

2018 AMENDED AND RESTATED

B Y L A W S

OF

**SMOKE TREE - ADOBE FALLS
OWNERS' ASSOCIATION, INC.**



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ARTICLE I NAME AND LOCATION

The name of the corporation is Smoke Tree - Adobe Falls Owners' Association, Inc. ("**Association**"). The principal office of the Association shall be located in the County of San Diego, California.

ARTICLE II DEFINITIONS

The definitions contained in the Declaration are incorporated herein by reference.

2.1 "Annual Budget Report" means the pro forma operating budget as set forth in **Section 4.3.1** of the Declaration.

2.2 "Annual Policy Statement" means the various notices and disclosures that shall be provided annually to Members as set forth in **Section 10.2** of these Bylaws.

2.3 "Board Meeting" means either of the following: (a) a congregation of a quorum of Board members at the same time and place to hear, discuss, or deliberate upon any Item of Business that is within the authority of the Board; or (b) a teleconference in which a quorum of the Board, in different locations, is connected by electronic means, through audio or video or both.

2.4 "Declaration" means and refers to the 2018 Amended and Restated Declaration of Covenants, Conditions and Restrictions applicable to the property and subsequent amendments thereto.

2.5 "Delivery to the Association" means that any document to be delivered to the Association shall be delivered to the person designated in the Annual Policy Statement in accordance with **Section 10.2** of these Bylaws.

2.6 "General Notice" means a notice that the Association sends to all Members, which shall be delivered by one (1) or more of the following methods:

2.6.1 any of the methods provided for Individual Notice as set forth in **Section 2.9** of these Bylaws;

2.6.2 inclusion in a billing statement, newsletter, or other document that is delivered by one (1) of the methods provided in this **Section 2.6**;

2.6.3 posting the printed notice in a prominent location accessible to all Members, provided that the location was designated for posting of General Notices by the Association in the Annual Policy Statement; or

2.6.4 by television broadcast provided the Association disseminates information regarding Association business to its members by such method.

2.7 “**Good Standing**” means and requires that the Member not be an adverse party against the Association in pending litigation, not be more than 60 days in arrears in the payment of monthly or special assessments or have any outstanding fines, penalties or violations.

2.8 “**Governing Documents**” means the Declaration, the Articles, Bylaws, and the Association Rules, and amendments, modifications or supplements thereto.

2.9 “**Individual Notice**” means a notice that the Association provides to a specific Member by either of the following methods:

2.9.1 first-class mail, postage prepaid, registered or certified mail, express mail, or overnight mail by an express service carrier, with the document being addressed to the recipient at the address last shown on the books of the Association, or

2.9.2 e-mail, facsimile, or other electronic means, if the recipient has consented, in writing, to that method of delivery, which consent may be revoked, in writing, by the recipient.

2.10 “**Item of Business**” means any action within the authority of the Board, except those actions that the Board has validly delegated to any other person or persons, managing agent, officer of the Association, or committee of the Board comprising less than a quorum of the Board.

2.11 “Majority of a Quorum” means that an action is approved or ratified by an affirmative vote of a majority of the votes represented and voting (whether in person or by written ballot) in a duly held election in which a quorum is represented, which affirmative votes also constitute a majority of the required quorum in accordance with Civil Code Section 4070.

2.12 “Majority of All Members” means that an action is approved or ratified by an affirmative vote of a majority of the total Voting Power in accordance with Civil Code Section 4065.¹

2.13 “Separate Interest” means a separately-owned Unit, as specified in Civil Code Section 4125.

2.14 “Voting Power” means those Members who are eligible to vote with respect to any other matter, issue, or proposal properly presented to the Members for approval.

ARTICLE III MEETING OF MEMBERS

3.1 Annual Meetings

Regular annual meetings of the Association shall be held within thirty (30) days of the same day of the same month of each year at a time designated by the Board.

3.2 Special Meetings

Special meetings of the Members shall be called at any time by a majority of the Board, or by the president, or upon written request of the Members representing five percent (5%) of the total Voting Power of the Association.

