

Bylaws adopted
4/25/2002

FIRST AMENDED BY-LAWS

OF

EMERY BAY VILLAGE

HOMEOWNERS' ASSOCIATION

TABLE OF CONTENTS

ARTICLE 1:	THE ASSOCIATION	1
ARTICLE 2:	DEFINITIONS	1
ARTICLE 3:	MEETINGS OF MEMBERS	1
3.1	Annual Meetings	1
3.2	Special Meetings	2
3.3	Notice of Meetings	2
3.4	Quorum	3
3.5	Proxies	3
3.6	Parliamentary Procedure	3
3.7	Voting	3
3.8	Action Without Meeting	5
ARTICLE 4:	BOARD OF DIRECTORS	5
4.1	Governing Body	5
4.2	Numbers	5
4.3	Qualifications	5
4.4	Term of Office	5
4.5	Nomination	5
4.6	Election	6
4.7	Resignation	6
4.8	Removals	6
4.9	Vacancies	6
4.10	Regular Meetings	7
4.11	Special Meetings	7
4.12	Notice	7
4.13	Quorum	8
4.14	Executive Session	8
4.15	Participation in Meetings by Conference Telephone	8
4.16	Waiver of Notice	8
4.17	Adjournment; Notice	9
4.18	Action Without a Meeting	9
4.19	Notice to and Attendance by Members	9
4.20	Emergency Meetings	9
ARTICLE 5:	POWERS AND DUTIES OF THE BOARD	9
5.1	Powers	9
5.2	Limitation of Powers	11
5.3	Duties	12
ARTICLE 6:	OFFICERS AND THEIR DUTIES	12
6.1	Enumeration of Officers	12
6.2	Election of Officers	12
6.3	Term	13
6.4	Special Appointments	13
6.5	Resignation and Removal	13
6.6	Vacancies	13
6.7	Multiple Offices	13
6.8	Duties	13
6.9	Compensation	14
6.10	Restrictions on Powers	14

ARTICLE 7:	COMMITTEES	14
ARTICLE 8:	INDEMNIFICATION OF OFFICERS, DIRECTORS AND AGENTS .	15
8.1	Rights of Indemnity	15
8.2	Approval of Indemnity	15
8.3	Advancement of Expenses	15
ARTICLE 9:	BUDGET AND FINANCIAL INFORMATION; NOTICE REGARDING MINUTES, ASSESSMENT INCREASES, MONETARY PENALTIES AND ALTERNATIVE DISPUTE RESOLUTION	16
9.1	Operating Account	16
9.2	Reserve Account	16
9.3	Other Accounts	16
9.4	Budget and Financial Statements	16
9.5	Copies of Minutes	19
9.6	Notice of Assessment Increase	19
9.7	Notice of Monetary Penalties	20
9.8	Notice of Alternative Dispute Resolution	20
9.9	Accounting of Reserve Fund Expenditures for Litigation	20
9.10	Notice Regarding Transfer or Use of Reserve Funds for Litigation .	20
9.11	Notice of Insurance Coverage	20
ARTICLE 10:	BOOKS AND RECORDS	21
10.1	Members' Right to Inspect	21
10.2	Directors' Right to Inspect	21
ARTICLE 11:	AMENDMENTS	21
11.1	Amendments	21
11.2	Records of Amendments	21
ARTICLE 12:	GENERAL PROVISIONS	22
12.1	Conflicting Provisions	22
12.2	Fiscal Year	22
12.3	Proof of Membership	22
12.4	Reserves	22
12.5	Severability	22
12.6	Filing of Tax Exempt Status	22
12.7	Consolidations and Mergers	22
12.8	Dissolution of Incorporated Association	22

FIRST AMENDED BY-LAWS
OF
EMERY BAY VILLAGE HOMEOWNERS' ASSOCIATION

ARTICLE 1: THE ASSOCIATION

The name of this non-profit Mutual Benefit Corporation is EMERY BAY VILLAGE HOMEOWNERS' ASSOCIATION (hereinafter referred to as the "Association"). The principal office of the Association shall be located in Emeryville, Alameda County, California.

The Association has the general power to do any and all things that a nonprofit mutual benefit corporation organized under the laws of the State of California may lawfully do for the benefit of its Members, specifically including any and all lawful actions which may be authorized, required or permitted to be done under and by virtue of the Project Documents or which may be necessary and proper for or incidental to the exercise of any of the express powers of the Association or for the peace, health, comfort, safety or general welfare of the Members. The Association shall have all of the powers and duties set forth in the Project Documents subject to the limitations stated below.

ARTICLE 2: DEFINITIONS

Terms used herein and not elsewhere defined shall have the meaning set forth in Article 1 of the First Amended and Restated Declaration of Covenants, Conditions and Restrictions Regarding a Plan of Condominium Ownership, the "Declaration", recorded in the office of the Recorder of the County of Alameda, State of California, and any amendments or supplements recorded or to be recorded pursuant thereto, applicable to the condominium project commonly known and referred to as Emery Bay Village Homeowners Association.

