

THE MARIPOSA OF MISSION PACIFIC PROPERTY OWNERS ASSOCIATION

A California Nonprofit Mutual Benefit Corporation



RESTATED BYLAWS

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, AND MAY BE REMOVED PURSUANT TO SECTION 12956.1 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.

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**THE MARIPOSA OF MISSION PACIFIC
PROPERTY OWNERS ASSOCIATION**
A California Nonprofit Mutual Benefit Corporation

RESTATED BYLAWS

ARTICLE 1: NAME & LOCATION

1.1 NAME.

The name of the association is THE MARIPOSA OF MISSION PACIFIC PROPERTY OWNERS ASSOCIATION, a California Nonprofit Mutual Benefit Corporation ("Association").

1.2 SPECIFIC PURPOSE.

The purpose of Association is to engage in any lawful act or activity for which a corporation may be organized under such Law. More specifically, the Association will provide for the management, administration, maintenance, preservation and architectural control of the Common Area and Common Facilities within that certain real estate common interest development located in the County of San Diego, State of California, and commonly referred to as THE MARIPOSA OF MISSION PACIFIC PROPERTY OWNERS ASSOCIATION; enforcing the Rules and Regulations which may from time to time be adopted by the Board of Directors as well as the terms and conditions of the Declaration; and otherwise enhancing and promoting the use and enjoyment of the Common Areas and Common Facilities by the Owners in common.

1.3 PRINCIPAL OFFICE.

The principal office of the Association shall be at such place within the County of San Diego, California as the Board of Directors may from time to time designate. The Board shall have the full power and authority to change the principal office of the Association from one location to another in the County of San Diego, California. Any such change shall be adopted by a resolution of the Board and noted in the meeting minutes.

1.4 APPLICATION.

These Restated Bylaws replace, rescind and otherwise repeal that document entitled "Bylaws of The Mariposa of Mission Pacific Property Owners Association" as certified on August 13, 1982. These Restated Bylaws (hereinafter "Bylaws") provide for the governance and operation of THE MARIPOSA OF MISSION PACIFIC PROPERTY OWNERS ASSOCIATION, and its Board of Directors and to all Members of the Association and all tenants, employees and other persons who use the facilities of the Project in any manner, in accordance with the provisions of the Restated Declaration of Covenants, Conditions and Restrictions for THE MARIPOSA OF MISSION PACIFIC PROPERTY OWNERS ASSOCIATION ("Declaration") recorded on June 25, 2004, as Instrument No. 2004-0596500 of Official Records of the County Recorder of San Diego County.

ARTICLE 2: MEMBERSHIP OF ASSOCIATION

2.1 QUALIFICATION FOR MEMBERSHIP.

Every Owner of a Lot shall be a Member of the Association. Ownership of a Lot or interest in it shall be the sole qualification for Membership in the Association. Persons or entities who hold an interest in a Lot merely as security for performance of an obligation are not Members until such time as the security holder comes into title to the Lot through foreclosure or deed in lieu thereof.

2.2 TERM OF MEMBERSHIP.

Each Owner shall be a Member of the Association until his/her ownership in all Lots in the Properties ceases, at which time membership in the Association shall automatically cease.

2.3 FURNISHING EVIDENCE OF MEMBERSHIP.

If so requested, a Member shall provide the Association with evidence of qualification of membership in the form of a copy of a recorded grant deed (certified by the Office of the County Recorder).

ARTICLE 3: MEMBERSHIP VOTING

3.1 CLASSES OF VOTING MEMBERSHIP.

The Association shall have one class of membership and the rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents. Members shall be entitled to one (1) vote for each Lot owned which is subject to assessment, as is further provided in the Declaration. Members shall have the power to exercise their voting rights as set forth herein below:

3.2 VOTING RIGHTS.

- (a) When there is more than one record Owner of a Lot, all of the co-owners shall be Members, but only one of them shall be entitled to cast the single vote attributable to the Lot. Co-owners may designate in writing one of the Owners to vote. If no such designation is made or if it is revoked, the co-owners shall decide among themselves, by majority vote, how that Lot's vote is to be cast. Unless the Board receives a written objection in advance from a co-owner, it shall be conclusively presumed that the voting co-owner is acting with the consent of his or her co-owners. No vote shall be cast for the Lot on a particular matter if a majority of the co-owners present in person or by proxy cannot agree on a vote.
- (b) Any provision of the Governing Documents requiring approval of a specified percentage of the voting power of the Association shall require the approval of the specified percentage of the voting power of the membership. If no percentage of the voting power is specified in the Governing Documents or by California law, the approval of a majority of a quorum shall be required.
- (c) Only Members in good standing shall be entitled to vote on any issue or matter presented to the Members for approval. In order to be in good standing, a Member must be current in the payment of all assessments levied against the Member's Lot and not be subject to any suspension of voting privileges as a result of any disciplinary proceeding conducted in accordance with the Governing Documents. A Member's good standing shall be determined as of the record date established in accordance with these Bylaws. The Association shall not be obligated to conduct a hearing in order to suspend a Member's voting privileges on the basis of the nonpayment of assessments, although a delinquent Member shall be entitled to request such a hearing in accordance with these Bylaws. A Member shall maintain good standing if his or her standing has not been suspended by the provisions of these Bylaws and the Member has maintained a current filing with the Association of the following: (i) the signature(s) of the Owners authorized to vote on behalf of the Member's Lot and the address to which all notices shall be sent; or, alternatively, (ii) a proxy naming the Owner's representative that representative's address.

3.3 MANNER OF CASTING VOTES.

In addition to voting in person or by proxy at a meeting, Members' votes may be solicited by written ballot with respect to any issue other than the election of Directors. Any action that may be taken by vote of the members at a regular or special meeting, except the election of governing body members where cumulative voting is a requirement, may be taken without a meeting provided the following written ballot requirements are satisfied pursuant to *Corporations Code* §7513.

