

**BY-LAWS OF**  
**ACACIA GARDENS HOMEOWNERS ASSOCIATION**  
**A CALIFORNIA NON-PROFIT CORPORATION**

**ARTICLE I**

**NAME, PURPOSE AND LOCATION**

**Section 1. Name.** The name of this corporation is ACACIA GARDENS HOMEOWNERS ASSOCIATION, a California non-profit corporation, its successors and assigns.

**Section 2. Purpose.** The purpose of these By-Laws is to supplement in certain respects the Second Restatement of Declaration of Covenants, Conditions and Restrictions of Acacia Gardens Condominiums-Hemet, California, as the same may be amended or restated from time to time, hereinafter referred to as the "Declaration", heretofore recorded for the benefit of the Condominium Project and for the benefit of all purchasers and Owners of residential Units within the Condominium Project. Each and every definition set forth in ARTICLE I of the Declaration shall have the same meaning in these Bylaws and each and every such definition is incorporated by reference herein and made a part hereof. Notwithstanding anything to the contrary set forth herein, the governance of the Association and the operation of the Project shall at all times comply with the provisions of the California Corporations Code, the California Code of Regulations, Title 10, Chapter 6, and all other applicable codes, statutes and regulations.

**Section 3. Location.** The principal office of the Association shall be maintained at the Project site or as close as practicable thereto, in the City of Hemet, County of Riverside, State of California.

**ARTICLE II**

**ASSOCIATION OF CONDOMINIUM OWNERS**

**Section 1. Annual Meetings.** The time and place of each annual meeting of the Association shall be held on the last Saturday of the first month, January, of the calendar year.

**Section 2. Special Meetings.** In addition to the authority of the Board of Directors to call special meetings of the Association, as provided in Article VI of the Declaration, the Owners of not less than thirty percent (30%) of the Units in the project may, at any time, request in writing that the Board call a special meeting of members of the Association and in such event, the calling of such meeting, at the earliest practicable time, shall be mandatory on the Board. Such written request shall state the matter(s) which the members desire to discuss at such special meeting.

**Section 3. Notice of Meeting.** A written or printed notice of a meeting of the Association, stating the type of meeting (annual or special), place, date and hour thereof shall be given by the Board not less than ten (10) nor more than ninety (90) days prior to the date set for such meeting. The notice shall be given to each member in any of the following ways: (a) by

leaving same with such member personally; or (b) by mailing it, postage prepaid, addressed to such member at their address as it appears on the Association records. If notice is given pursuant to the provisions above, failure of any member to receive notice of the meeting shall in no way invalidate the meeting or any proceedings thereat. Upon written request for notices mailed by registered mail, addressed to the Association, the holder of any duly recorded mortgage against any Unit, may promptly obtain a copy of any and all notices permitted or required to be given to entitle the holder of any mortgage requesting such notice to receive all notices sent to members from and after receipt of said request until said request is withdrawn and said mortgage is discharged of record.

**Section 4. Waiver of Notice.** The presence of all members in person or by proxy, at any meeting shall render the same a valid meeting unless any member shall at the opening of such meeting, object to the holding of same for noncompliance with the provisions of Section 3 of this Article II. Any meeting so held without objection shall, notwithstanding the fact that no notice of meeting was given or notice given was improper, be valid for all purposes and at such meeting any general business may be transacted and any action may be taken, provided that where a member has pledged his or her vote by mortgage, deed of trust or agreement of sale, only the presence of the pledge shall be counted in determining whether notice is waived with regard to business dealing with such matters on which the member's vote is so pledged.

**Section 5. Quorum.** At any meeting of the Association, members in person or by proxy entitled to cast at least fifty-one percent (51%) of the votes of the entire membership shall constitute a quorum for any action, except as otherwise provided in the Articles of Incorporation, the Declaration or these By-Laws. If however, such quorum shall not be present in person or by proxy at any such meeting, the members entitled to vote thereat shall have the power to 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 seven (7) days nor more than thirty (30) days from the time the original meeting was called, at which meeting the quorum requirement shall only be thirty percent (30%) of the entire membership. In the event a member has pledged his or her vote by mortgage, deed of trust or agreement of sale, the member's vote will be recognized in computing a quorum with regard to any business conducted concerning such matters upon which said member's vote is so pledged, unless the mortgage, deed of trust or agreement of sale provides otherwise in which event, such instrument shall control.