ARTICLE 3: MEETINGS OF MEMBERS

3.1 Annual Meetings

The Annual Meeting of the Members shall be held on the second Tuesday of March. If the day for the Annual Meeting of the Members is a legal holiday, the meeting

shall be held at the same hour on the first day following which is not a legal holiday or a Saturday or a Sunday. The meeting shall be held at the principal office of the Association, the Community Center or such other suitable place convenient to the Owners as may be designated by the Board of Directors.

3.2 Special Meetings

Special Meetings of the Members may be called at any time by the President or by the Board. A Special Meeting of the Members of the Association shall be promptly called by the President, or if the President refuses, by any Member of the Board upon:

- a. The vote for such a Special Meeting by the majority of a quorum of the Board; or
- b. Receipt by the Board of a written request for such a Special Meeting signed by Members representing not less than five percent (5%) of the voting power of the Association. The request for Special Meeting shall specify the general nature of the business to be transacted, and shall be delivered personally or sent by first-class, certified or registered mail or by telegraphic or other facsimile transmission to the President, any Vice President, or the Secretary of the Association. The officer receiving the request shall cause notice to be promptly given to the Members entitled to vote, in accordance with the provisions of Section 4.3 below, that a meeting will be held, and the date, time and purpose of such meeting, which date shall not be less than ten (10) nor more than ninety (90) days following receipt of the request. If notice of the meeting is not given within twenty (20) days after receipt of the request, the Members requesting the meeting may give the notice.

3.3 Notice of Meetings

Written notice of Members' meetings, Annual or Special, shall be given either by or at the direction of the Secretary or person authorized to call the meeting, and shall be transmitted to each Member entitled to vote thereat by mail not less than ten (10) days nor more than ninety (90) days prior to the date of such meeting. The notice shall set forth the place, date and hour of the meeting and specify the matters the Board intends to present for action by the Members, but except as otherwise provided by law, any proper matter may be presented for action at the meeting. Each Member shall, together with the notice of the Annual Meeting (or Special Meeting if action is to be taken) be provided with the form of proxy by which the Member may designate the President of the Association or any other person of the Member's choice to vote on behalf of the Member on matters which may come before the membership meeting. Notice and the form of proxy shall be addressed to Members at their addresses last appearing on the books of the Association, or supplied by Members to the Association for the purpose of notice. Notice may be delivered either personally or by mail. Mailed

notices shall be deemed delivered forty-eight (48) hours after they are mailed by first class mail, postage pre-paid.

3.4 Quorum

The presence at any meeting, in person, by absentee ballot, or by proxy, of at least fifty-one percent (51%) of the total voting power of the Association shall constitute a Quorum. If any meeting cannot be held because a Quorum is not present, Members representing a majority of the votes present, either in person or by proxy, may adjourn the meeting without notice other than announcement at the meeting of the time and place of the adjourned meeting, to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At any such adjourned meeting, the Quorum requirement shall be at least twenty-five percent (25%) of the total voting power of the Association. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting, or if a new date is fixed for the adjourned meeting after the adjournment of the original meeting, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed in Section 3.3 herein.

3.5 Proxies

At any meeting of Members, each Member may vote in person or by proxy. All proxies shall be in writing, dated, signed by the Members and filed with the Secretary of the Association. No proxy shall be valid for more than eleven (11) months from the date of its execution unless otherwise specifically provided for in the proxy but in no event shall it be valid more than two (2) years from the date of its execution. Any proxy issued hereunder shall be revocable by the Member executing such proxy at any time prior to the vote pursuant thereto, (1) by delivery to the Secretary of a written notice of revocation; or (2) as to any meeting, by attendance at such meeting, and voting in person by the Member executing the proxy. A proxy shall be deemed revoked when the secretary receives actual notice of the death or judicially declared incompetence of the issuing Member, or upon termination of such Member's status as an Owner as provided in Article 3.7.a.

3.6 Parliamentary Procedure

All questions of parliamentary procedure shall be decided in accordance with Robert's Rules of Order.

3.7 Voting

a. Membership. The Owner of a Unit shall automatically, upon becoming the Owner of the same, be a Member of the Association, and shall remain a Member thereof until such time as his or her Ownership ceases for any reason. Membership shall be appurtenant to and may not be separated from Ownership of the

Unit. Membership shall be held in accordance with the Articles and By-Laws of the Association.

b. **Voting Rights.** Members shall be entitled to cast one vote for each Unit owned, provided that when more than one person owns an interest in a Unit, the vote for such Unit shall be cast as a whole either (1) as a majority of the co-Owners of such Unit agree (in the absence of which agreement no vote shall be cast for such Unit on the particular matter upon which they cannot agree); or (2) by one of the Owners of such Unit designated by the Record Owners of the Unit by written notice to the Board as the Voting Member for such Unit. Such designation shall be revocable at any time by actual notice to the Board given by any of the Unit Owners of record or by the death or judicially declared incompetency of any voting member. The power to designate a Voting Member or to revoke such designation may be exercised by a Unit Owner's conservator, by the guardian of such Owner's estate, by the parent(s) or legal guardian(s) of such Owner in the case of an Owner who is a minor or, during the administration of an Owner's estate, by the executor or administrator of a deceased record Owner where such deceased Owner's interest in the Unit is subject to estate administration.

c. **Eligibility to Vote.** 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 not be delinquent in the payment of any assessment levied against the Member's Unit, or any monthly assessment, and not be subject to any suspension of voting privileges as a result of any disciplinary proceeding conducted in accordance with Article 8 of the Declaration. A Member's good standing shall be determined as of the record date, which date shall be ascertained as follows:

(1) The record date for determining those Members entitled to vote at a meeting of Members shall be the day of the meeting, or in the case of an adjourned meeting, the day of the adjourned meeting.

