");

(2) As of the end of the fiscal year for which the Reserve Study is prepared: [a] the current estimate of the amount of cash reserves necessary to repair, replace, restore or maintain the Components (hereafter, "**Cash Reserves**"), [b] the current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain the Components (hereafter, "**Accumulated Reserves**"), and [c] the percentage that the Accumulated Reserves is of the Cash Reserves (in other words, Accumulated Reserves divided by Cash Reserves);

(c) A statement as to whether the Board has determined or anticipates that the levy of one or more Supplemental Assessments will be required to repair, replace or restore any Component or to provide adequate reserves therefor.

(d) A general statement setting forth the procedures used by the Board in the calculation and establishment of such reserves to defray the costs of repair, replacement or additions to the Components.

The foregoing summary of the Association's reserves shall not be admissible in evidence to show improper financial management of an Association, provided that other relevant and competent evidence of the financial condition of the Association is not made inadmissible pursuant to Civil Code §1365.

9.10.2. FINANCIAL STATEMENT

To cause a financial statement of the affairs of the Association to be made and distributed to Members pursuant to Section 1365 of the California Civil Code, as it may be amended from time to time, including:

(a) A balance sheet as of 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 Close of Escrow in the Project, and an operating statement for the period from the date of the first Close of Escrow 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 Condominiums and the name or names of the Owners assessed.

(b) An annual report consisting of the following to be distributed within one hundred twenty (120) days after close of the Association's fiscal year:

(c) A balance sheet as of the end of the fiscal year.

(d) An operating (income expense) statement for the fiscal year.

(e) A statement of changes in financial position for the fiscal year.

(f) Any information required to be reported under Section 8322 of the California Corporations Code or any amendment thereof.

least 10-point bold type stating that the Budget is available at the business office of the Association or at another suitable location within the boundaries of the Community and that copies will be provided upon request and at the expense of the Association. If any Member requests a copy of the 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 days.

9.10.5. BOARD REVIEW OF FINANCIAL STATEMENTS

To cause to be prepared and to review, on at least a quarterly basis, the following financial statements of the Association:

- (a) A current reconciliation of the operating accounts.
- (b) A current reconciliation of the reserve accounts.
- (c) The current year's actual reserve revenues and expenses compared to the current year's budget.
- (d) The latest account statement prepared by the financial institutions where the Association has its operating and reserve accounts.
- (e) An income and expense statement for the operating and reserve accounts.

9.11. ADDITIONAL POWERS AND DUTIES OF BOARD

The Board shall have the following additional powers and duties:

9.11.1. DELEGATION

To delegate any of its powers hereunder to others including Committees, officers, employees, or agents. Such delegation may include the ability to enter into any contract or to execute any instrument in the name and on behalf of the Association, subject to all the limitations contained in the Condominium documents. The authority delegated may be general or defined to specific instances; and unless so authorized by the Board, no officer, agent or employee shall have any power or authority to bind the Association by any contract or engagement or to pledge its credit or to render it liable for any purpose or to any amount.

9.11.2. SUPERVISION

To supervise, select and remove any or all officers, agents and employees of the Association, and to prescribe such powers and duties for them as may not be inconsistent with law, the Articles, these Bylaws or the Declaration, and to see that their duties are properly performed, and, subject to the provisions of the **Section** entitled "*Term of Office*" herein, to fix their compensation.

9.11.3. PROSECUTE; DEFEND

(a) To prosecute or defend, in the name of the Association, any action affecting or relating to the Common Area or the property owned by the Association, and any action in which all or substantially all of the Owners have an interest.

(b) To institute, defend, settle or intervene on behalf of the Association in litigation, arbitration, mediation, or administrative proceedings in matters pertaining to (1)

(g) For any fiscal year in which the gross income to the Association exceeds \$75,000.00, a review of the annual report referred to in this **Section** shall be prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy. The foregoing notwithstanding, any Eligible Mortgage Holder shall be entitled, upon written request, to have an audited financial statement for the immediately preceding fiscal year prepared at its sole expense if one is not otherwise available.

If the annual report described above is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statements were prepared without audit or review from the books and records of the Association.

In addition to financial statements, the governing body shall annually distribute during the sixty (60) day period immediately preceding the beginning of the Association's fiscal year, a statement of the Association's policies and practices in enforcing its remedies against Members for defaults in the payment of Regular and Special Assessments including the recording and foreclosing of liens against Members' Condominiums.