3.4 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 of the Association. A proxy shall be deemed signed if the Member's name is placed on the proxy (whether by original signature or facsimile transmission, if said transmission is legible and deemed to be authentic by the Inspectors of the Election) by the Member or the Member's attorney in fact. Any form of proxy or written ballot distributed by any person or entity to the Membership shall afford the opportunity to specify a choice between approval and disapproval of each matter(s) to be acted on, except it shall not be mandatory that a candidate for election to the Board of Directors be named in the proxy or written ballot. The proxy or written ballot shall provide that, when the Member specifies a choice, the vote shall be cast in accordance with that choice. The proxy shall also identify the person(s) authorized to exercise the proxy. Every proxy shall be revocable and shall automatically cease upon conveyance of its maker's Membership, or upon receipt of written notice by the Secretary of the maker's death or judicially declared incapacity. No proxy shall be valid after the expiration of eleven (11) months from its date of execution, unless otherwise provided in the proxy, but in no event may the maximum term of any proxy exceed three (3) years from its date of execution. The maker of a proxy may revoke it by delivering a written revocation to the Association, by executing a subsequent proxy and presenting it to the meeting, or by attending any meeting and voting in person. Any revocable proxy may not be used to vote on any of the following matters unless it sets forth the general nature of the matter to be voted upon: (i) Removal of a Director without cause; (ii) Filling Director vacancies; (iii) Entering into or approving a contract or transaction between the Association and one (1) or more of the Directors or between the Association and any entity in which one (1) or more of the Directors has a material financial interest, except as allowed by *Corporations Code* §7233; (iv) Amending the Articles after approval by the Board, in accordance with *Corporations Code* §7812; (v) Electing to dissolve the Association, by approval of a majority of all Members or by approval of both the Board and Members pursuant to *Corporations Code* §8610; (vi) Amending the Articles or Bylaws to repeal, restrict, create, or expand proxy rights; (vii) Disposing of assets other than in the usual regular course of corporate activities pursuant to *Corporations Code* §7911(a)(2); and (viii) Agreements for corporate merger, and amendments thereof, in accordance with the provisions of *Corporations Code* §§8012 and §8015(a).

ARTICLE 4: MEMBERSHIP MEETINGS:

4.1 PLACE OF MEMBER MEETINGS; CONDUCT.

All meetings of the Members shall be held at the principal office of the Association or a place designated by the Board which shall be as close to the Project as reasonably possible. If no meeting place is designated, the meetings shall be held at the principal office of the Association. No meeting of the Members shall, unless unusual conditions exist, be held outside of San Diego County, California. Meetings of Members shall be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Board may adopt by resolution.

4.2 ANNUAL MEETING OF MEMBERS.

The Annual Meeting shall be held in October or at such date and time as the Board may otherwise determine. The results of the election of the Board of Directors shall be announced at the Annual Member Meeting. The owners may transact such other business of the Association as may properly come before them.

4.3 SPECIAL MEMBER MEETINGS.

Special meetings of the members may be called for any lawful purpose by a majority of a quorum of the Board, the President of the Association, or by a written request signed by Members representing at least five percent (5%) of the total voting power of the Association. The special member meeting shall be held not less than thirty-five (35) nor more than ninety (90) days after adoption of the resolution or receipt of the request by an officer of the Association. Only that business stated in the Special Meeting Notice shall be conducted at a special meeting of the members.

4.4 ACTION WITHOUT MEETING.

Any action that may be taken by the vote of Members at a regular or special meeting, except the election of Directors, may be taken without a meeting if done in compliance with the provisions of *Corporations Code* §7513.

4.5 QUORUM.

At any meeting, the presence - either in person or by proxy - of Members entitled to cast votes equal to at least fifty-one percent (51%) vote of all Members of the Association shall constitute a quorum for any action except as otherwise provided in the Articles, these Bylaws or the Declaration.

The Members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment notwithstanding the withdrawal of enough Members to leave less than a quorum, as long as the action taken (other than adjournment) is approved by at least a majority of Members required to constitute a quorum.

If a quorum is not present at a duly called meeting, a majority of those Members present in person or by proxy may adjourn the meeting pursuant to Section 4.7, below. The quorum for any adjourned meeting shall be twenty-five percent (25%).

4.6 NOTICE OF MEMBER MEETINGS.

Written notice of any member meeting to each Member of record in accordance with the following:

- (a) Except as otherwise provided in this Article, the notice shall be given at least ten (10) but not more than ninety (90) days before the meeting, by first-class mail or by personal delivery or in accordance with *Corporations Code* §5016 and any other successor statute related thereto.
- (b) The notice shall be addressed to each Member at the address appearing on the books of the Association or the address supplied by the Member to the Association for this purpose. If there is no such address, notice shall be given at the principal office of the Association. When there is more than one (1) record Owner of a Lot ("Co-Owners"), only one of them shall be entitled to notice under this provision. It shall be up to the Co-Owners to designate the Member entitled to notice and, failing to do so, then it shall be provided to the first name listed on the Association's records for said Lot.
- (c) The notice shall state the place, date and time of the meeting. If Directors are to be elected at the meeting, the notice shall include the names of all those who are nominees at the time the notice is given. The notice shall also state those matters that the Board, at the time the notice is given, intends to present for action by the Members.
- (d) In the case of a Special Meeting called by Members, the notice shall be given not more than twenty (20) days after receipt of the request for the meeting and shall state the purpose(s) for which the meeting is called. If that twenty (20) day requirement is not satisfied, the Members who called the meeting may give the notice.

- (e) Any action requiring approval of the Members, other than unanimous approval by those entitled to vote, shall be valid only if the general nature of the matter to be voted upon was stated in the notice of meeting or any written waiver of notice.
- (f) A certificate or declaration of the mailing, or other means of giving any notice of any members' meeting, may be executed by the Secretary or the managing agent and, if so executed, shall be filed with the corporate records or made a part of the Minutes of the meeting. Such certificate or declaration shall constitute prima facie evidence of the giving of notice.
- (g) A recitation in the minutes of any membership meeting that notice of such meeting had been properly given shall be prima facie evidence that such notice was so given.

4.7 ADJOURNED MEETING.

If a quorum is not present at a duly called meeting, a majority of those Members present in person or by proxy may adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the meeting date, but no other business may be transacted. Provided that the date, time and place of the adjourned meeting is announced at the original meeting, the adjourned meeting may be held without additional written notice. If no such announcement is made, or if the selected date is changed after adjournment, notice of the time and place shall be given to Members in the manner provided in these Bylaws.

4.8 WAIVER OF NOTICE OR CONSENT OF ABSENTEES.

The transactions of any meeting of Members, however called and noticed, shall be as valid as though taken at a duly called, noticed and held meeting, if a quorum is present either in person or by proxy and, if either before or after the meeting, each of the Members not present in person or by proxy (i) signs a written waiver of notice, (ii) a consent to the holding of the meeting or (iii) an approval of the Minutes of the meeting. Any such waiver, consent, or approval shall be filed with the corporate records or made a part of the Minutes of the meeting. Attendance by a person at a meeting shall also constitute a waiver of notice of that meeting, except when the person objects at the beginning of the meeting to the transaction of any business due to the inadequacy or illegality of the notice. Attendance at a meeting is not a waiver of any right to object to the consideration of matters not included in the notice of the meeting which are required to be described therein if that objection is expressly made at the meeting.

4.9 RECORD DATES FOR MEMBER NOTICE; VOTING AND GIVING CONSENTS.

For the purpose of determining which Members are entitled to receive notice of any meeting, vote, act by written ballot without a meeting, or exercise any rights in respect to any other lawful action, the Board of Directors may fix, in advance, a "record date" and only Members of record on the date so fixed are entitled to notice, to vote, or to take action by written ballot or otherwise, as the case may be, notwithstanding any transfer of any Membership on the books of the Association after the record date, except as otherwise provided in the Articles of Incorporation, by agreement, or in the *California Nonprofit Mutual Benefit Corporation Law*.

