

AMENDED AND RESTATED
BY-LAWS
OF
HARBORWALK OWNERS ASSOCIATION

ARTICLE I

NAME AND LOCATION

The name of the corporation is

HARBORWALK OWNERS ASSOCIATION

(hereinafter referred to as the "Association"). The Association is formed under the California Non-profit Mutual Benefit Corporation Law. The principal office of the Association shall be located in the County of Ventura, State of California (hereinafter referred to as "said County"). Meetings of members shall be held at such places as are set forth in the Declaration (defined below).

ARTICLE II

DEFINITIONS

1. Declaration. The "Declaration" shall mean, collectively, the Amended and Restated Declaration of Covenants, Conditions and Restrictions Establishing a Plan of Condominium Ownership, any amendments thereto, if any, and applicable to the condominium development commonly known and referred to as HARBORWALK.

2. Other Definitions. Each and every definition set forth in Article I of the Declaration shall have the same meaning herein as therein, and each and every such definition is incorporated by reference herein and made a part hereof as if once again fully written and set forth at length hereat.

ARTICLE III

MEMBERSHIP; VOTING RIGHTS

1. Membership and Voting Rights. The qualification for membership and the voting rights of members shall be as set forth in Article V of the Declaration.

2. Incorporation by Reference. Article V of the Declaration is by this reference incorporated herein and made a part hereof as if once again fully written and set forth at length hereat.

ARTICLE IV

MEETINGS OF MEMBERS

1. Annual Meetings. Annual meetings of the members shall be held during the month of March on a day to be determined by the Board, which day shall not be a legal holiday.

2. Special Meetings. Special meetings of the members may be called at any time by the president or by the Board, or upon written request of the members representing five percent (5%) or more of the members.

3. Notice of Meetings. Notice of all members meetings, annual or special, shall be given by mail or telegram and shall be given not less than ten (10) days nor more than ninety (90) days prior to the time of said meeting and shall set forth the place, date and hour of the meeting, and the nature of the business to be undertaken. Notices shall be given 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 addressed to such member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Mailed notices shall be deemed received forty-eight (48) hours after same are mailed; notice by telegram shall be deemed received twenty-four (24) hours after same are sent. Notices may also be personally delivered, and shall be deemed received upon delivery to any occupant of a condominium.

4. Quorum. The presence at any meeting in person or by proxy of members entitled to cast at least fifty percent (50%) of the total votes of all members 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 to a time not less than forty-eight (48) hours nor more than thirty (30) days from the time the original meeting was called, at which adjourned meeting the quorum requirement shall be at least twenty-five percent (25%) of said total votes. Any meeting of members whereat a quorum is present may be adjourned for any reason to a time not less than forty-eight (48) hours nor more than thirty (30) days from the time of such meeting by members representing a majority of the votes present thereat, either in person or by proxy.

5. Proxies. At all meetings of members each member may be present in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease when the ownership interest or interests of such member entitling him to membership in the Association ceases.

6. Order of Business. The order of business of all meetings of the members shall be as follows:

- (a) roll call;
- (b) proof of notice of meeting or waiver of notice;
- (c) reading of minutes of preceding meeting;
- (d) reports of Board and officers;
- (e) election of directors, if any are to be elected;
- (f) unfinished business; and
- (g) new business.

7. Parliamentary Procedure. All questions of parliamentary procedure shall be decided in accordance with Roberts Rules of Order.

8. Majority of Owners. Except as otherwise provided herein or in the Declaration, the majority of the total voting power present, in person or by proxy, shall prevail at all meetings.

9. Action Without Meeting. Any action which under the provisions of the California Corporations Code may be taken at a meeting of the members may be taken without a meeting if authorized by a writing signed by all the members who would be entitled to vote at a meeting for such purpose and filed with the secretary.

ARTICLE V

SELECTION AND TERM OF OFFICE OF BOARD

1. Number. The Board shall consist of five (5) directors who must be members.
2. Term of Office. Members shall elect five (5) directors for a term of two (2) years. To stagger terms of Directors, three (3) shall be elected in odd years and two (2) shall be elected in even years. ~~No director may serve more than two (2) consecutive terms as a Board member.~~ *[amended to remove 8/26/02]*
3. Election; Removal; Vacancies. Election and removal of directors shall be as provided in the Declaration. In the event of the death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor (unless, in the case of removal, his successor has been elected by the members as provided in California Corporations Code, Section 810).
4. Compensation. No director shall receive any compensation for any service he may render to the Association; provided, however, any director may be reimbursed for actual out-of-pocket expenses incurred by him in the performance of his duties.
5. Indemnification. No member of the Board or of any committee of the association, shall be personally liable to any owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, or any representative or employee of the Association, or the Architectural Committee, or any other committee, or any officer of the Association, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith, and without willful or intentional misconduct. In the event any such action is brought against any such person or entity, the association shall indemnify such person or entity for all reasonable costs, including attorneys fees, incurred in the defense of such action, including any settlement thereof unless such action arises out of the willful misconduct of such person. In the event the association is required to pay any such costs, the Association shall be entitled to assess all owners for the amount so expended, and such assessment need not be first approved by fifty-one percent (51%) or any other proportion of said owners.