3.3 Notice and Place of Meetings

Written notice of each meeting of the Members shall be given by, or at the direction of, the secretary by mailing a copy of such notice, first class mail, postage prepaid, at least ten (10) but not more than ninety (90) days before such meeting to all Members, addressed to the Member’s address last appearing on the books of the Association, or supplied by such member to the Association for

¹Unless otherwise indicated, all Civil Code Section references and Corporations Code Section references are to sections of the California Civil Code and California Corporations Code, respectively.

the purpose of notice. Notice pursuant to this Section may also be given to Members by e-mail if authorized by Members on an individual basis, in writing, on a form provided by the Association. Such notice shall specify the place, day and hour of the meeting. Except as otherwise provided by law, Members at special meetings may only act on those matters which have been listed in the meeting's notice.

If action is proposed to be taken at any meeting for approval for any of the following proposals, the notice shall also state the general nature of the proposal. Member action on such items is invalid unless the notice or written waiver of notice states the general nature of the proposal(s): (a) removing a director without cause; (b) filling vacancies in the Board by the Members; (c) amending the Articles; or (d) approving a contract or transaction in which a director has a material financial interest. Meetings shall be held within the Project or at a meeting place within the same County, as close to the Project as possible.

3.4 Quorum Requirements

3.4.1 Quorum Requirements Generally

The quorum requirements set forth below must be satisfied in order to take valid action at any meeting of the Members or by written ballot in accordance with **Section 4.10** of these Bylaws.

3.4.1.1 Quorum for Valid Action on Association Matters

In the case of a membership meeting or written ballot, the quorum shall be twenty-five percent (25%) of the Members eligible to vote and represented in person. Ballots received in accordance with **Section 4.4** of these Bylaws shall be treated as a Member present for purposes of establishing a quorum.

3.4.1.2 Reduction in Quorum Percentage for Action on General Matters

If the minimum quorum percentage specified in **Section 3.4.1.1** above is not satisfied, the meeting may be adjourned to another time or place not less than forty-eight (48) hours nor more than thirty (30) days after the initial meeting date, and at the reconvened meeting the quorum percentage shall be reduced to fifteen percent (15%) of the Voting Power of the Members. If this reconvened meeting is attended by less than one-third of the Voting Power of the Members

(but a quorum is present) the only matters upon which action may validly be taken are those matters the general nature of which were described in the notice of the meeting.

3.4.1.3 Quorum Exemption

Annual meetings shall be exempt from requiring a quorum of Members in order to conduct the election of directors in an uncontested election, approval of the former year's meeting minutes, and approval of IRS 70-604/70-605 rulings. All other business of the Association shall be conducted at an annual meeting, or special member meeting, requiring a quorum.

3.4.1.4 Quorum for Votes on Assessments and Removal of Directors From Office

In the case of any membership meeting or written ballot called or conducted for the purpose of voting on assessment increases or special assessments requiring Member approval or removal of any director from office, the quorum requirement for valid action on the proposal shall be the percentage specified in Civil Code Section 5605 or comparable superseding statute. The quorum requirement of Civil Code Section 5605(c) is more than fifty percent (50%) of the Members.

3.4.2 Members Represented by Ballot

Members present at a membership meeting in person or by submission of a ballot shall be counted toward satisfaction of the quorum requirements specified herein.

3.4.3 Effect of Departure of Members From Meeting

The Members present in person at a duly called or duly held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, so long as any action taken (other than adjournment) is approved by at least a majority of the Members required to constitute a quorum. If a quorum is never established for the meeting, a majority of those Members who are present in person may vote to adjourn the meeting for lack of a quorum, but no other action may be taken or business transacted.

3.5 Parliamentary Procedure

Meetings of the membership of the Association shall be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Association may adopt.