**Section 6. Number of Votes.** All members shall be entitled to one (1) vote for each Unit which is subject to assessment as shown on the recorded Condominium Plan.

**Section 7. Voting Rights.** All voting rights shall be subject to the restrictions and limitations provided in the Declaration, Articles of Incorporation and these By-Laws. Any person, firm, corporation, trust or other legal entity or a combination thereof, owning any condominium in the project, duly recorded in his/her name, or holding equitable title as a contract vendee, the Ownership whereof shall be determined by the records of the Association meetings. Any provision to the contrary notwithstanding, co-Owners or joint Owners shall be deemed one owner. The Authority given by a member to another person to represent such member at Association meetings, shall be in writing, signed by such member or if a Unit is jointly owned, then by all joint Owners, or if such member is a corporation, by the proper officer or officers thereof, and shall be filed with the Board of the Association and, unless limited by its

terms, such authority shall be deemed good until revoked in writing. An executor, administrator, guardian or trustee may vote in person or by proxy at any Association meeting with respect to any Unit owned or held by him or her in such capacity, whether or not the same shall have been transferred to his or her name by a duly recorded conveyance. In case such Unit shall not have been so transferred to his or her name, he or she shall satisfy the Board that he or she is the executor, administrator, guardian or trustee holding such Unit in such capacity. Whenever such Unit is owned by two or more jointly, according to the records, the vote therefore may be exercised by any one of the Owners present in the absence of protest by the other(s), provided, however, that when the vote of owner(s) has been pledged by mortgage, deed of trust or agreement of sale of any Unit or interest therein, an executed copy of which is on file with the Association, only the vote of the pledge will be recognized upon those matters on which the owner or owner's vote is pledged.

**Section 8. Adjournment.** Any meeting of the Association may be adjourned from time to time to such place and time as may be determined by majority vote of members present, whether a quorum is present or not, without notice other than announcement at the meeting. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

**Section 9. Parliamentary Procedure.** The President of the Association or another person elected at a meeting shall preside over meetings of members. All meetings of members shall be conducted in accordance with a recognized system of parliamentary procedure or any parliamentary procedures the Association may adopt.

### **ARTICLE III**

#### **BOARD OF DIRECTORS**

**Section 1. Number and Qualifications.** The affairs of the Association shall be governed by a Board of Directors. All such directors shall be Owners of Units in the project.

(a) Prior to the date that assessments commence on the Second Phase, the Board shall consist of five (5) directors;

(b) Between the date on which assessments commence on the Second Phase ("Increase Date") and the date that is seven (7) years thereafter ("Decrease Date"), the Board shall consist of six (6) directors, three (3) of which shall be owners of Units in the western half of the Project (consisting of the original 50 Units in the Project) and three (3) of which shall be Owners of Units in the Second Phase; and

(c) From and after the Decrease Date, the Board shall consist of five (5) directors, who may be Owners of Units located in any portion of the Project. Except as otherwise provided herein, in the Declaration, the Articles or the California Corporations Code, the majority of the total voting power present and voting, in person or by proxy, at a duly held meeting at which a quorum is present, shall prevail. So long as no Units in the Second Phase are transferred from Developer to a individual home buyer, the Directors controlled by the Developer may be represented by one (1) individual who shall have the right to vote on behalf of all the Directors controlled by the Developer.

**Section 2. Powers and Duties.** The Board shall have powers and duties as set forth in Article VII of the Declaration and said powers and duties shall be considered necessary for the administration of the affairs of the Association and further, the Board may do all such acts and things as are not by law or by these By-Laws nor the Declaration, directed to be exercised and done by the Owners.

**Section 3. Other Duties.** In addition to those duties of the Board required by law, it shall be the duty of the Board:

(a) to select, appoint and remove all officers, agents and employees of the Association and prescribe such powers and duties to them as may be consistent with applicable law, the Articles, the Declaration and these Bylaws;

(b) to supervise all officers, agents and employees of the Association, and to see that their duties are properly performed; and

(c) to perform all obligations of the Association as provided in the Declaration and these Bylaws.