Unless as may otherwise be established by the Board, the record dates pursuant to this section shall be as follows:

- (a) **Record Date for Notice of Meetings.** In the case of determining those Members entitled to notice of a meeting, the record date shall be no more than ninety (90) nor less than ten (10) days before the date of the meeting or, if notice is waived, the business day preceding the day on which the meeting is held;
- (b) **Record Date for Voting.** In the case of determining those Members entitled to vote at a meeting, the record date shall be no more than sixty (60) days before the date of the meeting;
- (c) **Record Date for Action by Written Ballot Without Meeting.** In the case of determining Members entitled to cast written ballots, the record date shall be no more than sixty (60) days before the day on which the first written ballot is mailed or solicited; and
- (d) **Record Date for Other Lawful Action.** In the case of determining Members entitled to exercise any rights in respect to other lawful action, the record date shall be no more than sixty (60) days prior to the date of such other action.
- (e) **"Record Date" Means as of Close of Business.** A person holding a Membership as of the close of business on the record date shall be deemed the Member of record.

ARTICLE 5: BOARD OF DIRECTORS

5.1 GENERAL.

The activities and affairs of this Association shall be administered and overseen by, and the powers of the Association exercised under the direction of, a Board of Directors. The Board may delegate the management activities to any management company or managing agent, provided, however, that the activities and affairs of the Association shall be directed, overseen, and managed, and the corporate powers exercised, under the ultimate direction of the Board.

5.2 NUMBER; QUALIFICATIONS.

The affairs of this Association shall be managed and its duties and obligations performed by an elected Board consisting of five (5) members. All Members of the Board must be Members of the Association and meet all the eligibility requirements set forth herein.

5.3 NOMINATION OF DIRECTORS.

Nominations for election to the Board may be made by any of the following:

- (a) A nominating committee, consisting of a chairman who shall be a Member of the Board, and two (2) or more Members, which committee shall be appointed by the Board at least ninety (90) days prior to the Annual Meeting, provided the Board receives the committee's nomination(s) at least forty-five (45) days prior to the Annual Meeting;
- (b) A written petition signed within eleven (11) months preceding the Annual Meeting representing fifteen percent (15%) of the voting power of the Association. The petition shall identify the nominee, contain that person's written consent to serve as a Director and be delivered to the Secretary of the Association at least thirty (30) days prior to the Annual Meeting;
- (c) Any Member who is present in person or by proxy, who makes a nomination from the floor at the Annual Meeting of Members at which the Director is to be elected, provided that said nominee is present and consents to the nomination; or
- (d) The Board, which may make nominations at any time.

5.4 ELIGIBILITY.

Candidates for nomination for election to the Board of Directors shall meet the following minimum standards in order to qualify to be a Board Member:

- (a) Must be a Member in good standing as that term is defined in these Bylaws;
- (b) Own a minimum twenty-five percent (25%) interest in his/her Lot either as a fee-simple owner or, if ownership is in the form of a trust or business entity, a minimum twenty-five percent (25%) beneficial interest in the trust or business entity. The Board may establish rules, regulations and procedures from time to time to assist the Nominating Committee in verifying this eligibility requirement of beneficial interests in trusts or business entities; and
- (c) Must be the only Member of the Lot running for election to the Board of Directors and/or serving on the Board of Directors.
- (d) The Nominating Committee shall verify that all candidates meet the eligibility standards set forth in this Section. However, any candidate determined by the Nominating Committee to not meet the eligibility standards may appeal the committee's decision to the Board of Directors, but must do so in writing and no later than ten (10) days after the Committee mails or delivers its ruling to the candidate.

5.5 ELECTION.

Cumulative: At each Annual Meeting of the Association, the Members shall fill, by election, all vacant positions on the Board. However, if an annual meeting is not held or does not include an election, the election may be held at a special meeting of members called for that purpose. Voting for Directors shall be by secret written ballot. Each Member entitled to vote at any election of Directors where two or more positions are to be filled shall have the right to cumulate his or her votes by giving one candidate a number of votes equal to the number of Directors to be elected, multiplied by the number of votes to which the Member is entitled, or by distributing his or her votes on the same principle among as many candidates as he or she desires. No Member shall be entitled to cumulate votes unless (i) the candidate's name or candidates' names have been placed in nomination before the voting, and (ii) a Member has given notice at the meeting, and before the voting, of the Member's intention to cumulate the Member's votes. If any one Member has given such notice, all Members may cumulate their votes for candidates in nomination. The nominees receiving the highest number of votes up to the number of Directors to be elected shall be elected as Directors and shall take office immediately following their election. In the event that there is a tie vote between those nominees who receive the lowest number of votes necessary to be elected, the tie shall be broken by lot. Each Member shall be entitled to his/her/its respective voting rights for each Lot owned within the Project.

5.6 TERM.

Each Board Member shall serve for a two (2) year term on a staggered basis, with three (3) Directors being elected in even numbered years and two (2) Directors elected in odd numbered years. Each Director shall hold office until the election of his/her successor or until the Director's death, resignation, removal or judicial adjudication of mental incompetence, or transfer of any ownership interest in the project. Directors shall be elected at each Annual Meeting; provided, however, that if an Annual Meeting is not held or the Directors are not elected thereat, the Directors may be elected at any special meeting of the members for the purpose.

5.7 REMOVAL.

This section shall govern removal of Directors:

- (a) Any Director may be removed from office by:
 - (i) A 2/3rds vote of all Directors on the occurrence of any of the following events:
 - (ii) The Director is declared of unsound mind by a final order of Court;
 - (iii) The Director is convicted of a felony; or
 - (iv) The Director has failed to attend three (3) regular Board meetings in any 12-month period; or
 - (v) The Director has become delinquent in the payment of any assessment for a period in excess of ninety (90) days. In this regard, the Director shall first be given a minimum of fifteen (15) days' written notice to pay such delinquency, and only upon the failure of such Director to pay such delinquency shall the Board declare vacant the office of such Director.
 - (vi) The Director fails to meet the eligibility requirements set forth in these Bylaws.
- (b) One or more Director(s) may be removed prior to the expiration of their term, without cause, at an Annual or Special Meeting of the Members. Any removal without cause shall be approved by the vote of Members representing a majority of a voting power of the Membership. However, unless the entire Board is removed, an individual Director shall not be removed prior to the expiration of his/her term of office if the number of votes cast against his/her removal is sufficient to elect the Director if voted cumulatively at an election at which time the same total number of votes were cast and the entire number of Directors authorized at the time of the most recent election of the Directors were then being elected. On any vote for the removal of more than one Director, Members shall be entitled to cumulate their votes.
- (c) A Director elected solely to office by the votes of members of the Association shall be removed from office prior to the expiration of his/her term of office only by the vote of at least a simple majority of the voting power residing in the Members.