3.6 Adjourned Meeting

3.6.1 Adjournment Generally

Any Members' meeting, annual or special, whether or not a quorum is present, may be adjourned to another place and/or time (but not for more than forty-five (45) days) by the vote of the majority of Members present at the meeting in person. Unless there is an absence of a quorum (in which case no business other than adjournment may be transacted), the reconvened meeting may take any action that might have been transacted at the original meeting.

3.6.2 Notice Requirements for Adjourned Meetings

When a Members' meeting is adjourned to another time or place, notice need not be given of the new meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. If the meeting is adjourned for more than forty-five (45) days, notice must be given to the membership as provided in **Section 3.3** herein.

ARTICLE IV VOTING

4.1 Membership and Voting

The Members shall be Owners and shall be entitled to one (1) vote per each Separate Interest. When more than one (1) person holds an interest in any Separate Interest, all such persons shall be Members. The vote for such Separate Interest shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Separate Interest. The vote of a Majority of a Quorum of Members present, in person, shall decide any question brought before such meeting, unless the question is one upon which, by the express provision of statute or the Declaration, the Articles or these Bylaws, a different vote is required, in which case such express provision shall govern and control.

4.2 Eligibility to Vote

A Member's voting privileges are subject to suspension if the Member is not current in the payment of all assessments levied against the Member's property or in violation of the Governing Documents. A Member's voting privileges shall not be suspended until the Member receives written notice of possible suspension of voting rights and has an opportunity to be heard at a hearing before the Board as provided in **Section 8.5** of these Bylaws.

4.3 Proxies

There shall be no proxy voting.

4.4 Secret Ballot Requirements

Notwithstanding any other law or provision of the Governing Documents, the following elections or votes shall be conducted by secret ballot in accordance with the procedures set forth in this Article:

- (A) elections regarding assessments legally requiring a vote,
- (B) election and removal of members of the Board,
- (C) amendments to the Governing Documents,
- (D) the grant of exclusive use of Common Area property, or
- (E) other type of election or vote expressly identified in the rules adopted in accordance with **Section 4.5** of these Bylaws.

Each ballot received by the inspector of elections shall be treated as a Member present at a meeting for purposes of establishing a quorum. Secret ballot votes on other matters are optional.

4.5 Adoption of Election and Meeting Rules

The Association shall adopt rules, in accordance with the procedures prescribed by Civil Code Section 4360, *et seq.*

4.6 Inspectors of Election

The Association shall select an independent third party or parties as an inspector of election. The number of inspectors of election shall be one (1) or three (3). For the purposes of this Section, an independent third party includes, but is not limited to, a volunteer poll worker with the County registrar of voters, a licensee of the California Board of Accountancy, a notary public, or professional manager. An independent third party may be a Member of the Association, but may not be a member of the Board or a candidate for the Board or related to a member of the Board. An independent third party may not be a person, business entity, or subdivision of a business entity, who is currently

employed or under contract to the Association for any compensable services unless expressly authorized by rules of the Association adopted pursuant to **Section 4.5**.

An inspector of election shall perform his or her duties impartially, in good faith, to the best of his or her ability, and as expeditiously as is practical. If there are three (3) inspectors of election, the decision or act of a majority shall be effective in all respects as the decision or act of all. Any report made by the inspector or inspectors of election is prima facie evidence of the facts stated in the report.

4.6.1 Powers of Inspectors

The inspector or inspectors of election shall do all of the following:

(A) Determine the number of memberships entitled to vote and the voting power of each.

(B) Receive ballots. The sealed ballots at all times shall be in the custody of the inspector or inspectors of election or at a location designated by the inspector or inspectors until after the tabulation of the vote, at which time custody shall be transferred to the Association.

(C) Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.

(D) Count and tabulate all votes. All votes shall be counted and tabulated by the inspector or inspectors of election, or his or her designee, in public at a properly noticed open meeting of the Board or Members. Any candidate or other Member of the Association may witness the counting and tabulation of the votes.

(E) Determine when the polls shall close, consistent with the Governing Documents.