**Section 4. Manager and Management Agent and Employees.** The Board may employ for the Association, a management agent or manager to perform such duties and services as the Board shall authorize, including but not limited to, the duties enumerated in Section 3 herein above. The duties conferred upon the management agent or manager by the Board may be, at any time revoked, modified or amplified by the majority of Owners at a duly constituted meeting. The Board may employ any other persons or agents to perform such duties and at such salaries as the Board may establish. Any manager/agent heretofore and hereinafter, dismissed for any reason may not be re-hired.

**Section 5. Election and Term of Officers.** Election to the Board shall be by secret ballot. The candidates receiving the highest number of votes shall be deemed elected. Successor directors shall be elected at the next annual meeting corresponding with the expiration of the terms. All directors shall hold office until their respective successors are elected. Except as otherwise provided in the Declaration and these Bylaws, elections to the Board shall be in accordance with the provisions of the California Corporations Code. Each member shall be entitled to one (1) vote for each open Board position, but in no event shall a member cast more than one (1) vote per candidate.

(a) At the first annual meeting after the adoption of these Bylaws, and annually thereafter until the Increase Date, the members shall elect five (5) directors and such directors shall serve for a term of two (2) years;

(b) At the first annual meeting after the Increase Date the members who are Owners of Units in the First Phase shall elect three (3) directors and such directors shall serve for a term of two (2) years. The three (3) remaining directors shall be appointed by Declarant.

(c) At the second annual meeting after the Increase Date, and annually thereafter until the Decrease Date, the members who are Owners of Units in the First Phase shall

elect three (3) directors, and the Owners of Units in the Second Phase and shall elect three (3) directors, and such directors shall serve for a term of two (2) years;

(d) At the first annual meeting after the Decrease Date and annually thereafter, the members shall elect five (5) directors. The three (3) directors receiving the highest number of votes shall serve for a term of two (2) years, and the two (2) directors receiving the lowest number of votes shall serve for a term of one (1) year. After the expiration of the initial terms, all terms shall be for (2) years, on a staggered basis.

**Section 6. Vacancies.** Vacancies on the Board caused by any reason, other than removal of a director by a vote of the Association, shall be filled by vote of a majority of the remaining directors, even though they may constitute less than a quorum and each person so elected shall be a director until the vacating director's term is up.

**Section 7. Removal of Directors.** Any or all directors of the Board may be removed from office by affirmative vote of fifty-one percent (51%) of Owners entitled to vote at any election of the Board subject to California Corporations Code Section 7222.

**Section 8. Compensation.** No compensation shall be paid to directors for their services as directors. No remuneration shall be paid to any director for services performed for the Association in any other capacity, unless a resolution authorizing such remuneration shall have been unanimously adopted by the Board before the services are undertaken. A director and a director's relative may not be an employee of the Association unless a resolution authorizing such employment shall have been unanimously adopted by the Board before the services of said employee are undertaken.

**Section 9. Organizational Meeting of New Board.** The first meeting of the newly elected Board shall be held as soon as possible after election of the Board at such place as shall be fixed by the Directors at the meeting at which they were elected, and no notice shall be necessary to the newly elected Directors in order to legally constitute such meeting, providing that a majority of the whole Board shall be present.

**Section 10. Waiver of Notice.** The transaction at 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 is present and if either before or after the meeting, each of the members of the Board sign a written notice, or consent to holding of meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the records of the Board, or made part of the minutes of the meeting.

**Section 11. Quorum.** To constitute a quorum for the transaction of business by the Board, it is necessary that at least a majority of the Board be present. Every act or decision done or made by a majority of members present at a meeting duly held at which a quorum is present at the commencement of the meeting, shall be regarded as acts of the Board, except as otherwise herein provided.