9.10.3. RESERVE STUDY

To prepare or cause to be prepared a reserve study ("*Reserve Study*") for the second (2nd) fiscal year of the Association, and thereafter, once every three (3) years. The term "Reserve Study," as used in these Bylaws and the other Project Documents, shall mean: a reasonably competent and diligent visual inspection of the accessible areas of the major components in the Project, which the Association is obligated by the Declaration and any other Project Document, to repair, replace, restore or maintain as part of a study of the reserve account requirements of the Project. The Reserve Study shall include at a minimum the following:

(a) 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 30 years (hereafter, "Component(s)").

(b) Identification of the estimated remaining life and estimated useful life of each Component.

(c) An itemized estimate of the cost of repair, replacement, restoration or maintenance costs of each Component, both currently and at the end of its useful life.

(d) An estimate of the total annual contribution (and monthly representation) necessary to defray the cost to repair, replace, restore or maintain each Component during and at the end of its useful life, after subtracting total reserve funds as of the date of the Reserve Study.

(e) As of the end of the fiscal year for which the reserve study is prepared: (1) the current estimate of the amount of cash reserves necessary to repair, replace, restore or maintain the Components (hereafter, "Cash Reserves"), (2) the current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain the Components (hereafter, "Accumulated Reserves"), and (3) the percentage that the Accumulated Reserves is of the Cash Reserves (in other words, Accumulated Reserves divided by Cash Reserves).

9.10.4. BUDGET SUMMARY

In lieu of the distribution of the Budget described in the **Section** entitled "*Budget*" hereinabove, the Board of Directors may elect to distribute a summary of said Budget to all of the Association's Members with a "written notice" on the front page of the Budget summary printed in at

enforcement of the governing instruments, (2) damage to the Common Area Areas, (3) damage to the Condominiums that the Association is obligated to maintain or repair, or (4) damage to the Condominiums, which arises out of, or is integrally related to, damage to the Common Area that the Association is obligated to maintain or repair.

9.11.4. APPOINTMENT OF TRUSTEE

To appoint a Trustee to enforce Assessment liens by power of sale as provided in the Declaration and in Civil Code §1367.

9.11.5. CHANGE PRINCIPAL OFFICE

To change the principal office for the transaction of the business of the Association from one location to another within the same county.

9.11.6. SELL PROPERTY

To sell property owned by the Association for the benefit of all of the Owners and their Mortgagees, as their respective interests may appear, at such price and upon such terms as the Board may determine reasonable, subject to the limitations contained in the **Section** hereinbefore entitled "*Indebtedness; Sale of Property.*"

9.11.7. RECORDS

To cause to be kept a complete record of all its acts and 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 by one-fourth (1/4) of the Class A Members; and to 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 and classes of membership.

9.11.8. DUPLICATION OF BUILDING PLANS

To provide written permission to duplicate the official copy of Project building plans maintained by the building department.

9.11.9. GRANT EASEMENTS

To grant easements under, through and over the Common Area which are reasonably necessary to the ongoing development and operation of the Project for, but not limited to, utilities, cable television, water and sewer facilities.

9.11.10. OTHER POWERS

In addition to any other power contained herein, the Association may exercise the powers granted to a nonprofit mutual benefit corporation as enumerated in Corporations Code §7140.

9.12. LIMITATIONS

The Board of Directors of the Association shall be prohibited from taking any action in violation of any provision in the Project Documents, except with the vote or written consent of (i) a majority of the Members of each Class A and Class B during the time the two-class voting structure is in effect; or (ii) a majority of the Members of the Association including at least fifty-one percent (51%) of Association Members other than Declarant after conversion to a single Class A voting membership. In

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addition, the Board is further prohibited from taking any action in violation of any State, County or City statute, law, ordinance or regulation.

10. OFFICERS

10.1. OFFICERS

The officers of the Association shall be a President, a Vice President, a Secretary and a Chief Financial Officer. The Association may also have, at the discretion of the Board, one (1) or more assistant Secretaries, one (1) or more assistant Chief Financial Officers and such other officers as may be appointed in accordance with the provisions of the **Section** hereinafter entitled "*Subordinate Officers.*" Officers other than the President need not be directors. One (1) person may hold two (2) or more offices, except those of President and Secretary simultaneously.