(2) The record date for determining those Members entitled to vote by written ballot on proposed Association actions without a meeting when no prior action by the Board has been taken, shall be the day on which the first written ballot is mailed or solicited. When prior action of the Board has been taken, it shall be the day on which the Board adopts the resolution relating to that action.

d. **Required Vote of Members.** Except as provided elsewhere in these By-Laws or in the Declaration, all matters to be decided by the Members shall be determined by the vote of Members representing fifty-one percent (51%) of the voting power of the Association present, in person, by absentee ballot, or by proxy, at a meeting at which a quorum is present.

e. Secret Ballots. Voting shall not be done by secret ballot except for elections for directors.

3.8 Action Without Meeting

Any action, other than the election of Directors, which may be taken at a meeting of the Members may be taken without a meeting if done by written ballot in compliance with the procedures specified in Section 7513 of the California Corporations Code.

ARTICLE 4: BOARD OF DIRECTORS

4.1 Governing Body

The affairs of the Association shall be managed by the Board of Directors.

4.2 Numbers

The Board shall consist of five (5) Directors, who shall serve in that capacity without compensation, provided, however, any Director may be reimbursed for actual out-of-pocket expenses incurred by such Director in the performance of his duties as a Director. All Directors must be Owners of a Condominium in the Project.

4.3 Qualifications

Each Director must be an Owner who is not delinquent in the payment of any assessment levied against the Owner's Unit or any monthly assessment. If any Director ceases to be an Owner, membership on the Board shall terminate immediately. In the event the Owner is a corporation or trust, the president of the corporation or the trustee of the trust may designate the person who will be eligible to serve as Director.

4.4 Term of Office

At the Annual Meeting of Members in 2002 and in each even numbered year thereafter, two (2) Directors will be elected for a term of two (2) years. Starting at the Annual Meeting in 2003 and in each odd numbered year thereafter, three (3) Directors will be elected for a term of two (2) years. Each Director shall serve until the election and qualification of his successor.

4.5 Nomination

Nomination for election to the Board shall be made by a Nominating Committee consisting of a Chairman, who shall be a Director, and two (2) or more Members. Each Member of the Nominating Committee shall be appointed by the Board to serve for a period of one year, and vacancies thereon shall be filled by the Board. Not less than sixty (60) days in advance of mailing the notice of Annual Meeting required by Section 3.3 above, the Nominating Committee shall notify all Members in writing that the Members may nominate candidates to the Board. Members shall have fifteen (15) days from the mailing of such notice to respond in writing to the Nominating Committee. If

there are more nominees put forward by the Membership at large than seats to be filled on the Board, those nominees shall be all of the nominees. If fewer than the number of seats available are put forward by the membership at large, then the Nominating Committee shall select that number of nominees equal to the difference between the total nominees put forward by the membership and the number of Director positions available. Nominations may also be made from the floor.

4.6 Election

Election to the Board shall be by secret written ballot. The persons receiving the largest number of votes shall be deemed elected.

4.7 Resignation

A Director may resign at any time, effective upon giving written notice to the President or to the Secretary or to the Board, unless the notice specifies a later time for the resignation of a Director to be effective. If the resignation of a Director is effective at a future time, the Board may elect a successor to take office when the resignation becomes effective.

4.8 Removals

a. Removal By Membership. Except as provided in Section 4.8(b) below, a Director may be removed from office prior to expiration of his or her term only by the affirmative vote of a majority of the voting power of the Members represented and voting at a duly held meeting at which a quorum is present or by written ballot conducted in accordance with these By-Laws.

b. Removal By Board. The Board shall have the power and authority to remove a Director and declare his or her office vacant if he or she (1) has been declared of unsound mind by a final order of court; (2) has been convicted of a felony; (3) has been found by a final order or judgment of any court to have breached any duty under Corporations Code Sections 7233-7236 (relating to the standards of conduct of directors); or (4) fails to attend three (3) duly noticed meetings of the Board in any calendar year.

4.9 Vacancies

A vacancy on the Board shall be deemed to exist in any of the following events:

- a. Death, resignation or removal of a Director;
- b. The Board, by resolution, declares vacant the office of a Director who has been judicially declared insane or incompetent or who has been convicted of a felony, or who has been found to have breached any duty as provided in Section 4.8.b;

c. The Board, by resolution, declares vacant the office of a Director who was absent from three (3) duly noticed meetings of the Board, including organizational meetings, in any calendar year;

e. A Director has ceased to be an Owner;

f. The authorized number of Directors is increased; or

g. The Members fail, in connection with the Annual Meeting, to elect the full number of Directors to be voted for.

No reduction of the authorized number of Directors shall have the effect of removing any Director before that Director's term of office expires.

Vacancies on the Board may be filled by a majority of the remaining Directors, though less than a quorum. The Members at any time may elect, by the vote or written consent of fifty-one percent (51%) of the voting power of the Association, a Director or Directors to fill any vacancy or vacancies which the Directors are unable to fill.