5.8 FILLING VACANCIES.

Any vacancies occurring on the Board of Directors shall be filled by:

- (a) A vote of majority of the Directors elected by the Members of the Association.
- (b) By a two-thirds vote of all Directors if the vacancy is of a Director appointed by the Directors to fill a prior vacancy.

The remaining Directors shall fill any vacancy on the Board caused by the death, removal or resignation of a Director unless the vacancy is created by the removal of a Director by the Members. A successor Director shall serve for the remaining term of the Director being replaced.

5.9 COMPENSATION.

No Director shall receive any compensation for any service he or she may render to the Association; provided, however, that a Director may be reimbursed for actual out of pocket expenses incurred by the Director in the performance of his or her duties.

5.10 CONFLICT / LIMITATIONS OF DIRECTORS.

No family member of any Board of Director shall be employed by the Association or any of the Association's contractors. No Member of the Board of Directors shall award contracts to any organization in which they have any financial interest or in which their family members have a financial interest. Members of the Board of Directors and their families shall not be eligible to be awarded service contracts with the Association for a period of one (1) year after such Member's term of office expires.

All actions of the Board of Directors on behalf of the Association which have any financial liability impact must first be approved by a vote of the entire Board. Any action done by any Member of the Board of Directors may be rejected or rescinded as an act of the Board or the Association by a majority of the Board.

5.11 POWERS AND DUTIES.

The Board shall exercise for the Association all powers and duties vested in or delegated to the Board or the Association by the Governing Documents and the *Corporations Code* governing nonprofit mutual benefit corporations. Said powers and duties shall be subject to the limitations of the Governing Documents and shall include, but not be limited to, the following:

- (a) The power to establish, fix, levy, collect and enforce the payment of Assessments and against the Owners in accordance with the procedures set forth in this Declaration.
- (b) The power to borrow money and incur indebtedness for the purposes of the Association and to cause to be executed and delivered therefore, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidences of debt and securities therefor, with the vote or the written consent of 2/3^{rds} of the voting power of the Membership.
- (c) The power to fix and establish the fiscal year for the Association, including the power to modify the fiscal year.
- (d) Authorizing the withdrawal of monies from the Association's operating account upon the signature of a single Director or authorized agent and from the reserve accounts upon the signatures of two (2) Directors;
- (e) Filling vacancies on the Board, except for a vacancy created by the removal of a Director by Members.
- (f) By majority approval of the Board, extending the time for return of ballots when an action is taken without a meeting;
- (g) Preparation of budgets and financial for the Association as prescribed in the Governing Documents.
- (h) The power to create committees pursuant to resolutions adopted by a majority of the Board; provided that if a committee will exercise any power or authority of the Board, it shall consist of two (2) or more Directors, and as many other Members as the Board may designate, to serve at the pleasure of the Board. No Directors need serve on any committee which does not exercise any power or authority of the Board (e.g., social committees).
- (i) The power to enforce and adopt reasonable rules and regulations governing the use of the Lots, the Common Area, any common facilities and Association-owned property, and the conduct at Board and Members' meetings, in accordance with the following:
 - (i) Reasonable restrictions related to use of the Common Area and all its facilities and the conduct of Owners and their families, guests, employees, tenants and invitees with respect to the Project and other Owners. Written copies of the Rules and any schedule of fines and penalties adopted by the Board shall be furnished to the Owners.
 - (ii) Setting of reasonable administrative rules, fees, deposits; and the setting of reasonable hearing procedures and monetary penalties and fines in the event of a violation of any provisions of the Governing Documents, subject to the Board's authority for disciplinary actions against members as set forth the these Bylaws.
- (j) The right to institute, defend, settle or intervene in litigation, arbitration, mediation or administrative proceedings in the name of the Association as the real party in interest and without joining with it the Owners, in matters pertaining to:
 - (i) Enforcement of the Governing Documents.
 - (ii) Damage to the Common Area.
 - (iii) Damage to the Lots that arises out of, or is integrally related to, damage to the Common Area or Lots that the Association is obligated to maintain or repair.
 - (iv) Enforcement of payment of Assessments pursuant to the provisions contained in this Declaration.
 - (v) Any other matter(s) in which the Association is a party, including, but not limited to contract disputes.
 - (vi) Any action in which all, or substantially all, of the Owners have an interest.
- (k) The right to discipline Owners for violation of any of the provisions of the Governing Documents pursuant to Article 8 herein.
- (l) The power to remove any vehicle within the Project parked in violation of this Declaration or the Rules and Regulations in accordance with the provisions of *Vehicle Code* §22758.2, any other powers granted to an association under California law, and any amendments thereto.
- (m) The right for its agents and employees to enter any Lot or upon any portion of Common Area when necessary in connection with any emergency, maintenance, landscaping or construction work for which Association is responsible or for any other purpose reasonably related to the performance by the Board of its responsibilities under this Declaration. For other than emergency entry, the Association's agents/employees shall have the right to enter any Lot or upon any portion of the Common Area to affect repairs, improvements, replacements or maintenance which the Association, after approval by 2/3^{rds} vote of the Board reasonably deems necessary. Entry shall be made only upon reasonable notice to the Owner (except in the case of an emergency). Any extraordinary costs incurred by the Association in order to gain or effectuate Lot access shall be the responsibility of the Lot Owner and may be charged against the Lot as a reimbursement assessment, enforceable pursuant to *Civil Code* §1377 et. seq.