10.2. ELECTION

The officers of the Association shall be chosen annually by the Board, and each shall hold his office until he shall resign, or shall be removed or otherwise disqualified to serve, or his successor shall be elected and qualified.

10.3. SUBORDINATE OFFICERS

The Board may appoint such other officers as the business of the Association may require, each of whom shall hold office for such period, have authority and perform such duties as are provided in these Bylaws or as the Board may from time to time determine.

10.4. REMOVAL AND RESIGNATION

(a) Any officer may be removed, either with or without cause, by a majority of the directors at the time in office, at any regular or special meeting of the Board or, except in case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board.

(b) Any officer may resign at any time by giving written notice to the Board or the President, or to the Secretary of the Association. Any such resignation shall take effect at the date of the 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.

10.5. VACANCIES

A vacancy in any office because of death, resignation, disqualification or any other cause, other than a vacancy created by removal, may be filled by appointment by the Board. A vacancy created by removal of a director can be filled only by election of the Members. The officer so appointed shall serve for the remainder of the term of the officer he or she replaces.

10.6. PRESIDENT

The President shall be the chief executive officer of the Association and shall, subject to the control of the Board, have general supervision, direction and control of the business and officers of the Association. He shall preside at all meetings of the Members and at all meetings of the Board. He shall be, by virtue of his office, a Member of all committees, and shall have the general powers and duties of management usually vested in the office of President of a corporation, and shall have such other powers and duties as may be prescribed by the Board or by these Bylaws. The President shall see that

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orders and resolutions of the Board are carried out and shall sign all leases, mortgages, deeds, written instruments and all evidences of indebtedness, including without limitation, promissory notes, checks, drafts or other orders for payment of money, as provided in the Section entitled "*Checks, Drafts, Etc.*" herein.

10.7. VICE PRESIDENT

In the absence or disability of the president, the Vice President shall perform all the duties of the President, and when so acting shall have all powers of and be subject to all the restrictions upon the President. The Vice President shall have such other powers and perform such other duties as from time to time may be prescribed for him by the Board or by the Bylaws.

10.8. SECRETARY

The Secretary shall keep, or cause to be kept, a book of minutes at the principal office or such other place as the Board may order of all meetings of directors and Members, with the time and place of holding, whether regular or special and if special how authorized, the notice thereof given, the names of those present at the directors' meetings, the number of Member present or represented at a meeting of Members meetings and the proceedings thereof. The Secretary shall give, or cause to be given, notice of all the meetings of the Members and of the Board required by the Bylaws or by law to be given, and he shall keep other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

10.9. CHIEF FINANCIAL OFFICER

(a) The Chief Financial Officer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transaction of the Association, including account of its assets, liabilities, receipts, disbursements, gains, losses, capital and surplus. The books of account shall at all reasonable times be open to inspection and copying by any Director or his duly authorized representative.

(b) The Chief Financial Officer shall sign all evidences of indebtedness, including without limitation, promissory notes, checks, drafts or other orders for payment of money, as provided in the **Section** entitled "*Checks, Drafts, Etc.*" herein, and shall deposit all moneys and other valuables in the name, and to the credit, of the Association with such depositories as may be designated by the Board. He shall disburse the funds of the Association as may be directed by resolution of the Board, shall render to the President and directors, whenever they request it, an account of all of his transactions as Chief Financial Officer and of the financial condition of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

(c) The duties of the Chief Financial Officer relating to the collection and disbursement of Association funds herein may be performed by a management company or such other agent as may be approved by the Board.

11. INDEMNIFICATION

11.1. GENERALLY

A director, officer, committee member, employee or other agent of the Association who is a party to or is threatened to be made a party to any proceeding (including a proceeding by or on behalf of the Association) because he or she is or has been a director, officer, committee member, employee or agent of the Association shall be indemnified by the Association against all expenses and liability actually

and reasonably paid or incurred in connection with the proceeding to the maximum extent permitted by the California Nonprofit Mutual Benefit Corporation Law and the provisions of California Civil Code §1365.7. Terms used in this Article shall have the same meaning as in Section 7237 of the California Corporations Code or any successor statute or law.