(F) Determine the tabulated result of the election. The results of the election shall be promptly reported to the Board of the Association and shall be recorded in the minutes of the next Board Meeting and shall be available for review by Members of the Association.

(G) Perform any acts as may be proper to conduct the election with fairness to all Members in accordance with this Section, the Corporations Code, and all applicable rules of the Association regarding the conduct of the election that are not in conflict with this Section.

4.7 Secret Ballot Procedures

Secret ballots and two (2) preaddressed envelopes with instructions on how to return ballots shall be mailed by first-class mail or delivered by the Association to every Member not less than thirty (30) days prior to the deadline for voting. In order to preserve confidentiality, a voter may not be identified by name, address, or Separate Interest number on the secret ballot. The secret ballot itself is not signed by the voter, but is inserted into an envelope that is sealed. This envelope is inserted into a second envelope that is sealed. In the upper left hand corner of the second envelope, the voter shall sign his or her name, indicate his or her name, and indicate the address or separate interest identifier that entitles him or her to vote, and the second envelope is addressed to the inspector or inspectors of election, who will be tallying the votes. The envelope may be mailed or delivered by hand to a location specified by the inspector or inspectors of election. The Member may request a receipt for delivery.

No person, including a Member or an employee of the management company, shall open or otherwise review any secret ballot prior to the time and place at which the secret ballots are counted and tabulated. The inspector of elections, or his or her designee, may verify the Member's information and signature on the outer envelope prior to the meeting at which secret ballots are tabulated. Once a secret ballot is received by the inspector of elections, it is irrevocable.

4.8 Tabulation of Secret Ballots and Announcement of Results

The secret ballots received prior to the voting deadline shall be counted by the inspector of elections at a properly noticed meeting of Members or Board Meeting. The tabulated results of the election shall be promptly reported to the Board and shall be recorded in the minutes of the next Board Meeting and shall be available for review by Members. Within fifteen (15) days of the election, the Board shall give General Notice of the tabulated results of an election.

4.9 Election and Meeting Materials

The sealed secret ballots at all times shall be in the custody of the inspector or inspectors of election or at a location designated by the inspector or inspectors until after the tabulation of the vote, and until the time allowed by Civil Code Section 5145 for challenging the election has expired, at

which time custody shall be transferred to the Association. After the transfer of the ballots to the Association, the ballots shall be stored by the Association in a secure place for no less than one (1) year after the date of the election. If there is a recount or other challenge to the election process, the inspector or inspectors of elections shall, upon written request, make the ballots available for inspection and review by a Member or his or her authorized representative. In the event of a recount or other challenge to the election process, the Association shall, upon written request, make the ballots available for inspection and review by Association Members or their authorized representatives. Any recount shall be conducted in a manner that shall preserve the confidentiality of the vote.

4.10 Action of Members Without a Membership Meeting

Except when a membership meeting is required under Corporations Code Section 7513(e), an election or vote may be conducted by written mail ballot without a membership meeting. Membership approval by written mail ballot shall be valid only if (i) the number of votes cast by ballot within the time established for return of the ballots equals or exceeds the quorum that would have been required to be present at a membership meeting if such a meeting had been convened to vote on the proposal; and (ii) the number of affirmative votes equals or exceeds the number of affirmative votes that would have been required to approve the action at such a meeting. The time fixed for the return of written mail ballots may be extended twice, for a reasonable period of time as set by the Board, only if the Board so notifies the Members in the balloting solicitation materials originally sent to Members.

ARTICLE V

BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE

5.1 In General

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

5.2 Number; Qualifications

The affairs of this Association shall be managed by a Board of five (5) directors, comprised of three (3) officers and two (2) Members at Large, with responsibilities to be determined by the Board. All directors must be Members of the Association and in Good Standing. Joint Owners of a Separate Interest may not serve on the Board concurrently. Good standing is a qualification for nomination to the Board and continued service thereon.

5.3 Term of Office

The term of office for directors shall be two (2) years. The directors shall serve staggered terms with two (2) or three (3) directors being elected in alternate years. Unless sooner vacated, each director shall hold office until the director's term expires and a successor is elected or appointed.