- (n) Provide for the maintenance, management, repairs, replacement and preservation of the Common Area and improvements thereon, including the right to grant permits, licenses and easements over, under, upon and across the Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project, subject to the limitations listed herein.
- (o) Use the maintenance fund to, among other things, acquire and pay for goods and services for the Common Area, facilities and interests of or for the Association to fulfill any duty or responsibility of the Association imposed by this Declaration or as may be imposed by law, subject to the limitations set forth below, including, but not limited to:
 - (i) Water, sewer, refuse, electrical, telephone, gas, and other necessary utility service for the Common Area and, to the extent not separately metered and charged, for the Lots, provided, however, that the Association, acting through the Board of Directors, shall have the right to enter into agreements with public utilities and/or cable service providers to provide bulk services to the Lots.
 - (ii) Payment of taxes and assessments, if any, levied or assessed against the owned Common Area, or against any Lot if resulting in a lien against the Common Area and any other lien or encumbrance which affects the Common Area including, but not limited to, mechanics' liens. Such taxes, assessments, liens or encumbrances shall be paid by the Board from the Project Fund, however, shall not include any levy or assessment against (or which affects) merely the interest of one or more, but less than all, of the Lots and not the interest of all of the Owners in the Common Area. The Board shall levy an enforcement assessment against any Lot for the amount of any such tax, assessment, lien or encumbrance that applies specifically to such Lot to the extent the amount is separately determinable.
 - (iii) Insurance policies of the Association, which shall be reviewed annually to assure full insurance protection; however, nothing herein shall require the Board to provide casualty or liability insurance for the Owners or the Lots or structures thereon.
 - (iv) The services of any personnel that the Board determines are necessary or proper for the management, operation and security of the Project, of the Common Area and the Association.
 - (v) Legal and accounting services necessary or proper in the operation of the Common Area and the Association or the enforcement of the Governing Document.
- (p) Maintain such areas adjacent to the Project as the Board of Directors shall determine from time to time to be desirable in order to enhance the appearance of the Project or as may be required from time to time by the City of San Diego or other applicable governmental agency.
- (q) It shall be the duty of the Board to inspect the Common Area at least every three years for the purpose of determining the condition of the Common Area including, but not limited to, the state of adequacy of maintenance, the need for additional maintenance and/or refurbishment, replacement or repair. The Common Area to be inspected shall include but not limited to, the exterior of all buildings and structures, roofs, walkways, irrigation, landscaping, drainage and recreation facilities. Structural components of any building/structure, foundations and soils shall also be inspected if the inspection otherwise required by this Section would place a reasonable person on notice of any defect or need to maintain, repair or refurbish such item. The Board may inspect the interior of any Lot if required to do so in order to fulfill its obligations pursuant to this Section. The Board shall obtain a report of the inspection of the Common Area and maintain a copy of such report in the records of the Association.

5.12 LIMITATION ON POWERS.

Notwithstanding the powers and duties shown above, the Board shall be prohibited from taking any of the following actions, except with the vote or written assent of a majority of a quorum of the Members of the Association:

- (a) Entering into a contract with a third person under which the third person will furnish goods or services for the Common Area or the Association Property for a term longer than one (1) year with the following exceptions:
 - (i) A management contract, the terms of which have been approved by the FHA or VA; however, no agreement for the services of a person/firm to manage the Project shall exceed a term of one year and shall further provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.
 - (ii) A 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.
 - (iii) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration provided that the policy permits short rate cancellation by the insured.

- (b) Incurring aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent (5%) of the gross budgeted expenses of the Association for that fiscal year. This section shall not limit expenditures for repair, maintenance and replacement of reserve line items;
- (c) Selling during any fiscal year property of the Association having an aggregate fair market value in excess of five percent (5%) of the gross budgeted expenses of the Association for that fiscal year;
- (d) Borrowing money, incurring indebtedness and executing therefor promissory notes or other evidences of debt for the Association in excess of ten percent (10%) of the gross budgeted expenses of the Association for that fiscal year; or
- (e) Filling a vacancy on the Board created by the removal of a Director by the Members.

5.13 FINANCIAL DOCUMENTATION; PREPARATION, REPORTING AND REVIEW RESPONSIBILITIES.

With regard to the preparation, reporting and review of the Association's financial documentation, the Board shall have the following responsibilities:

- (a) Preparing a pro forma operating budget for each fiscal year and distributing a copy thereof to each Owner not less than forty-five (45) and not more than sixty (60) days prior to the beginning of the fiscal year, unless California law provides a different time line, in which case the statute shall control. The budget shall contain at least the following:
 - 1. The estimated revenue and expenses on an accrual basis;
 - 2. A statement as to whether the Board has determined or anticipates that the levy of one or more Special Assessments will be required to repair, replace or restore any major component or to provide adequate reserves therefor;
 - 3. A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement or additions to those major components that the Association is obligated to maintain or other components identified by the Board;
 - 4. A summary of the Association's insurance policies;
 - 5. A summary of the Association's reserves based upon the most recent review or study conducted pursuant to *Civil Code* §1365.5, which shall be printed in bold type and include all of the following:
 - (i) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component;
 - (ii) As of the end of the fiscal year for which the study is prepared: (1) the current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components and (2) the current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain those major components; and
 - (iii) The percentage that the amount determined for purposes of subparagraph (ii) (2), above, is of the amount determined for purposes subparagraph (ii)(1), above;

In lieu of the distribution of the pro forma operating budget, the Board may elect to distribute a summary of the statement to each Owner with a written notice that the statement is available at the business office of the Association or designated location and that copies will be provided upon written request and at the expense of the Association. The Association shall provide the copy to the Owner within five (5) working days of the receipt of the Owner's written request.

- (b) Preparing and distributing an annual report, within one-hundred twenty (120) days after the close of each fiscal year, consisting of the following:
 - 1. A balance sheet as of the end of the fiscal year;
 - 2. An operating (income and expense) statement for the fiscal year;
 - 3. A statement of changes in financial position for the fiscal year; and
 - 4. For any fiscal year in which the gross income to the Association exceeds \$75,000.00, a copy of the review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy. If this report 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 without independent audit or review from the books and records of the Association.
- (c) Preparing and distributing to the Owners, within sixty (60) days before the beginning of each fiscal year, 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 Owners;

- (d) Causing to be conducted at least once every three (3) years a reasonably competent and diligent visual inspection of the accessible areas of the major components which the Association is obligated to repair, replace, restore, or maintain as part of a study of the reserve account requirements of the Project. The Board shall review this study annually and consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review. This study shall, at a minimum, include:
1. 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;
 2. Identification of the probable remaining useful life of the components identified in (a), above, as of the date of the study;
 3. An estimate of the cost of repair, replacement, restoration or maintenance of the components identified in (a), above, during and at the end of their useful life; and
 4. An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain the components identified in (a), above, during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.
- (e) Reviewing the following on at least a quarterly basis:
1. A current reconciliation of the operating and reserve accounts of the Association;
 2. The actual reserve revenues and expenses for the current year to date compared to the budget for the current year;
 3. An income and expense statement for the operating and reserve accounts of the Association; and
 4. The most current account statements prepared by the financial institution where the Association has its operating and reserve accounts.
- (f) Members of the Association shall be notified in writing at the time that the pro forma operating budget required in *Civil Code* §1365 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 of Directors, and how and where those minutes may be obtained.

5.14 EXPENDING RESERVE FUNDS.

The Board may 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 that the Association is obligated to repair, restore, replace or maintain and for which the reserve fund was established. The signature of at least two (2) Directors shall be required for the withdrawal of monies from the Association's reserves.

The foregoing notwithstanding, the Board may reallocate monies in the reserve account for different specific line items of major components which the Association is obligated to repair, restore, replace or maintain, as long as said reallocation is based upon a written finding by the Board of Directors which explains the reason for the reallocation and includes the opinion(s) of professionals and/or experts confirming the need for the reallocation.