11.2. APPROVAL

Upon written request to the Board by any person seeking indemnification, the Board shall promptly determine whether the applicable standard of conduct set forth in the California Nonprofit Mutual Benefit Corporation Law has been met. If so, the Board shall authorize indemnification. If the Board cannot authorize indemnification because the number of directors who are parties to the proceeding with respect to which indemnification is sought prevent a quorum of directors who are not parties to the proceeding, the Board shall promptly call a special meeting of Members. At the meeting, the Members shall determine whether the applicable standard of conduct set forth in the California Nonprofit Mutual Benefit Corporation Law has been met. If so, the Members shall authorize indemnification. Members or other persons seeking to be indemnified shall not be entitled to vote on the question of indemnification.

11.3. ADVANCING EXPENSES

Except as otherwise determined by the Board in a specific instance, expenses incurred by a director, officer, committee member, employee or agent seeking indemnification under Article shall be advanced by the Association prior to the final disposition of the proceeding upon receipt of an undertaking by or on behalf of the director, officer, committee member, employee or agent to repay the amount unless it is ultimately determined that the person is not entitled to be indemnified by the Association.

12. MISCELLANEOUS

12.1. CHECKS, DRAFTS, ETC

(a) All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the Association, shall be signed or endorsed by the President and Chief Financial Officer of the Association, or by such person or persons and in such manner as from time to time shall be determined by resolution of the Board pursuant to the Subsection entitled "*Other Powers*" within the Section hereinbefore entitled "*Additional Powers and Duties of Board.*"

(b) The foregoing notwithstanding, the signature of at least two (2) persons who shall 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 for the withdrawal of moneys from the Association's reserve accounts. As used in this Article, "reserve accounts" means moneys that the Board has identified from its annual budget for use to defray the future repair or replacement of, or additions to, those Common Area components of the Project which the Association is obligated to maintain pursuant to the section entitled "Management and Control" herein.

12.2. FISCAL YEAR

The fiscal year of the Association shall begin on the *1st day of June* and end on the *31st day of May* of each year, except that the first fiscal year shall begin on the date of conveyance of the first condominium to a Purchaser in the Project. However, the fiscal year of the Association is subject to change from time to time as the Board shall determine.

12.3. INSPECTION OF BOOKS AND RECORDS

The Association shall keep in its principal office for the transaction of business, or at such other place within the Project as the Board shall prescribe, the original or a copy, including any amendments, of the Bylaws certified by the Secretary, the Declaration, Articles of Incorporation, Rules and Regulations, a membership register which shall include the members' mailing address and telephone numbers, books of account and copies of minutes of all Membership, Board and Committee meetings, all of which, other than minutes, proposed minutes or summary minutes of a Board executive session, shall be made available for inspection and copying by any Member of the Association, or by any Member's duly appointed representative and by all first Mortgagees, at any reasonable time and for a purpose reasonably related to his interest as a Member or Mortgagee, and as provided for in Corporations Code Sections 8330 through 8338, inclusive. The Board shall establish reasonable rules with respect to:

- (a) Notice to be given to the custodian of the records by the Member or Mortgagee desiring to make the inspection
- (b) Hours and days of the week when such an inspection may be made
- (c) Payment of the costs of reproducing copies of documents requested
- (d) Every Director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the Common Area Areas. The right of inspection by a Director shall include the right at his expense to make extracts and copies of documents.

12.4. REQUEST FOR COPIES OF REPORTS

Upon written request from an Owner or his duly authorized representative, the Association shall, within ten (10) days of the mailing or delivery of the request, provide the Owner of a Condominium with:

- (a) A copy of the Declaration, Bylaws, Articles of Incorporation and Rules Regulations, if any.
- (b) copy of the most recent financial reports, as called for in the section entitle "Financial Reports" herein.
- (c) A statement in writing from an authorized representative of the Association as to the amount of any Assessments levied upon the Owner's interest in his Condominium which are unpaid on the date of the Statement. The statement shall also include true information on late charges, interest and costs of collection which, as of the date of the statement, are or may be made a lien upon the Owner's interest in the Project pursuant to California Civil Code §1367, or any successor statute or law. A properly executed certificate of the Association as to the status of Assessments on a Condominium is binding upon the Association as of the date of its issuance. The Association may charge a fee for this service, which shall not exceed the reasonable costs to prepare and reproduce the requested items.