5.4 Removal; Vacancies

Any or all directors may be removed without cause if such removal is approved by the affirmative vote of a Majority of a Quorum of Members, represented and voting at a duly held meeting.

In the event of the death or resignation of a director his or her successor shall be filled by approval of the Board at a duly held meeting or by a sole remaining director, and shall serve for the unexpired term of his or her predecessor. The Members may elect a director at any time to fill any vacancy not filled by the directors. A vacancy created by removal of a director can be filled only by election of the Members.

5.5 Compensation

No director shall receive compensation for any service related to performance of their duties as a director or officer to the Association, unless approved by a vote of the membership. Any director may be reimbursed for his or her actual expenses, if reasonable, incurred in the performance of his or her duties.

5.6 Indemnification of Officers and Directors

Each director, officer, and committee member shall be indemnified by the Association and the Members against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him or her by judgment or settlement in connection with any proceeding to which he or she may be a party, or in which he or she may become involved, by reason of his or her being

or having been a director, officer, or committee member of the Association, except in cases of fraud, gross negligence or bad faith of the director, officer, or committee member in the performance of his or her duties.

5.7 Resignation of Directors

Except as provided in this paragraph, any director may resign, and such resignation shall be effective on giving written notice to the president, the secretary, or the Board, unless the notice specifies a later time for the resignation to become 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.

5.8 Declaration of Vacancy

In accordance with Corporations Code Section 7221, a majority of the Board may declare vacant the office of any director who fails to meet the qualifications or violates the code of conduct contained in this **Section 5.8**. Before the office of a director may be declared vacant, the director shall first be given a warning in executive session (documented in the Executive Session Minutes) specifying the grounds for such action and whether or not present at the executive session meeting, be provided written notice of the warning and the grounds specified. The Director is entitled upon request (made within 15 days of the date of the written notice) to meet with the Board and present any statements, evidence or information in his or her defense for their consideration prior voting on the matter.

5.8.1 Director Qualifications

To remain qualified for continued service on the Board of Directors, Directors must remain in Good Standing.

5.8.2 Director Code of Conduct

Directors are required to meet the following code of conduct with regard to their service on the Board. A Director shall not:

(A) receive any type of monetary gain, or other gain such as services, products, gifts or gratuities of a significant value, which have been provided in relation to a directors' service on the Board, and which is not disclosed. Disclosure must take place at an open Board Meeting and be recorded in the minutes. Compensation for services duly approved by the Board and unrelated to

duties as a director or officer of the Association, or reimbursement of expenses associated with service to the community do not constitute unethical or detrimental behavior and are permissible;

(B) addresses fellow directors with abusive language in such a manner that causes distress and emotional harm. Abusive language is any language which causes humiliation or intimidation, or inflicts ridicule, coercion, threats or mental abuse, or other language of a punitive nature, or language which is prejudicial or grossly profane.

(C) discloses confidential information obtained in executive session or otherwise to non-Board members; and

(D) maintain attendance at Board meetings such that a Director does not miss more than three (3) consecutive regularly scheduled Board Meetings or fail to attend more than six (6) Board Meetings, regular or special, within any twelve (12) month period.

ARTICLE VI

NOMINATION AND ELECTION OF DIRECTORS

6.1 Nomination

Nomination for election to the Board shall be made pursuant to reasonable procedures adopted by the Board from time to time. Provided that the number of candidates on the ballot is less than the number of openings on the Board, nominations may also be made from the floor at the annual meeting. All candidates shall have reasonable opportunity to communicate their qualifications to Members and to solicit votes.

6.1.1 Board Candidate Qualifications

All candidates for the board must be Members of the Association and in Good Standing.

6.2 Election

The election of the Board shall be conducted at the annual meetings of the Association. At such election the Members may cast, with respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of

votes shall be elected. Members shall not be entitled to cumulate their votes. Voting for directors shall be by secret written ballot.