4.10 Regular Meetings

Regular Annual Meetings of the Board shall be held on the same date and at the same place as, and immediately following the Annual Meeting of the Members for the purpose of organization, election of officers and transaction of other business. Other regular meetings of the Board shall be held at least quarterly at such time and at such place within the project as may be fixed from time to time by resolution of the Board. If the time, date and place of a regular Board Meeting is not fixed by Board Resolution, notice must be given to Directors as provided in section 4.12.

4.11 Special Meetings

Special Meetings of the Board shall be held when called by the President, or by any two (2) Directors upon notice as provided in section 4.12. No matters other than those specified in the notice may be discussed at such Special Meetings.

4.12 Notice

Notice of any regular meeting of the Board shall be given to each Director not less than four (4) nor more than fifteen (15) days prior to the date fixed for such meeting. Notice shall be personally delivered or sent by mail or telegram to each Director at his or her address as shown in the records of the Association; provided, however, that notice of a meeting need not be given to any Director who signs a waiver of notice or a written consent to the holding of such meeting. The notice shall specify the time and place of the meeting. Notice of any Special Meeting shall be given in the same manner as notice for a regular meeting, except that notice shall be given to each Director not less than four (4) days prior to the date fixed for the meeting, unless the meeting is called because of an "emergency" as defined in Civil Code Section 1363.05 or comparable superceding statute. The notice shall specify the purpose of the

meeting. If the notice is mailed, it shall be deemed to be delivered forty-eight hours after deposit in the United States mail with first class postage fully prepaid. If notice is given by telegram, notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. The attendance of a Director at the meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of business because the meeting is not lawfully called or convened.

4.13 Quorum

A majority of the authorized number of Directors shall constitute a quorum for the transaction of business at a meeting of the Board. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

4.14 Executive Session

With the approval of a quorum of the Board, the Board may adjourn a meeting and reconvene in executive session to consider litigation, matters relating to the formation of contracts with third parties, Member discipline and personnel matters. The nature of any and all business to be considered in executive session shall first be announced in open session. Upon request of a Member being disciplined, the Board shall meet in executive session and the Member shall be entitled to attend that portion of the executive session addressing the disciplinary action.

4.15 Participation in Meetings by Conference Telephone

Members of the Board may participate in any meeting, regular or special, through use of a conference telephone or similar communication equipment, so long as all Directors participating in the meeting can hear one another, and all Directors so participating shall be deemed to be present in person at the meeting.

4.16 Waiver of Notice

Subject to the requirements of Civil Code Section 1363.05, the transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though done at a meeting duly held after regular call and notice if a quorum be present, and if, either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding such meeting, or an approval of the minutes of the meeting. The waiver of notice or consent need not specify the purpose of the meeting.

All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Notice of a meeting shall also be deemed waived by any Director who attends the meeting without protesting, before or at its commencement, the lack of notice to the Director.

4.17 Adjournment; Notice

A majority of the Directors present at any Directors' meeting, either regular or special, whether or not a quorum is present, may adjourn any meeting to another time and place. Notice of the time and place of the adjourned meeting need not be given, unless the meeting is adjourned for more than twenty-four hours, in which case notice of the time and place shall be given before the time of the adjourned meeting, in the manner specified in Article 4.12 above, to the Directors who were not present at the time of the adjournment.

4.18 Action Without a Meeting

Any action required or permitted to be taken by the Board may be taken without a meeting if all Directors shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. Such action by written consent shall have the same force and effect as a unanimous vote of such Directors. Notice to Members of any action so taken shall be posted in a conspicuous place in the Common Area within three (3) days of the date such action was taken.

4.19 Notice to and Attendance by Members

Notice to Members of the time and place of each Regular or Special Meeting of the Board shall be posted at a prominent place or places within the Common Area at least four (4) but not more than fifteen (15) days prior to a regular meeting and at least (four) 4 days prior to any Special Meeting, except as provided in Section 4.20 below. Regular and Special Meetings of the Board shall be open to all Members of the Association except for that portion of meetings of the Board held in executive session for the reasons specified in Article 4.14 above. A reasonable time limit for all Members of the Association to speak to the Board shall be established by the Board.

4.20 Emergency Meetings

An emergency meeting of the Board may be called by the President, or by any two Directors 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 Article 4.

ARTICLE 5: POWERS AND DUTIES OF THE BOARD

5.1 Powers

The Board, subject to all applicable law, shall manage the affairs of the Association. Excepting only those powers expressly reserved to the Members, it shall

have all the powers conferred upon it by law, these By-Laws, or the Declaration, including, without limitation, the following:

- a. To enforce the applicable provisions of the Declaration and these By-Laws, including enforcement of liens and penalties for non-payment of assessments;
- b. To maintain fire, casualty, liability, workers' compensation and other insurance on behalf of the Association and for bonding of Directors and Association employees;
- c. To provide and pay for maintenance, utility, gardening and other services benefitting the Common Area; to employ a manager, an independent contractor or such other personnel as the Board may deem necessary for operation of the Project and to prescribe their duties; and to obtain legal and accounting services; provided, however, that without the approval of the Owners, no such employment shall be for a period in excess of one year, as specified in Section 5.2.c. below;
- d. To purchase materials, supplies and the like for maintenance and repair of the Common Area;
- e. To pay for reconstruction of any portion of the Project damaged or destroyed, in accordance with the Declaration;
- f. To pay taxes and special assessments which would be a lien upon the entire Project or Common Area, and to discharge any lien or encumbrance levied against the entire Project or Common Area;
- g. To enter, personally or by agent, into any Unit when necessary in connection with maintenance, emergency repair or construction for which the Association is responsible in accordance with the Declaration;
- h. To adopt and publish rules and regulations governing the use of Common Areas and the personal conduct of the Members and their guests thereon (the "Rules"), and to establish and enforce penalties for the infraction thereof;
- i. To levy a fine, after notice and hearing before the Board, in accordance with Article 8 of the Declaration, against any Owner who shall fail or refuse to obey the Rules;
- j. To suspend the voting rights of a Member during any period such Member shall be in default in the payment of any assessment levied by the Association or, for a period not exceeding thirty (30) days, to suspend such right for infraction of the Rules, provided that such voting rights may only be suspended after notice and an opportunity to be heard in accordance with Article 8 of the Declaration;

- k. To establish committees of the Board and to delegate such powers to such committees and to such officers and employees of the Association as the Board may authorize;
- l. To elect officers of the Association and to fill vacancies on the Board (except for a vacancy created by removal of a Director);
- m. To prepare budgets and financial statements for the Association;
- n. To fix and enforce reasonable penalties for non-payment of Association dues.
- o. To issue or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether any assessment has been paid. A reasonable charge may be made by the Board for the issuance of such certificate. If a certificate states that an assessment has been paid, such certificate shall be conclusive evidence of such payment.
- p. To impose Special Individual Assessments as provided in Article 4.7 of the Declaration.

5.2 Limitation of Powers

Without the vote or written consent of 51% of the voting power of the Association, the Board shall be prohibited from taking any of the following actions:

- a. Selling, during any fiscal year, property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;
- b. Paying compensation to Directors or officers of the Association; provided, however, that the Board may cause a Director or officer to be reimbursed for expenses incurred, if reasonable, in carrying on the business of the Association;
- c. Entering into a contract with a third person for goods or services for the Common Area or the Association for a term longer than one (1) year, with the following exceptions:
 - (1) A management contract, the terms of which have been approved by the Federal Housing Administration or the Veterans Administration;
 - (2) A contract with a public utility if the rates charged for the materials or services are regulated by the Public Utilities Commission, provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate; and
 - (3) Prepaid casualty or liability insurance of not more than three (3) years duration, provided that the policy permits for short rate cancellation by the insured.

d. Imposing a Regular Assessment per condominium which is more than twenty percent (20%) greater than the Regular Assessment per Condominium for the immediately preceding fiscal year, except in Emergency Situations as defined in Article 4 of the Declaration;

e. Imposing Special Assessments within a single fiscal year which in the aggregate exceed five percent (5%) of the budgeted gross expenses for said fiscal year, except for Emergency Situations as defined in Article 4 of the Declaration; and

f. Incurring aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

5.3 Duties

It shall be the duty of the Board to undertake all duties and responsibilities of the Association as expressed herein or in the Declaration. Such duties shall include, but are not limited to, the following:

a. Cause to be kept a complete record of all of its acts and corporate affairs and to present a statement thereof to the Members at the Annual Meeting of the Members. The Association shall give to each Member the financial statements required by Article 9 herein.

b. Supervise all officers, agents and employees of the Association and see that their duties are properly performed.

c. As more fully provided in the Declaration:

(1) Fix the amount of the annual assessment against each Unit as provided in the Declaration;

(2) Foreclose the lien against any Unit for delinquent assessments in accordance with the Declaration.

d. The Board shall obtain and maintain insurance as provided in Section 3.10 of the Declaration.

ARTICLE 6: OFFICERS AND THEIR DUTIES

6.1 Enumeration of Officers

The officers of the Association shall be a President, a Vice President, a Secretary, a Treasurer and such other officers as the Board may from time to time by resolution create.

6.2 Election of Officers

The election of officers shall take place at the first meeting of the Board following each Annual Meeting of the Members.

6.3 Term

The officers of this Association shall be elected annually by and from the Board. All officers shall hold office for one (1) year unless such officer shall sooner resign, or shall be removed, or shall otherwise be or become disqualified to serve.

6.4 Special Appointments

The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as the Board may, from time to time, determine.

6.5 Resignation and Removal

Any officer may be removed from office, with cause, by the Board. An officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

6.6 Vacancies

A vacancy in any office may be filled by appointment of the Board. The officer appointed to fill such vacancy shall serve for the remainder of the term of the officer he replaces.

6.7 Multiple Offices

Any two (2) or more offices may be held by the same person except the office of President and Secretary.