13. AMENDMENTS

13.1. IN GENERAL

Except as may otherwise be stated in these Bylaws, during the period of time prior to conversion of the Class B membership in the Association to Class A membership, new Bylaws may be adopted or these Bylaws may be amended or repealed by the vote of the Members entitled to exercise a

majority or more of the voting power of each class of Members of the Association or by the written assent of such Members. After conversion of the Class B membership to Class A membership in the Association, these Bylaws may be amended or repealed by the vote of Members entitled to exercise (i) sixty-seven percent (67%) of the voting power of the Association, and (ii) at least sixty-seven percent (67%) of the voting power of the Members of the Association other than Declarant. 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. Anything herein stated to the contrary notwithstanding, no "material amendment" (as more fully set forth in the section of the **Declaration** entitled "**Amendments**") may be made to these Bylaws without the prior written consent of Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the votes of Condominiums which are subject to mortgages held by such Eligible Mortgage Holders Mortgage Holders; provided further, that so long as there remains a Class B membership in the Association, any amendment to these Bylaws shall require the prior approval of the VA. A draft of any amendment should be submitted to the VA for its approval prior to its approval by the membership of the Association.

13.2. MORTGAGEES AND INSURERS

With the exception of the VA and FHA, an Eligible Mortgage Holder or Eligible Insurer, who receives a written request to consent to additions or amendments requiring consent under this provision who does not deliver or post to the requesting party a negative response within thirty (30) days after such receipt shall be deemed to have consented to such request, provided that notice was delivered by certified or registered mail, with a "return receipt" requested.

13.3. AMENDMENTS FOR MANIFEST ERRORS, AMBIGUITY AND/OR CHANGES IN LAW

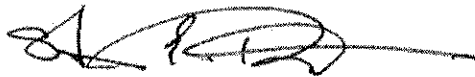
Anything herein to the contrary any amendment, each Member, by acceptance of conveyance of title to a Condominium and each Mortgagee by acceptance of a Mortgage or Deed of Trust secured by a Condominium, hereby agrees and consents to the amendment of these Bylaws for the purpose(s) of correcting manifest and technical errors or for curing or correcting any ambiguity or defective or inconsistent provisions or clerical omission or mistake and/or to effect compliance of one or more provisions of these Bylaws with such amendments, repeals and/or additions made to statutory law, whereby the provisions contained in these Bylaws are in conflict therewith. The foregoing notwithstanding, to the extent that the provisions set forth in these Bylaws are intended to comply with the provisions of the *Common Interest Development Act* as set forth at *Civil Code §1350 et seq.* ("**CID Act**"), and any other statutory law, upon any changes to the CID Act or other statutory law relating to such provisions of these Bylaws, the Board shall comply with such provisions of the CID Act and statutory law and the Board shall have the right to amend these Bylaws as a result of the changes to the CID Act and statutory laws without any vote of the Members. Any such amendment shall be certified by the Secretary, in the event that the first meeting of the Association has not yet taken place and a Board of Directors has not yet been elected and/or no officers have been appointed to the Association, the incorporator of the Association.

The undersigned hereby certifies:

1. That he or she is the sole incorporator of **ARBOR HILL OWNERS ASSOCIATION**, a California non-profit mutual benefit corporation; and

2. That the foregoing Bylaws constitute the Bylaws of said corporation as adopted by the sole incorporator on April 16, 2003.

SOLE INCORPORATOR:



I, the undersigned, do hereby certify:

1. That I am the duly elected and acting Secretary of **ARBOR HILL OWNERS ASSOCIATION**, a California non-profit mutual benefit corporation; and

2. That the foregoing Bylaws constitute the Bylaws of said corporation duly adopted at the meeting of the Board of Directors thereof duly held on _____.

SECRETARY:

SUBORDINATION AGREEMENT

WELLS FARGO BANK, N.A.

being the beneficiary under that certain Deed of Trust recorded
December 18, 2002, as Document No. 2002-1156674 of
Official Records in the Office of the County Recorder of San Diego County, California,
hereby declares that the lien and charge of said Deed of Trust is and shall be subordinate
to the Restated and Superseding Declaration of Covenants, Conditions and
Restrictions for "Arbor Hill," to which this Subordination Agreement is attached.

DATED: March 31, 2003

WELLS FARGO BANK, N.A.

By:


(Signature)

Sean Mahon

PRINTED NAME

(Please Attach Proper Notary Certificate(s) of Acknowledgment)

SUBORDINATION AGREEMENT