6.3 Uncontested Elections

If the number of candidates is not more than the number of directors to be elected, it shall be deemed an uncontested election. The candidates identified become the “slate” at the annual meeting. Any Member may move to accept the “slate” by acclamation. The motion shall be seconded by any Member and approved by majority voice vote at the annual meeting.

ARTICLE VII MEETINGS OF DIRECTORS

7.1 Annual and Regular Meetings

7.1.1 Annual Meeting of Directors

Immediately following each annual meeting of Members, the Board shall hold a regular Meeting for the purpose of organization, election of officers, and the transaction of other business. Notice of this Board Meeting shall not be required.

7.1.2 Regular Meetings

Ordinarily, regular Board Meetings shall be conducted at least monthly, provided, however, regular Board Meetings can be held as infrequently as every quarter if the Board’s business does not justify more frequent meetings. If the Board adopts an annual schedule for the conduct of regular Board Meetings (such as a schedule that calls for regular Board Meetings to be held at a specific time and location on the third Thursday of each month) and that schedule is communicated to all directors at the inception of the year, no further notice of a regular Board Meeting shall be required unless the date, time, or location for a particular regular Board Meeting is changed for any reason, in which case, notice shall be provided to all directors in accordance with **Section 7.4**.

7.2 Special Meetings

Special Board Meetings shall be held when called by written notice signed by the president of the Association, or by any two (2) directors.

7.3 Emergency Meetings

An emergency Board Meeting may be called by the president of the Association (**Section 9.7.1**), or by any two members of the governing body other than the president, without providing notice to the Members as set forth herein, if there are circumstances that would 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 herein.

7.4 Notice of Meetings

Notice of the time and place of regular and special Board Meetings shall be provided to Board members in advance of said Board Meetings. Notice of emergency Board Meetings shall be communicated to all directors in such a manner as is reasonable under the circumstances. Members shall be given notice of the time and place of Board Meetings, except for an emergency Board Meeting or a Board Meeting that will be held solely in executive session, at least four (4) days prior to the Meeting. Except for an emergency Board Meeting, Members shall be given notice of the time and place of a Board Meeting that will be held solely in executive session at least two (2) days prior to the Board Meeting. Notice shall be given by General Notice as defined in **Section 2.6** of these Bylaws, or by Individual Notice as defined in **Section 2.9** of these Bylaws to any Member who had requested notification of Board Meetings by Individual Notice. The notice shall contain the agenda for the Board Meeting.

7.5 Quorum

A majority of the directors then in office, not counting vacancies, shall constitute a quorum for the transaction of business. Every act performed or decision made by a majority of the directors present at a duly held Board Meeting at which a quorum is present shall be regarded as the act of the Board. A Board Meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by a majority of the required quorum for that Board Meeting.

7.6 Executive Session

The Board may hold executive session Board Meetings to discuss and vote upon personnel matters, matters that relate to the formation of contracts with third parties, litigation in which the Association is or may become involved, or to meet with a Member, upon the Member's request, regarding the Member's payment of assessments. In any matter relating to the discipline of a Member, the Board shall meet in executive session if requested by that Member, and he or she shall

be entitled to attend the executive session. Any matter discussed in executive session shall be generally noted in the open session minutes of the Board immediately following the Board Meeting.

7.6.1 Notice to Members of Executive Session Meetings

Members shall be given notice of the time and place of a Board Meeting that will be held solely in executive session at least two (2) days prior to the Board Meeting. Notice shall be provided as set forth in **Section 7.4** herein.

7.7 Teleconference Meetings

A Board Meeting may be held by teleconference. A teleconference Board Meeting shall be through audio or video or both. A teleconference Board Meeting shall be conducted in a manner that protects the rights of the Members of the Association and otherwise complies with the requirements of these Bylaws. Except for a Board Meeting that will be held solely in executive session, the notice of the teleconference Board Meeting shall identify at least one (1) physical location so that Members of the Association may attend and at least one (1) member of the Board or a person designated by the Board shall be present at that location. Participation by Board members in a teleconference Board Meeting constitutes presence at that meeting as long as all Board members participating in the Board Meeting are able to hear one another and Members of the Association speaking on matters before the Board.