6.8 Duties

The duties of the officers shall be as follows:

a. President. The President shall be the Association's Chief Executive Officer and, subject to supervision by the Board, shall have general management and control of the business and affairs of the Association. The President shall preside at all meetings of the Members and the Board; see that orders and resolutions of the Board are carried out; sign all leases, mortgages, deeds and other written instruments; co-sign all checks and promissory notes; and perform such other duties as the Board may prescribe.

b. Vice President. The Vice President shall act in the place and stead of the President in the event of the President's absence, inability, or refusal to act, and shall exercise and discharge such other duties as may be required by the Board or the President.

c. Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; serve notices of meetings of the Board and of the Members; keep appropriate current records

showing the Members' names and addresses; and perform such other duties as may be required by the Board.

d. Treasurer. The Treasurer shall be the Chief Financial Officer of the Association and shall receive and deposit in appropriate bank accounts all monies of the Association; disburse such funds as directed by resolution of the Board; keep proper books of account; sign all checks and promissory notes of the Association; and cause the Association to comply with the requirements of Article 9 below.

6.9 Compensation

No officer shall receive any compensation for services rendered to the Association, provided, however, that any officer may be reimbursed for reasonable, actual out-of pocket expenses incurred by such officer in the performance of the officer's duties.

6.10 Restrictions on Powers

a. Execution of Corporate Contracts and Instruments. Except as otherwise specifically authorized by the Board, all contracts, leases, mortgages, deeds and other written instruments entered into in the name of the Association shall require the signatures of two officers, namely, the President or, in his absence, inability, or refusal to act, the Vice President, and any other officer of the Association.

b. Checks, Drafts, Notes, Evidence of Indebtedness. All checks, drafts, notes or other evidences of indebtedness issued in the name of or payable by the Association shall be signed or endorsed by any two officers of the Association, except as otherwise specifically authorized by the Board.

ARTICLE 7: COMMITTEES

The Board shall appoint a Nominating Committee, Architectural Control Committee and Landscaping Committee as provided in the Project Governing documents and, subject to contrary provisions of the Declaration and these By-Laws, if any, may appoint such other committees as it deems appropriate in order to advise the Board. Notwithstanding any grant of authority from the Board, no committee shall have the power to (a) approve any action which by law or these By-Laws requires the approval of the Members; (b) fill vacancies on the Board or any committee; (c) adopt, amend or repeal By-Laws; (d) amend or repeal resolutions of the Board; or (e) appoint committees of the Board or Members thereof.

ARTICLE 8: INDEMNIFICATION OF OFFICERS, DIRECTORS AND AGENTS

8.1 Rights of Indemnity

The Association shall indemnify each Director, officer, committee member, employee or other agent of the Association who is a party to or is threatened to be made a party to any proceedings, including a proceeding by or in the right of the Association, by reason of the fact that such person is or was a Director, officer, committee member, employee or agent of the Association, against all expenses and liabilities actually and reasonably paid or incurred in connection with such proceedings to the maximum extent permitted by the California Non-Profit Mutual Benefit Corporation Law. Terms used in this Article 8 shall have the same meaning as in Section 7237 of the California Non-Profit Mutual Benefit Corporation Law.

8.2 Approval of Indemnity

Upon written request to the Board by any person seeking indemnification hereunder, the Board shall promptly determine whether the applicable standard of conduct set forth in the California Non-Profit Mutual Benefit Corporation Law has been met and, if so, the Board shall authorize indemnification. If the Board cannot authorize indemnification because the number of Directors who are parties to such proceeding with respect to which indemnification is sought prevents formation of a quorum of Directors who are not parties to such proceedings, the Board shall promptly call a Special Meeting of Members. At such meeting, the Members shall determine whether the applicable standard of conduct set forth in the California Non-Profit Mutual Benefit Corporation Law has been met and, if so, the Members shall authorize indemnification. Members or other persons seeking to be indemnified shall not be entitled to vote on the question of indemnification.

8.3 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, committee member, employee or agent seeking indemnification under these By-Laws in defending any proceedings covered by these By-Laws shall be advanced by the Association prior to the final disposition of such proceedings upon receipt of an undertaking by or on behalf of the Director, officer or committee member, employee or the agent to repay such amount unless it is ultimately determined that such person is entitled to be indemnified by the Association with respect to such expenses.

ARTICLE 9: BUDGET AND FINANCIAL INFORMATION; NOTICE REGARDING MINUTES, ASSESSMENT INCREASES, MONETARY PENALTIES AND ALTERNATIVE DISPUTE RESOLUTION

9.1 Operating Account

There shall be established and maintained a cash deposit account to be known as the "Operating Account" into which shall be deposited the operating portion of all Regular and Special Assessments as fixed and determined for all Members. Disbursements from such Account shall be for the general need of the operation, including but not limited to, wages, repairs, betterment, maintenance, and other operating expenses of the properties.

9.2 Reserve Account

The Association shall pay out of the Reserve Account only those costs that are attributable to the maintenance, repair or replacement of capital Improvements for which reserves have been collected and held.

9.3 Other Accounts

The Board shall maintain any other accounts it shall deem necessary to carry out its purposes, including Reserve Accounts for future repairs, betterments, replacements and additions to Common Areas as set forth in the Declaration. All Association books of account shall be maintained in accordance with generally accepted accounting principles.