Additionally, notwithstanding the above, 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 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.

The Board shall exercise prudent fiscal management in delaying restoration 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 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.

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, and of the availability of an accounting of those expenses, in the next available mailing to all Members of a notice or report addressed and mailed or delivered to a Member as part of a newsletter, magazine or other article regularly sent to Members. The Association shall make an accounting of expenses related to the litigation on at least a quarterly basis. The accounting shall be made available for inspection by Members at the Association's office.

ARTICLE 6: MEETING OF DIRECTORS

6.1 REGULAR MEETINGS.

Regular meetings of the Board of Directors shall be held as determined by the Board of Directors provided however, that meetings are held at least monthly, though the Board may Resolve that meetings be held as infrequently as every six months if business to be transacted by the Board of Directors does not justify more frequent meetings. The meetings shall be at such time and place within the Project or within the County of San Diego as fixed by resolution of the Board. Any larger meeting room selected by the Board shall be as close as possible to the Project. Notice of the time and place of the meeting shall be posted at a prominent place or places within the Common Area, if possible, and shall be communicated to the Directors not less than seventy-two (72) hours prior to the meeting; provided, however, that prior to or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him/her of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

6.2 SPECIAL MEETINGS.

Special meetings of the Board shall be held when called by written notice signed by the President 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. Notice of any special meeting shall be provided to the Members in the manner provided for notice of regular meetings and/or posting in the Common Area and shall be sent to all Directors not less than seventy-two (72) hours prior to the scheduled time of the meeting; provided, however, that notice need not be given to any Director who has signed a waiver of notice or a written consent to holding of the meeting.

6.3 ORGANIZATIONAL MEETING.

Immediately after the Annual Meeting, or as soon thereafter as reasonably practicable, the Board shall meet to elect the officers of the Association and conduct any other business of the Association as the Board, in its discretion, shall determine is necessary.

6.4 QUORUM.

A majority of the number of Directors of the Board shall constitute a quorum and, if a quorum is present, the decision of majority of the Directors present shall be the act of the Board.

6.5 OPEN MEETINGS/NOTICE TO MEMBERS.

Regular and special meetings of the Board shall be open to all Members of the Association; provided, however, that Members who are not on the Board may not participate in any deliberation or discussion unless expressly authorized to do so by the vote of the majority of the quorum of the Board. The Board of Directors shall set aside a time during any meeting of the Board for Members to speak, 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 shall be established from time to time by the Board of Directors. Notice of meetings of the Board shall be posted in at least two (2) prominent places in the Common Area at least five (5) days prior to the meeting in the case of regular meetings and three (3) days in the cause of special meetings. The notice shall specify the time and place of the meeting, whether the meeting is regular or special and, in the case of a special meeting, the nature of any special business to be transacted.

6.6 ELECTRONIC PARTICIPATION IN MEETINGS.

Directors of the Board may participate in a meeting through use of conference telephone, electronic video screen communications, or other communications equipment. Participation in a meeting through the use of conference telephone, pursuant to this subdivision, constitutes presence in person at that meeting as long as all Directors participating in the meeting are able to hear one another. Participation in a meeting through use of electronic video screen communication or other communications equipment (other than conference telephone) pursuant to this paragraph constitutes presence in person at that meeting if all of the following apply:

- (a) Each Director participating in the meeting can communicate with all of the other Directors concurrently.
- (b) Each Director 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 corporation.
- (c) Association adopts and implements some means of verifying both of the following:
 - (i) A person participating in the meeting is a Director or other person entitled to participate in the Board meeting and
 - (ii) all statements, questions, actions or votes by the Board are taken or cast only by the Directors and not by persons who are not Directors and were made by that Director and not by another person not permitted to participate as a Director.

6.7 EMERGENCY MEETINGS.

An emergency meeting of the Board may be called by the President of the Association, or by any two Directors of the governing body 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 this section.

6.8 EXECUTIVE SESSION.

The Board may, with the approval of a majority of a quorum, adjourn a meeting and reconvene in executive session to meet with its legal counsel or discuss and vote upon (a) litigation in which the Association is or may become involved, (b) matters that relate to the formation of contracts with third parties, (c) personnel matters, and (d) 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. In the event the executive session does not follow an open session, the Board may conduct an executive session if the nature of any and all business considered in such executive session is announced at the next regularly scheduled Board meeting. Nothing herein contained shall be construed to obligate the Board to first call an open meeting before meeting in executive session. An executive session which does not follow an open meeting may be called and noticed in the same manner as a special meeting. Any matter related to the issues enumerated in this Paragraph discussed in executive session shall be generally noted in the Association minutes.

6.9 ADJOURNMENT.

A majority of the Directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than twenty-four (24) hours, notice of the adjournment shall be given prior to the time of the adjourned meeting to the Directors who were not present at the time of the adjournment.

6.10 ACTION WITHOUT A 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(s) may be conveyed by copy, facsimile or e-mail and shall be filed with the Minutes of the proceedings of the Board. An explanation of the action taken shall be communicated by any means the Board deems appropriate.

6.11 BOARD DELIBERATION REGARDING MEMBER DISCIPLINE.

In any matter relating to the disciplining of a Member, the Board shall meet in executive session if requested by that Member, and the Member shall be entitled to attend that portion of the executive session in which the Board discusses the discipline of that Member.

6.12 MEETING MINUTES.

The Board shall keep accurate written Minutes of its meetings and shall retain them in the permanent records of the Association. The Minutes proposed for adoption that are marked to indicate draft status or a summary of the Minutes of any Board meeting, other than executive session, shall be available to Members within thirty (30) days of the meeting. The Minutes, proposed Minutes or summary of Minutes shall be distributed to any Member upon request and upon reimbursement for the costs in making that distribution. Members shall be notified in writing at the time that the budget is distributed or at the time of any general mailing to the entire Membership of their right to have copies of the Minutes of meeting of the Board, and how and where those Minutes may be obtained.

6.13 WAIVER OF NOTICE.

The transactions of any meeting of the Board of Directors, 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 (1) a quorum is present, and (2) 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.

ARTICLE 7: OFFICERS

7.1 ENUMERATION OF OFFICERS; DUTIES.

The officers of this Association shall be a President, Vice President, Secretary, Treasurer and such other Officer(s) as the Board may from time to time create by Resolution, provided that a minimum of five (5) Directors hold office at any given time. The Board may appoint additional officers as it may, in its sole discretion, determine necessary or desirable. Any number of offices may be held by the same person except for the offices of (a) President and Treasurer and (b) President and Secretary. In addition to such other duties as may be required of each Officer by the Board, and unless otherwise delegated, the duties of each Officer shall be as follows:

7.1.1 PRESIDENT

- (a) Preside over all meetings of the Members and of the Board;
- (b) Sign as President all deeds, contracts and other written instruments that have been approved by the Board unless the Board, by duly adopted resolution, authorizes the signature of a lesser officer;
- (c) Call meetings of the Board, whenever he/she deems it necessary, in accordance with any rules and notice requirements imposed by the Board and the Governing Documents. The notice period shall be not less than seventy-two (72) hours except in the case of emergencies; and
- (d) Have, subject to the approval of the Board, general supervision, direction and control of the Association's affairs.