**Section 12. Date.** Regular meetings of the Board shall be held on a monthly or quarterly basis, at a date and time as the Board from time to time shall determine, provided that should said day fall on a legal holiday, then said meeting shall be held at the same time on the next day

following which is not a legal holiday or at a time agreed upon by the majority of the Board. Written notice of said regular meetings shall not be required to be given to each Board member, but notice of time and place of such meeting shall be posted in a prominent place(s) within the Common Area. The first meeting of the Board shall be held as promptly as practicable following the annual meeting of Owners, and at said first Board meeting, appointment of a manager or agent, as contemplated in Article VI of the Declaration, shall be considered by the Board and the then existing or other agent or manager shall be appointed or elected if deemed desirable.

**Section 13. Special Meetings.** Special meetings of the Board for any purpose may be called at any time by the President or by any three (3) members of the Board other than the President. Written notice of said special meeting shall be given to each Board member not less than four (4) days prior to the scheduled time of the meeting and shall be delivered to him at his address as it appears on the Association records, and further, shall be posted in a prominent place(s) within the Common Area. Such notice shall specify the date, place, hour and general nature of business to be conducted thereat. Each regular and special meetings of the Board shall be open to all Association members, provided that Association members who are not on the Board may not participate in any deliberation or discussion, unless expressly so authorized by vote of a majority of a quorum of the Board. The Board may, with approval of a majority of a quorum of its members, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

**Section 14. Management Dispute.** During the period that the Board consists of six (6) directors, in the event of a dispute by, between or among the members of the Board which constitutes a “deadlock” of the Board resulting from the inability of the members of the Board to agree on a particular matter, or in the event of a dispute arising under this Declaration or the other Governing Documents concerning the scope, performance or breach of any of the provisions of this Declaration or the other Governing Documents relating to the (a) management or maintenance of the Project by either the Owners or the Association, or (b) amount or allocation of the Common Expenses, Regular Assessments or other assessments due hereunder (collectively, a “Management Dispute”) the parties involved in such Management Dispute shall use their best efforts to settle such Management Dispute. In the event that the Management Dispute cannot be settled through such discussions within a period of ten (10) days after one party has delivered on the other party(ies) written notice with respect to the existence of a Management Dispute (“Management Dispute Notice”), except as the parties may otherwise agree, the parties shall submit the dispute to a mutually agreeable certified property management company unrelated to the property manager managing the Project, for a decision. The decision of such property management company shall be binding and final.

**Section 15. Elections.** Notwithstanding anything to the contrary contained herein, the Association shall follow the provisions of California Civil Code Sections 1357.120, 1363.03, 1363.04 and 1363.09 with regard to election procedures.



## ARTICLE IV

### OFFICERS

**Section 1. Designation.** The principal officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, all of whom shall be elected by and from the Board. The Directors may elect an Assistant Secretary and an Assistant Treasurer and such other officers as in the judgment of the Directors, may be necessary.

**Section 2. Election of Officers.** On affirmative vote of a majority of Board members, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board, or at any special meeting of the Board called for that purpose. A majority of members of the Association at a duly noticed meeting, may propose to recall any member of the Board with our without cause being shown.

**Section 3. President.** The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board. The President shall have all the general powers and duties which are usually vested in the office of president of a non-profit corporation.

**Section 4. Vice-President.** The Vice-President shall take the place of the President and perform his/her duties whenever the President shall be absent or unable to act. If neither the President, nor the Vice-President is able to act, the Board shall appoint some other Board member to do so on an interim basis. The Vice-President shall also perform such other duties as shall be imposed upon him by the Board.

**Section 5. Treasurer.** The Treasurer shall be responsible for association funds and securities, and shall be responsible for keeping full and accurate records of all receipts and disbursements in books belonging to the Association, unless a professional person has been hired to do same. He/she shall be responsible for the deposit of all monies and other valuable affects in the name and to the credit of the Association, in such depositories as may be designated by the Board. The Treasurer shall have the responsibility to prepare, or cause to be prepared, a balance sheet and operating (income) statement for the Association, a copy of which shall be mailed to each owner along with their billing for dues, each month.