9.4 Budget and Financial Statements

The following financial statements and related information for the Association shall be prepared. Copies thereof shall be distributed to each Member of the Association in accordance with the requirements of the California Civil Code.

a. Budget. A pro forma operating budget for each fiscal year consisting of at least the following information shall be distributed to Members not less than 45 days nor more than 60 days prior to the beginning of the fiscal year:

(1) A statement of the amount of Regular Assessments for the next succeeding fiscal year;

(2) The estimated revenue and expenses on an accrual basis;

(3) A summary of the Association's reserves based upon the most recent review or study conducted in accordance with subparagraphs 4 and/or 5 as provided under California Civil Code Section 1365.5, or comparable superseding statute, which shall be printed in bold type and include all of the following:

(a) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component;

(b) 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;

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

3) The percentage that the amount determined for purposes of Subparagraph 9.4.a(2) is of the amount determined for purposes of Subparagraph 9.4.a(3);

(4) 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; and

(5) 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.

In lieu of distributing the complete pro forma operating budget as specified above, the Board may elect to distribute a summary of the budget to the Members (within the time limits provided above), together with a notice that the complete budget is available at the Association's principal office, and that copies will be furnished, upon request, to any Member at the Association's expense. If a Member requests a copy of the complete budget, the Association shall provide the material, via First Class Mail, within five days. The notice required hereunder shall be presented on the front page of the summary of the budget in at least 10-point bold type.

b. Year-End Report. Within one-hundred twenty (120) days after the close of the fiscal year, a copy of the Association's Year-End Report, consisting of at least the following shall be distributed to Members:

(1) A balance sheet as of the end of the fiscal year;
(2) An operating (income) statement for the fiscal year;
(3) A statement of changes in financial position for the fiscal year;

(4) A statement advising Members of the place where the names and addresses of the current Members are located;

(5) Any information required to be reported under Corporations Code Section 8322 requiring the disclosure of certain transactions in

excess of \$50,000 per year between the Association and any Director or officer of the Association and indemnifications and advances to officers or Directors in excess of \$10,000 per year; and

(6) A review of the financial statements of the Association prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy for any fiscal year in which the gross income of the Association exceeds \$75,000. If the annual report is not prepared by such a licensee, it shall be accompanied by the certificate of an authorized officer of the Association that the statement was prepared without audit from the books and records of the Association.

c. Annual Statement Regarding Delinquency/Foreclosure Policy. In addition to financial statements, the Board shall annually distribute within 60 days prior to the beginning of the fiscal year, a statement describing the Association's policies and practices in enforcing its remedies against Members for defaults in the payment of Regular and Special Assessments, including the recording and foreclosing of liens against Members' Units.

d. Review of Accounts. On no less than a quarterly basis the Board shall:

(1) Review a current reconciliation of the Association's Operating Account;

(2) Review a current reconciliation of the Association's Reserve Account;

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

(4) Review the Association's latest account statements prepared by the financial institution(s) with whom the Operating and Reserve Accounts are lodged; and

(5) Review the Association's income and expense statement for the Operating and Reserve Accounts.

To the extent one or more documents provide the information required in more than one of the above listed items, any such requirements listed above may be satisfied by reviewing the same documents.

e. Reserve Study. At least once every three years the Board shall cause a study of the Reserve Account Requirements of the Association to be conducted if the current replacement value of the major components which the Association is obligated to repair, replace, restore or maintain is equal to or greater than one-half of the gross budget of the Association for any fiscal year. In connection with

this reserve study, the Board is required to see that the Association gets a competent inspection of the major structures of the Project. The Board shall review the reserve study annually and shall consider and implement necessary adjustments to the Board's analysis of the Reserve Account Requirements as a result of that review.

The study required by this Section shall at 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 30 years;

(2) Identification of the probable remaining useful life of the components identified in Subparagraph (1) as of the date of the study;

(3) An estimate of the cost of repair, replacement, restoration, or maintenance of each major component identified in Subparagraph (1) during and at the end of its useful life;

(4) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain each major component during and at the end of its useful life. The total reserve funds as of the date of the study should be taken into account in determining the required total annual contribution.

As used in this section, "Reserve Accounts" means moneys that the Board has identified for use to defray the future repair, or replacement of, or additions to or betterment of those major components which the Association is obligated to maintain, repair and replace.

"Reserve Account Requirements" means the estimated funds which the Board has determined are required to be available at a specified point in time to repair, replace, restore or maintain those major components which the Association is obligated to maintain.

9.5 Copies of Minutes

At the time of distribution of the proforma operating budget as provided in Section 9.4 or at the time of any general mailing to the entire membership, the Board shall advise the Members of their right to have copies of the minutes of meetings of the Board and how and where those minutes may be obtained.

9.6 Notice of Assessment Increase

The Board shall provide by first class mail to each Owner, at the street address of the Owner's Unit, or at such other address as the Owner may from time to time designate, in writing, notice of any increase in Regular or Special Assessments of the Association, not less than thirty (30) days nor more than sixty (60) days prior to the increased assessment becoming due.

9.7 Notice of Monetary Penalties

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 violation of the Governing Documents or the Rules of the Association, which shall be in accordance with authorization for Member discipline 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 pursuant to this subdivision.