7.1.2 VICE PRESIDENT

- (a) Act in the place and stead of the President in the event of the absence, inability or refusal to act by the President;

7.1.3 SECRETARY

- (a) Keep a record of all meetings and proceedings of the Board and of the Members;
- (b) Keep the seal of the Association, if any, and affix it on all papers requiring the seal;
- (c) Serve all required notices of meetings of the Board and the Members;
- (d) Keep current records showing the names and addresses of all Members; and
- (e) Sign as Secretary all deeds, contracts and other written instruments that have been approved by the Board, if the instruments that have been approved by the Board and signed by the President require a second Association signature and the Board has not passed a resolution authorizing another officer to sign in the place and stead of the Secretary.

7.1.4 TREASURER

- (a) Receive and deposit all of the funds of the Association in any bank or banks selected by the Board;
- (b) Be responsible for and supervise the maintenance of books and records to account for Association funds and other Association assets;
- (c) Disburse and withdraw Association funds in the manner specified by the Board; and
- (d) Prepare and distribute the financial statements for the Association required by the Declaration.

7.2 ELECTION & TERM.

The Officers of the Association shall be Members of the Board of Directors and shall be elected annually by the Board. Officers shall hold office for one year unless he/she sooner resigns, is removed or is otherwise disqualified for service. Any vacancies shall be filled by the Board. Each officer shall hold his or her office at the pleasure of the Board.

7.3 RESIGNATION AND REMOVAL.

The Board may remove any Officer from office either with or without cause. An Officer may resign giving notice to the Board, the President or the Secretary, and such resignation shall take effect upon receipt of the notice or at any later time specified therein. Unless otherwise specified in the notice, acceptance of a resignation by the Board shall not be necessary to make it effective.

7.4 COMPENSATION.

No Officer shall receive any compensation for any service he/she may render to the Association; provided, however, that an Officer may be reimbursed for actual out of pocket expenses incurred by the officer in the performance of his /her duties.

7.5 DELEGATION.

With Board approval, an Officer may delegate his /her powers and duties to any committee, employee or agent of the Association including, but not limited to, the property manager.

ARTICLE 8: MEMBER DISCIPLINE ; HEARINGS

This section shall govern the rights and procedures of the Association in disciplining Members.

- (a) The Board shall have the right to discipline a Member and/or their family, tenants, residents, co-owners, guests and invitees for violation of any of the provisions of the Governing Documents by:
 - (i) Suspending the Member's rights and privileges, including voting rights and the rights and privileges to use the Common Area and/or facilities, appurtenant to the Member's Lot, as well as other use privileges granted to Owners in good standing; and/or
 - (ii) Imposing a monetary penalty against the Member.

The Board shall also have the right to suspend the voting rights of any Member, and the rights of any Member and any invitees deriving rights from any Member to use and enjoy the Common Area for any period during which the Member is delinquent in the payment of any assessment or monetary penalty or as otherwise provided in the Governing Documents.

- (b) The Association cannot be empowered to cause a forfeiture or abridgement of an owner's right to the full use and enjoyment of his Lot on account of the failure by the Owner to comply with the provisions of the Governing Documents except by judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of the Owner to pay assessments duly levied by the Association.
- (c) Except for the authority and rights provided to it for enforcement of nonpayment of assessments, the notice and hearing procedures shall be substantially in accordance with *Civil Code* §1363(h) and *Corporations Code* §7341, to wit:
 - (i) At least fifteen (15) days prior Notice shall be provided to the Member prior to the imposition of a monetary fine/penalty or suspension and the reasons therefor;
 - (ii) Such Notice shall provide an opportunity for the Member to be heard, orally or in writing, before the Board or such Committee as may be authorized by the Board not less than five (5) days before the effective date of the monetary fine/penalty or suspension;
 - (iii) Any Notice required under this section may be given by any method reasonably calculated to provide actual notice, but if given by mail such Notice be given by first-class or registered mail sent to the last address of the Member as shown on the Association's records;
 - (iv) The Notice shall set forth the date, time and place where the hearing shall be held and shall provide the Member the opportunity to request that such Meeting be held in Executive Session of the Board;
 - (v) The Notice shall set forth the amount of any monetary penalty/fine to be imposed and/or such other disciplinary action as the Association may be entitled;
 - (vi) If the Board imposes discipline on a Member, the Board shall provide the Member a written notification of the disciplinary action, by either personal delivery or first-class mail, within 15 days following the action.
- (d) Any action challenging a suspension of Membership, including any claim alleging defective notice, must be commenced within one year after the date of suspension
- (e) A Member who is suspended shall be liable for any charges incurred, services or benefits actually rendered, dues, assessments or fees incurred prior to the suspension or arising from contract or otherwise.
- (f) If the Association adopts or has adopted a policy imposing any monetary penalty, including any fee, on a Member for a violation of the governing documents of rules of the Association (including any monetary penalty relating to the activities of a guest or invitee of a Member), pursuant to the provisions of *Civil Code* §1363(g), as amended, the Board shall adopt and distribute to each member, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations. Notwithstanding the foregoing, the Board shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule previously adopted and distributed to the Members.

ARTICLE 9: BOOKS AND RECORDS

9.1 REQUIRED BOOKS AND RECORDS.

The Association shall maintain at its principal office:

- (a) Copies of the Governing Documents as last amended;
- (b) Adequate and correct books and records of account;
- (c) Written Minutes of the proceedings of its Members, Board and committees of the Board; and
- (d) A membership register of each Member's name, mailing address and voting rights.

9.2 INSPECTION RIGHTS.

The above books and records shall be made available for inspection as follows:

- (a) Any Member shall have the right to inspect the Governing Documents at the principal office of the Association, at any reasonable time during office hours;
- (b) Any Member shall have the right to inspect the accounting books and records described herein and to copy them at any reasonable time and for a purpose reasonably related to his or her interest as a Member. This right is subject to the power of the Board to set reasonable times for inspection, notice requirements, and fees to cover the cost of making copies of the documents requested by a Member.

For the purposes of this subsection, "accounting books and records" shall be defined to mean the:

- (i) *pro forma* operating budget;
 - (ii) audited annual report;
 - (iii) monthly balance sheet and income and expense statement; and
 - (iv) reserve study
- (c) Every Director shall have the absolute right to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association at any reasonable time. The right of inspection by a Director includes the right to make extracts and copies of documents with the exception of secret written ballots, which shall only be reviewed by Inspectors of Election, the management company and/or the Association's general counsel.