An annual report consisting of the following shall be distributed to each member at the Annual Meeting; (a) a balance sheet as of the end of the fiscal year; (b) an operating (income) statement for the fiscal year; (c) a statement of changes in financial position for the fiscal year; and (d) any information required to be reported under Section 8322 of the Corporations Code. If the annual report is not prepared by an independent accountant, it shall be accompanied by the certificate of the President or the Secretary of the Association that the statements were prepared without audit from the books and records of the Association. When the gross income to the Association for any fiscal year is in excess of Seventy-Five Thousand Dollars (\$75,000.00), then the annual report required by this Section 6 shall be prepared by an independent accountant, whose selection shall be made by the Board.

**Section 6. Secretary.** The Secretary shall attend and keep minutes of all Board and Association meetings, and shall give all notices, as provided for herein, and shall have other

powers and duties as may be incidental to the office of secretary given by these By-Laws or assigned from time-to-time by the Board. If the Secretary shall not be present at any meeting, the presiding officer shall appoint a secretary pro-tem, who shall keep the minutes of such meeting and record same in the books provided for the purpose.

**Section 7. Auditor.** The Association may, at any meeting, appoint some person or firm or corporation engaged in the business of accounting, to act as accountant for the Association and to perform such audits and fiscal duties as may be required by the Association.

**Section 8. Execution of Instruments.** All checks, drafts, notes, bonds, acceptances, contracts and all other instruments, except conveyance, shall be signed by such persons as shall be provided by general resolution applicable thereto. Such instruments shall be signed by two (2) of the following: the President, Vice-President, Treasurer, Secretary, Assistant Secretary or Assistant Treasurer. Conveyances shall be signed by the President and Secretary.

## **ARTICLE V**

### **NON-LIABILITY OF OFFICERS AND DIRECTORS**

**Section 1. Exculpation.** Every officer, director, member of committees appointed by the Board, and member of the Association, shall be indemnified by the Association against all reasonable costs, expenses and liabilities (including attorneys' fees) actually and necessarily incurred or imposed on him or her in connection with any claim, action, suit, proceeding, investigation or inquiry of whatever nature in which he or she may be involved as a party or otherwise by reason of his or her having been an officer or member of the Association, whether or not he or she continues to be such an officer, director or member of the Association at the time of the incurring or imposition of such costs, expenses, or liabilities, except in relation to matters as to which he or she shall be finally adjudged in such action, suit, proceeding, investigation or inquiry, to be liable for willful, wanton or gross misconduct toward the Association in the performance of his or her duties or, in the absence of such final adjudication, any determination of such liability by the opinion of legal counsel selected by the association. The foregoing right of indemnification shall be in addition to and not in limitation of all rights to which such persons may be entitled as a matter of law and shall inure to the benefit of the legal representatives of such persons.

## **ARTICLE VI**

### **ASSOCIATION BOOKS AND RECORDS**

**Section 1. Books and Records.** All "association records" and "enhanced association records", as defined in California Civil Code Section 1365.2, and Operating Rules shall be made available for inspection and copying by any Association member or by its duly appointed representative, or any Mortgagee, pursuant to the procedures set forth in California Civil Code Section 1365.2. Every director shall have the absolute right, at any reasonable time, to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director shall include the right to make extracts and copies of documents. or at such other place within the Project as the Board prescribes. Members shall have such additional access and inspection rights with respect to



records of the Association as is provided in Article 12 (commencing with Section 8330) of Chapter XIII of Part III of Division II of Title I of the California Corporations Code, or any successor statutes or laws. At the time the pro forma operating statement is delivered under **Section 2.1** of these Bylaws or at the time of any mailing, Members shall be notified in writing of their right (a) to have copies of Minutes, (b) how and where to obtain such copies, and (c) the cost of obtaining such copies.

**Section 2. Budget, Financial and Insurance Statements.** The following financial information shall be regularly prepared by the Board of the Association:

2.1 **Budgets.** A pro-forma operating statement (budget) for each fiscal year consisting of at least the following information shall be distributed to all members of the Association not less than thirty (30) days and not more than ninety (90) days prior to the beginning of the fiscal year, together with a copy of Section 1354 of the California Civil Code relating to dispute resolution procedures:

(a) 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 **Article VI, Section 3** of these Bylaws, based only on assets held in cash or cash equivalents, which shall be printed in bold type and include 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:

(a) The current estimate of the amount of cash reserves necessary to repair, replace, restore or maintain the major components; and

(b) The current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain the major components;

(iii) The percentage that the current amount of accumulated cash reserves determined for purposes of **Article VI Section 2.1(b)(ii)(b)** is of the current estimate of the amount of accumulated cash reserves determined for purposes of **Article VI Section 2.1(b)(ii)(b)**;

(c) A statement as to both of the following:

(i) 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. If so, the statement shall also set out the estimated amount, commencement date, and duration of the assessment.