ARTICLE VI

NOMINATION AND ELECTION OF DIRECTORS

1. Nomination. Nomination for election to the Board shall be made by a nominating committee consisting of three (3) persons. Nominations may also be made from the floor at each annual meeting. The nominating committee shall consist of a chairman, who shall be a member of the Board, and two (2) other persons who are members of the Association. Each member of the nominating committee shall be appointed by the Board to serve for a period of one (1) year, and vacancies thereon shall be filled by the Board. The nominating committee shall make as many nominations for election to the Board as it shall, in its discretion, determine, but not less than the number of vacancies to be filled. Such nominations may be made from among members only.
2. Election. Election to the Board shall be by secret written ballot. At such election, the members, or their proxies, may cast, in respect to each vacancy, as many votes as they are entitled to cast under the provisions of the Declaration (and subject to cumulative voting as therein described). The candidates receiving the highest number of votes shall be deemed elected.

ARTICLE VII

MEETINGS OF DIRECTORS

1. Regular Meetings. Regular meetings of the Board shall be held monthly without notice at such place and hour as may be fixed from time to time by resolution of the Board. Should any such meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

2. Special Meetings. Special meetings of the Board shall be held when called by the president of the Association, or by any two (2) directors, after not less than three (3) days prior notice to each director.

3. Quorum. A majority of the 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. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors as provided in California Corporations Code, Section 7211(b). Any action so approved shall have the same effect as though taken at a meeting of the Board.

ARTICLE VIII

POWER AND DUTIES OF THE BOARD

1. Powers. The Board shall have all powers conferred upon the Association as set forth herein and in the Declaration, excepting only those powers expressly reserved to the members.

2. Duties. It shall be the duty of the Board:

(a) to cause to be kept a complete record of all of its acts and doings and to present a statement thereof to the members at each annual meeting of the members, or at any special meeting when such statement is requested in writing by members representing one-fourth (1/4) of the members;

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

(c) to delegate its powers as provided in the Declaration.

(d) To prepare or cause to be prepared financial statements on a regular basis and distribute same to all members, regardless of the number of members or the amount of assets of the Association, as follows:

(1) A proforma operating statement (budget) for each fiscal year which shall be distributed not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of the fiscal year to which it pertains. The proforma budget shall consist of the following information:

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

(ii) A summary of the Association's reserves based upon the most recent review or study conducted pursuant to California Civil Code, Section 1365.5, which shall be printed in bold type and include all of the following:

(A) The current estimated replacement costs, 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: (i) The current estimate of the amount of cash reserves necessary to repair, replace, restore or maintain the major components; (ii) The current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain major components.

(C) The percentage that the amount determined for purposes of clause (ii) of subparagraph (B) is of the amount determined for purposes of clause (i) of subparagraph (B) is of the amount determined for purposes of clause (i) of subparagraph (B);

(iii) A statement as to whether the Board of Directors of the Association 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 therefore;

(iv) 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.

(e) to make available to members within thirty (30) days of the meeting the minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the Board, other than an executive session. The minutes, proposed minutes, or summary minutes shall be distributed to any member of the Association upon request and upon reimbursement of the Association's costs in making the distribution. The members shall be notified in writing at the time that the pro forma budget is distributed or at the time of any general mailing to the entire membership of the members' right to have copies of the minutes of meetings of the Board and how and where those minutes may be obtained.

(f) to perform the following accounting duties:

(1) Review a current reconciliation of the Association's operating accounts on at least a quarterly basis.

(2) Review a current reconciliation of the Association's reserve accounts on at least a quarterly basis.

(3) Review, on at least a quarterly basis, the current year's actual reserve revenues and expenses compared to the current year's budget.

(4) Review the latest account statements prepared by the financial institutions where the Association has its operating and reserve accounts.

(5) Review an income and expense statement for the Association's operating and reserve accounts on at least a quarterly basis.

(g) to manage the Association's reserve funds. The signatures of at least two persons, who shall be members of the Association's Board of Directors, or one officer who is not a member of the Board of Directors and a member of the Board of Directors, shall be required for the withdrawal of monies from the Association's reserve accounts. The Board of Directors shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, major components which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established. However, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements or other expenses. The transferred funds shall be restored to the reserve fund within three years of the date of the initial transfer, except that the Board may, upon making a finding supported by documentation that a delay would be in the best interests of the Association, delay the restoration until the time which the Board reasonably determines necessary. The Board shall exercise prudent fiscal management in delaying restoration of these funds and in restoring the expended

funds to the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits required by this section. This special assessment is not subject to the limitation imposed by Civil Code, Section 1366 and Section 4.4 of the Declaration.

(h) to cause, at least once every three (3) years, a study of the Association's reserve account requirements to be conducted if the current replacement value of the major components which the Association is obligated to repair, replace, restore, or maintain is equal to or greater than one-half of the gross budget of the Association for any fiscal year. The Board shall review this study annually and shall consider implementing necessary adjustments to the reserve account requirements as a result of that review.