9.3 DOCUMENTS PROVIDED BY ASSOCIATION.

- (a) Within ten (10) days of the mailing or delivery of a written request therefor and receipt of the costs to prepare and reproduce said documents, Association shall be required to provide any Owner with the following documents:
 - (i) A copy of the Governing Documents;
 - (ii) A copy of the most recent financial statement;
 - (iii) A written statement from an authorized representative of the Association specifying (i) the amount of current Regular, Special and/or other assessments and fees; (ii) the amount of any assessments levied on the Owner's Lot that are unpaid on the date of the statement; and (iii) the amount of late charges, interest, and costs of collection that, as of the date of the statement, are or may be made a lien on the Owner's Lot pursuant to the Declaration;
- (b) A statement noting any change in the Association's current assessments and fees which have been approved by the Board, but which have not become due and payable as of the date disclosure is provided pursuant to this Section.
- (c) In the case of the Minutes, Minutes proposed for adoption that are marked to indicate draft status, or a summary of the Minutes, any meeting of the Board, other than an Executive Session, shall be made available to Members within 30 days of the Meeting and shall be distributed to Members only upon request and payment of any fees.

ARTICLE 10: NON-LIABILITY AND INDEMNIFICATION

10.1 LIMITATION ON LIABILITY OF ASSOCIATION'S DIRECTORS AND OFFICERS.

No Directors, committee Members or officers of the Association (collectively and individually referred to as the "Released Party") shall be responsible to any Owner, or Member of an Owner's family, any of the Owner's tenants, guests, servants, employees, licensees, invitees or any other person for:

- (a) Any error or omission in the discharge of their duties and responsibilities or for their failure to provide any service required by the Governing Documents, provided that such Released Party has, upon the basis of such information as may be possessed by the Released Party, acted in good faith, in a manner that such person believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. Without limiting the generality of the foregoing, this standard of care and limitation of liability shall extend to such matters as the establishment of the Association's annual budget, the funding of Association reserve accounts for repair, replacement and maintenance of Common Areas and enforcement of the Governing Documents.
- (b) Any loss or damage suffered by reason of theft or otherwise of any article, vehicle or other item of personal property which may be stored by such Owner or other person within any Lot or Exclusive Use Common Area or for any injury to or death of any person or loss or damage to the property of any person caused by fire, explosion, the elements or any other Owner or person within the Project or by any other cause, unless the same is attributable to his or her own willful or wanton act or gross negligence. It is the intent of this Section to provide volunteer Directors and Officers with protection from liability to the full extent permitted by California *Civil Code* §1365.7, or comparable superseding statute, and to the extent this provision is inconsistent with said section, the *Civil Code* shall prevail.

10.2 INDEMNIFICATION OF ASSOCIATION.

Each Owner shall be liable to the Association for any damage to the Common Areas and/or Association Property caused by the negligence or willful misconduct of the Owner or his or her family, guests, invitees or lessees. Each Owner shall indemnify, hold harmless, and pay any costs of defense of each other Owner from claims for personal injury or property damage occurring within any Lot owned by the indemnitor, provided that this protection shall not extend to any indemnitee whose negligence or willful misconduct caused or contributed to the injury or damage. This Section is not intended to be for the benefit of any insurer and shall not affect nor limit the duty of any insurer to pay any claim which would be payable by said insurer but for this Section.

10.3 INDEMNIFICATION BY ASSOCIATION.

To the fullest extent permitted by law, the Association shall indemnify its Directors, Officers, Committee Members, Employees, and other Agents described in *Corporations Code* §7237, including persons formerly occupying any such positions, against all expenses, judgments, fines, settlements and other amounts actually and reasonably incurred by them in connection with any "proceeding" as and including an action by or in the right of the Association, by reason of the fact that such person is or was a person described by that Section. "Expenses" and "Proceeding" as used in this Section shall have the same meaning as in *Corporations Code* §7237(2).

10.4 APPROVAL OF INDEMNITY BY ASSOCIATION.

On written request to the Board by any person seeking indemnification hereunder, the Board shall promptly determine in accordance with *Corporations Code* §7237(e), whether the applicable standard of conduct set forth in *Corporations Code* §7237(b) or §7237(c) has been met, and if it has, 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 prevents the formation of a quorum of Directors who are not parties to the proceeding, the Board shall promptly call a meeting of Members. At that meeting, the Members shall determine under *Corporations Code* §7237(e) whether the applicable standard of conduct set forth in *Corporations Code* §7237(b) or §7237(c) has been met, and if it has, the Members present at the meeting in person or by proxy shall authorize indemnification.

10.5 ADVANCEMENT OF EXPENSES.

To the fullest extent permitted by law, and except as is otherwise determined by the Board in a specific instance, expenses incurred by a Director, Officer, Employee or Agent seeking indemnification in defending any proceeding covered hereunder shall be advanced by the Association before final disposition of the proceeding, on receipt by the Association of an undertaking by or on behalf of that person that the advance will be repaid unless it is ultimately determined that the person is entitled to be indemnified by the Association for those expenses.

ARTICLE 11: AMENDMENTS

An addition or amendment to this document shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only.

These Bylaws may be amended at regular or special meetings of the Members and shall require the vote or written assent of at least fifty-one (51%) percent of the voting power of the Association. Notwithstanding the foregoing, the percentage of a quorum or of the voting power of the Association or of the Members necessary to amend a special clause or provision of these Bylaws shall not be less than the prescribed percentage of affirmative votes required for action to be taken under the clause or provision.

ARTICLE 12: MISCELLANEOUS

12.1 FISCAL YEAR.

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year.

12.2 CONFLICT.

In the case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

12.3 LENDERS / MORTGAGEE RIGHTS.

The rights of Lenders as initially contained in Article XV [NOTICE TO LENDERS] and Article XVI [ADDITIONAL RIGHTS OF LENDERS] of the original Bylaws are contained in Article 10 [Rights of Mortgagees] of the Restated Declaration.

12.4 DEFINITIONS.

Unless otherwise specified in these Bylaws, the definitions set forth in the Declaration shall also apply to these Bylaws.

CERTIFICATION

I, the undersigned, the duly elected and acting Secretary of THE MARIPOSA OF MISSION PACIFIC PROPERTY OWNERS ASSOCIATION, a California nonprofit mutual benefit corporation, do certify that these Bylaws were adopted as the Bylaws of the Association on _____, 2004, and that they do now constitute the Bylaws of the Association.

This Certificate is executed under penalty of perjury on _____, 2004, in San Diego, California.

**THE MARIPOSA OF MISSION PACIFIC
PROPERTY OWNERS ASSOCIATION**
A California Nonprofit Mutual Benefit Corporation

By: _____
Al Millstine, its Secretary
authorize