(ii) The mechanism or mechanisms by which the board of directors will fund reserves to repair or replace major components, including assessments, borrowing, use of other assets, deferral of selected replacement or repairs, or alternative mechanisms.

(d) A general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Common Area and any other areas or Improvements within the Project for which the Association is responsible. The report shall include, but need not be limited to, reserve calculations made using the formula described in Section 1365.2.5 of the Civil Code and may not assume a rate of return on cash reserves in excess of two percent (2%) above the rediscount rate published by the Federal Reserve Bank of San Francisco at the time the calculation was made.

In lieu of the distribution of the pro-forma operating statement described above to all members, the Board may elect to distribute a summary of such statement to the members with a notice that the actual statement is available at the business office of the Association or another suitable location within the Project and that copies will be provided upon request of the Board, at the Association's expense. If any member requests a copy of the pro-forma operating statement required to be distributed as provided above, the Association shall provide it to the member by first-class United States mail at the Association's expense within five (5) days following a request therefor by the member. The written notice that is distributed to each member shall be in at least 10-point bold type on the front page of the summary of the pro-forma operating statement.

2.2 Review of Accounts. The Board shall do the following not less frequently than quarterly:

(a) Cause a current reconciliation of the Association's Maintenance and Operation Account to be made and review the same;

(b) Cause a current reconciliation of the Association's Reserve Account to be made and review the same;

(c) Review the current year's actual reserve revenues and expenses compared to the current year's budget;

(d) Review the most current account statements prepared by the financial institution where the Association has its Maintenance and Operation Account and Reserve Account; and

(e) Review an income and expense statement for the Association's Maintenance and Operation Account and Reserve Account.

2.3 Annual Report. An annual report shall be distributed to the members of the Association within one hundred and twenty (120) days after the close of the fiscal year consisting of the following: (a) a balance sheet as of the end of the fiscal year; (b) an operating (income) statement for the fiscal year; (c) a statement of changes in financial position for the

fiscal year; (d) any information required to be reported under Section 8322 of the California Corporations Code. For any fiscal year in which the gross income to the Association exceeds Seventy-Five Thousand Dollars (\$75,000.00), a copy of the review of the annual report shall be prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy. If the 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 from the books and records of the Association without independent audit or review; and (e) a notice of any requirements for Association approval of physical changes and other improvements to their Condominium. The notice shall describe the types of changes that require approval and shall include a copy of the procedure used to review and approve or disapprove a proposed change, pursuant to Civil Code Section 1378 and any amendments or changes thereto.

2.4 Association Policies. A statement setting forth the Association's policies and practices in enforcing the lien rights and other legal remedies for the default in the payment of Assessments against members shall be distributed to the members of the Association not later than sixty (60) days prior to the beginning of each fiscal year.

2.5 Schedule of Monetary Penalties. If the Association adopts or has adopted a policy imposing any monetary penalty, including any fee, on any member for a violation of the governing documents or rules of the Association, including any monetary penalty relating to the activities of a guest or invitee of a member, 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, which shall be in accordance with authorization for the discipline of members contained in the Governing Documents. The Board shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was adopted and distributed to the members as provided herein.

2.6 Copies to Mortgagees. Copies of each such balance sheet, operating statement and pro forma operating statement for the Association shall be mailed to any Mortgagee who has requested in writing that such copies be sent to it at such Mortgagee's expense.

2.7 Insurance Summary. Not less than thirty (30) days nor more than ninety (90) days prior to the beginning of the Association's fiscal year, the Board shall provide a statement setting forth the information regarding the Association's insurance policies as required by California Civil Code Section 1365, and any successor statutes or laws, including the following:

(a) A summary of the property, general liability, earthquake and flood insurance policies to be carried by the Association pursuant to the Declaration that states all of the following:

- (i) The name of the insurer;
- (ii) The type of insurance;
- (iii) The policy limits of the insurance; and

(iv) The insurance deductibles.