9.8 Notice of Alternative Dispute Resolution

The Board shall annually provide to Members of the Association a summary of the provisions of Section 8.7 of the Declaration specifically referencing California Civil Code Section 1354. The summary shall include the following language:

"Failure by any Member of the Association to comply with the prefiling requirements of Section 1354 of the Civil Code may result in the loss of your rights to sue the Association or another Member of the Association regarding enforcement of the Governing Documents."

This summary shall be provided either at the time of distribution of the pro forma budget or by mail or by delivery as part of a newsletter, magazine or other publication of the Association regularly sent to Members at the address appearing on the books of the Association.

9.9 Accounting of Reserve Fund Expenditures for Litigation

If the Board makes the decision to use reserve funds or to temporarily transfer money from the Reserve Account to pay for litigation as provided in California Civil Code Section 1365.5(d) or any superseding statute, the Association shall make an accounting of litigation-related expenses on at least a quarterly basis. The accounting shall be made available for inspection by Members at the Association's office, or, if the Association does not maintain an office, at the office of the Association's manager.

9.10 Notice Regarding Transfer or Use of Reserve Funds for Litigation

If the Board makes the decision to use reserve funds or to temporarily transfer money from the Reserve Account to pay for litigation, the Association shall, in accordance with California Civil Code Section 1365(d), or any superseding statute, notify the Members in the next available mailing to all Members of that decision and of the availability of an accounting of those expenses.

9.11 Notice of Insurance Coverage

The Board shall give notice of the Association's insurance coverage in accordance with California Civil Code Section 1365(e), (f), (g), (h), and (l) or any superseding statute.

ARTICLE 10: BOOKS AND RECORDS

10.1 Members' Right to Inspect

The books, records, and papers of the Association, including the membership register, books of accounts, minutes of meetings of the Board, Members or committees of the Association, the Declaration, the Articles of Incorporation and these By-Laws, shall at all times during reasonable business hours be available for inspection and copying by any Member or his duly appointed representative. The Board shall establish reasonable rules with respect to:

- a. Notice to be given to the custodian of the records by any Member desiring to make the inspection;
- b. Hours and days of the week when such an inspection may be made;
- c. Payments of the cost of reproducing copies of documents requested by a Member. and
- d. Valid association purposes for which a member may obtain access to the Members' List. In the absence of a valid association purpose for requesting access to the Members' List, the Board shall deny a request for access to the Members' List, as provided by the California Corporations Code.

10.2 Directors' Right to Inspect

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

ARTICLE 11: AMENDMENTS

11.1 Amendments

These By-Laws may be amended, by the majority of votes of the voting power at a Regular or Special Meeting of the Members where a quorum is present, in person, by proxy, or by absentee vote.

11.2 Records of Amendments

A record shall be kept of all amendments or new By-Laws adopted, which record shall show the date of amendment or adoption and, in the case of an amendment, the date of the original By-Laws being amended. If any By-Laws repeal any portion of the original By-Laws, the records shall reflect the date of the meeting at which the repeal was enacted or the date the written consent to repeal was filed.

ARTICLE 12: GENERAL PROVISIONS

12.1 Conflicting Provisions

In the case of any conflict between any provisions of the Declaration and the By-Laws, the Declaration shall control.

12.2 Fiscal Year

The fiscal year of the Association shall be the calendar year unless and until a different fiscal year is adopted by the Members at a duly constituted meeting thereof.

12.3 Proof of Membership

No person shall exercise the rights of membership in the Association until satisfactory proof of membership has been furnished to the Secretary. Such proof may consist of either a copy of a duly executed and acknowledged grant deed or title insurance policy showing said person to be the Owner of an interest in a Unit entitling him to membership. Such deed or policy shall be deemed conclusive in the absence of a conflicting claim based on a later deed or policy.

12.4 Reserves

Any amounts collected by or paid to the Association in excess of operational needs shall be set aside in the Reserve Account for future financial needs in the manner set forth in the Declaration and shall be deposited into insured interest-bearing accounts.

12.5 Severability

Invalidation of any one of these By-Laws by judgement or court order shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration and all of the terms hereof are hereby declared severable.

12.6 Filing of Tax Exempt Status

The Board shall cause to be timely filed any annual election for tax-exempt status as may be required under federal or state law, and shall undertake to cause the Association to comply with the statutes, rules and regulations which have been or shall be adopted by federal and state agencies pertaining to such exemptions.

12.7 Consolidations and Mergers

To the extent permitted by law, the Association may participate in mergers and consolidations with other nonprofit corporations organized for the same purposes as this Association, provided that any merger or consolidation must be approved by a majority of the Voting Power of the Association.

12.8 Dissolution of Incorporated Association

If the Association as an incorporated entity is dissolved, then without further action or notice, a nonprofit, unincorporated association shall be deemed formed which shall succeed to all the rights and duties of the Association. The affairs of the

unincorporated association shall be governed by the laws of the State of California and, to the extent not inconsistent therewith, by the Project Documents as though they had been prepared for an unincorporated association.

CERTIFICATE OF SECRETARY

The undersigned, Secretary of the corporation known as Emery Bay Village Homeowners' Association, does hereby certify that the foregoing First Amended Bylaws consisting of 24 pages, including this page, were duly adopted by written ballot of the Members of said Association on the 25th day of April, 2002, and that they now constitute said Bylaws.

Date: 4-25-02

Sandra Norris
Sandra Norris