The study required by this subdivision shall at a minimum include:

(1) Identification of the major components which the Association is obligated to repair, replace, restore, or maintain which, as of the date of the study, have a remaining useful life of less than 30 years.

(2) Identification of the probable remaining useful life of the components identified in paragraph (1) during and at the end of their useful life.

(3) An estimate of the cost of repair, replacement, restoration, or maintenance of the components identified in paragraph (1) during and at the end of their useful life.

(4) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the components identified in paragraph (1) during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.

As used in this section, "reserve accounts" means monies that the Association's Board of Directors 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. As used in this section, "reserve account requirements" means the estimated funds which the Association's Board of Directors has determined are required to be available at a specified point in time to repair, replace, or restore those major components which the Association is obligated to maintain.

(i) to annually provide to the Association members a summary of Civil Code, Section 1354 relating to alternative dispute resolution. The summary shall include the following language: "Failure by any member of the Association to comply with the profiling requirements of Section 1354 of the California Civil Code may result in the loss of your rights to sue the Association or another member of the Association regarding enforcement of governing documents." The summary shall be provided either at the time the pro forma budget is distributed or through any newsletter mailed or delivered to the members, at the address appearing on the books of the Association.

ARTICLE IX

OFFICERS AND THEIR DUTIES

1. Enumeration of Offices. The officers of the Association shall be a president and vice president, who shall at all times be members of the Board, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

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.

3. Terms. The officers of this Association shall be elected annually by the Board and each shall hold office for one year unless he/she shall sooner resign, or shall be removed, or shall otherwise be or become disqualified to serve.

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.

5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board. 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. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he/she replaces.

7. Multiple Offices. The offices of the secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices in the case of special offices created pursuant to Section 4 hereof.

8. Duties. the duties of the officers shall be as follows:

President

(a) The president shall preside at all meetings of the Board, shall see that orders and resolutions of the Board are carried out, shall sign all leases, mortgages, deeds and other instruments, and shall co-sign all checks and promissory notes.

Vice President

(b) The vice president shall act in the place and stead of the president in the event of his/her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him/her by the Board.

Secretary

(c) The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members, shall keep the corporate seal of the Association and affix it on all papers requiring said seal, shall serve notices of meetings of the Board and of the members, shall keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

Treasurer

(d) The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board, shall co-sign all checks and promissory notes of the Association, shall keep proper books of account, shall cause an annual operating statement reflecting income and expenditures of the Association for its fiscal year to be prepared and shall cause copies of said statement to be distributed to each member within ninety (90) days after the end of such fiscal year, and shall cause an annual budget to be prepared and presented to each member.

9. Compensation. No officer shall receive any compensation for any service he may render to the Association; provided, however, any officer may be reimbursed for actual out-of-pocket expenses incurred by him in the performance of his duties.

ARTICLE X

COMMITTEES

Subject to contrary provisions of the Declaration and these by-laws, the Board shall appoint an Architectural Control Committee as provided in the Declaration, and shall also appoint a nominating committee as provided in these by-laws. In addition, the Board may appoint such other committees as it deems appropriate in order to carry out its purpose. Final committee decisions are subject to review and final approval by the Board of Directors.

ARTICLE XI

ASSESSMENTS

1. Liability for Assessments; Collection. As more fully provided in Articles VII and VIII of the Declaration, each member is obliged to pay to the Association annual and special assessments to be collected as therein set forth.

2. Incorporation by Reference. Articles VII and VIII of the Declaration are by this reference incorporated herein and made a part hereof as if once again fully written and set forth at length hereat.

ARTICLE XII

AMENDMENTS

1. These by-laws may be amended by vote or written consent of members entitled to cast at least fifty-one percent (51%) of the total power of the Association.

ARTICLE XIII

GENERAL PROVISIONS

1. Conflicting Provisions. In the case of any conflict between any provisions of the Declaration and these by-laws, the conflicting provisions of the Declaration shall control. In the case of any conflict between any provisions of the articles and these by-laws, the conflicting provisions of the articles shall control.

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

3. Proof of Membership. No person shall exercise the rights of the membership in the Association until satisfactory proof thereof 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 condominium 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.

4. Absentee Ballots. The Board may make such provisions as it may consider necessary or desirable for absentee ballots.

5. Consent to Waiver of Notice. The transactions at any meeting of the Board, however noticed, shall be valid as though had at a meeting duly held after regular notice if a quorum be present and either before or after the meeting each director not present thereat signs a written waiver of notice or a consent to the holding of such meeting or an approval of the true and correct minutes thereof. All such waivers, consents or approvals shall be filed with the records of the Board and made a part of its minutes.

6. Reserves. Any amounts collected by or paid to the Association in excess of operational needs shall be set aside as reserves for future financial needs. All such sums shall be deposited into insured interest-bearing accounts. These sums may include amounts collected by Declarant from owners through purchase escrows representing capital contribution by such owners to the Association.