(b) The Board shall, as soon as reasonably practical, notify its members by first-class mail if any of the policies have lapsed, been canceled and are not immediately renewed, restored or replaced, or if there is a significant change, such as a reduction in coverage in limits or an increase in the deductible, for any of the Association's insurance policies. If the Association receives any notice of non-renewal of a policy described above, and there will be lapse in coverage, the Association shall immediately notify its members if replacement coverage will not be in effect by the date the existing coverage will lapse.

(c) To the extent that the information to be disclosed pursuant to **Article VI Section 2.6(a)** is specified in the declaration page of the applicable insurance policy, the Board may meet the requirements of those provisions by making copies of that page and distributing it to the members.

(d) The summary of the Association's insurance policies distributed pursuant to **Article VI Section 2.6(a)** shall contain the statement required under California Civil Code Section 1365(e)(4).

### **Section 3. Reserves.**

**3.1 Availability of Reserve Fund Information.** In accordance with California Civil Code Section 1365, the Association shall prepare and provide to Members a document entitled "Assessment and Reserve Funding Disclosure Summary" ("Reserve Summary") with a notice that the actual Reserve Summary is available at the business office of the Association or another suitable location within the Project, or by another method permitted under California Civil Code Section 1365.2.

**3.2 Transfer of Reserve Funds.** As provided in Section 1365.5 of the California Civil Code and any successor statutes or laws, 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 for which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established including any separate reserves maintained for Cost Centers. However, the Board may authorize a temporary transfer of monies from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements or other expenses, if the Board has provided notice of the intent to consider the transfer in a notice of meeting, which shall be provided as specified in Article II, Section 3. the notice shall include the reasons the transfer is needed, some of the options for repayment, and whether a special assessment may be considered. If the board authorizes the transfer, the board shall issue a written finding describing the reasons why a transfer from reserves to operating funds is necessary and how and when the money will be repaid to the reserve fund. The Association must notify all members of the decision in the next mailing to all members and of the availability of an accounting of these expenses. 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, after giving the same notice required for considering a transfer, and, upon making a finding supported by documentation that a temporary delay would be in the best interest of the Project, temporarily delay the restoration of these funds until the time the Board reasonably determines to be necessary. The

Board shall exercise prudent fiscal management in maintaining the integrity of the reserve account, and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limits required by this Section. Such Special Assessment is not subject to the limitation imposed by California Civil Code Section 1366 and any successor statutes or laws or as provided in the Declaration. The Board may, at its discretion, extend the date the payment of the Special Assessment is due; provided that any such extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of any unpaid Special Assessment. In addition to the foregoing, when a decision is made to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation involving the repair, restoration, replacement or maintenance of major components for which the Association has the obligation to repair, restore, replace or maintain and for which the reserve fund was established, the Association shall notify the members of that decision and the next available mailing to all members pursuant to California Corporations Code Section 5016, and of the availability of an accounting of those expenses. The Association shall make an accounting of expenses related to such litigation on at least a quarterly basis, which shall be made available for inspection by members at the Association's office.

**3.3 Reserve Study.** At least once every three (3) years, the Board shall cause a study of the reserve account requirements for the Project to be conducted if the current replacement value of the major components which the Association is obligated to repair, replace, restore, or maintain under the Declaration is equal to or greater than one-half (1/2) of the gross budget of the Association for any fiscal year. The Board shall review this study, or cause it to be reviewed, annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review. Separate studies shall be completed for any Cost Centers. At a minimum, the study required by this Section shall include:

(a) The 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;

(b) Identification of the probable remaining useful life of the components identified in **Article VI Section 3.2(a)** as of the date of the study;

(c) An estimate of the cost of repair, replacement, restoration, or maintenance of each major component identified in **Article VI Section 3.2(a)** during and at the end of its useful life; and

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

As used in this **Article VI Section 3**, "reserve accounts" means monies that the Board has identified for use to defray the future repair or replacement of, or additions to, those major components which the Association is obligated to maintain. In addition, as used in this Section, "reserve account requirements" means the estimated funds which the Board has determined or required to be available at a specified point in time to repair, replace, or restore those major components which the Association is obligated to maintain under the Declaration.

**3.4 Visual Inspections.** At least once every three (3) years, the Board shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components with respect to which the Association is required to repair, replace, restore, or maintain as part of a study of the reserve account requirements of the Project if the current replacement value of the major components identified in the reserve study described in **Article VI Section 3.2** above is equal to or greater than one-half (1/2) of the Association's gross budget exclusive of the reserve account for such three (3) year period.

**Section 4. Managing Agent's Handling of Association Fund.** The Managing Agent, as set forth in the Articles of Incorporation for the Project shall handle any Association funds in compliance with Section 1363.2 of the California Civil Code as it may be amended or revised from time to time. In addition to the foregoing, all Association funds relating to any Cost Center or any Cost Center Budget shall not be commingled with other Association funds. At no time shall any Association funds relating to any Cost Center be used for general Association purposes.

**Section 5. Changes in Common Interest Development Act.** The provisions set forth above in this **Article VI** are intended to comply with the provisions of the Common Interest Development Act set forth at California Civil Code Section 1350, et seq. ("CID Act") and any successor statutes or laws. Upon any changes to the CID Act relating to the Association's account, reporting requirements hereunder or any other changes affecting the terms and provisions of these Bylaws, the Board shall comply with the provisions of the CID Act and the Board shall have the right to attach to these Bylaws any changes required as a result of the changes to the CID Act without any vote of the members.

## **ARTICLE VII**

### **FISCAL YEAR**

The fiscal year of the Association shall be such as may from time to time be established by the Board.

## **ARTICLE VIII**

### **SUSPENSION OF MEMBERSHIP**

During any period in which a member shall be in default of any payment of any annual or special assessments levied by the Association, the voting rights and the right to use of the common recreational facilities by such member and /or his tenant(s) may be suspended by the Board until such assessment has been paid provided that the procedure for notice and hearing set forth in California Civil Code Section 1363 have been followed. Such rights of a member and/or his tenant(s) may also be suspended, after notice and an opportunity to be heard before the Board has been given in accordance with California Civil Code Section 1363, for a period not to exceed thirty (30) days for any single infraction of the rules and regulations as set forth in the Declaration, and as established by the Board governing the use of the Common Area. However, there can be no purported power in the Association to cause a forfeiture or abridgement of an owner's rights to the full use and enjoyment of his individually owned Unit because of failure by the owner to comply with provisions of the Declaration, these By-Laws or rules and regulations established by the Board for operation of the Common Area and facilities, except where the loss



or forfeiture is the result of the judgment of a court or a decision arising out of arbitration, or as a result of foreclosure sale under a power of sale for failure of the owner to pay assessments levied by the Association.

## **ARTICLE IX**

### **AMENDMENT**

These By-Laws and any provisions hereof, may be amended or repealed by the vote or written assent of fifty-one percent (51%) of the voting members, subject only to the qualifications set forth in the Declaration, or elsewhere herein with respect to particular provisions containing prescribed percentages of voting power required for action to be taken provided that these By-Laws or any amendment hereto changing the authorized number of Directors, shall be made only pursuant to Section 7220 of the California Corporations Code. These By-Laws, the Declaration, and the Articles of Incorporation may each be amended by the vote or written consent of fifty-one percent (51%) of the prescribed percentage of affirmative votes required for action to be taken under a particular clause.

## **ARTICLE X**

### **MISCELLANEOUS PROVISIONS**

**Section 1. Successors.** Each owner/successive owner of each Unit shall be furnished with a copy of these By-Laws.

**Section 2. Conflicts.** If there are any conflicts or inconsistencies between the provisions of these By-Laws or Articles, and provisions of the Declaration, the Declaration shall govern and apply; (these By-Laws supercede the Declaration only if the Declaration is over twenty (20) years old and has not been up-dated during the last four years); and in the event of any conflict between the provisions of these By-Laws and the Articles, the provisions of these By-Laws shall govern and apply.