7.8 Waiver of Notice

The transactions of any Board Meeting, however called and noticed or wherever held, shall be as valid as though taken at a Board Meeting duly held after regular call and notice, if (a) a quorum is present, and (b) either before or after the Board Meeting, each of the directors not present signs a written waiver of notice, a consent to holding the Board Meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the Board Meeting. Notice of a Board Meeting shall also be deemed given to any director who attends the Board Meeting without protesting before or at its commencement about the lack of adequate notice.

7.9 Notice of Adjourned Meeting

Notice of the time and place of holding an adjourned Board Meeting need not be given, unless the Board Meeting is adjourned for more than twenty-four (24) hours, in which case personal notice of the time and place shall be given before the time of the adjourned Board Meeting to the

directors who were not present at the time of adjournment, and shall be posted at a prominent place within the Common Area.

7.10 Meetings Conducted by Electronic Transmissions

The Board shall not take action on any Item of Business outside of a Board Meeting. The Board shall not conduct a Board Meeting via a series of electronic transmissions, including, but not limited to, electronic mail, except as specified herein.

7.10.1 Emergency E-mail Meetings

Electronic transmissions may be used as a method of conducting an emergency Board Meeting if all members of the Board, individually or collectively, consent in writing to that action, and if the written consent or consents are filed with the minutes of the Board Meeting. Written consent to conduct an emergency Board Meeting may be transmitted electronically.

7.11 Conflict of Interest Restrictions on Director Votes

7.11.1 Voting Prohibited

An individual director or member of a committee, who is the subject of the following, shall not vote on any of the following matters:

- (A) discipline of the director or committee member;
- (B) an assessment against the director or committee member for damage to the Common Area or improvements;
- (C) a request by the director or committee member for a payment plan for overdue assessments;
- (D) a decision whether to foreclose on a lien on the director's or committee member's Separate Interest;
- (E) review of a proposed architectural change to the director's or committee member's Separate Interest in accordance with Article VIII of the Declaration; and

(F) a grant of exclusive use common area to the director or committee in accordance with Civil Code Section 4600.

7.11.2 Material Financial Interest

Corporations Code Sections 7233 and 7234 shall apply to contracts or other transactions authorized, approved, or ratified by the Board or a committee of the Board where a director has a material financial interest in a particular contract or transaction.

7.12 Attendance by Members; Common Interest Development Open Meeting Act Provisions

7.12.1 Meetings Generally Open to Members

With the exception of executive sessions of the Board (see **Section 7.6**, above), any Member of the Association may attend Board Meetings, provided, however, that nondirector Members may participate in deliberations or discussion of the Board only when expressly authorized by a vote of a majority of the directors present at the Board Meeting at which a quorum has been established or by the Board member chairing the Board Meeting.

7.12.2 Right of Members to Speak at Meetings

The Board shall permit any Member to speak at any meeting of the Members or the Board, except for Board Meetings that are held in executive session under **Section 7.6**, above. The Board or the chairman of the meeting may impose reasonable time limitations on presentations or statements by Members, and, in the case of Board Meetings, the agenda for the Board Meeting can designate a specific time for Member statements and comments.

7.12.3 Meeting Agendas; General Restriction of Action to Items on the Agenda

As required by Civil Code Section 4920, any notice of Board Meetings that is required by law to be distributed or made available to the Members under **Section 7.4** must include an agenda for the Board Meeting. Except as provided in subsections (A) through (E) of this **Section 7.12.3** or **Section 7.12.4** below, the Board may not discuss or take action on any item at a non-emergency Board Meeting unless the item was placed on the agenda that was included in the notice given to the Members. Members who are not on the Board may, however, speak on the issues that are not on the agenda. Notwithstanding the general rule that Board actions must be restricted to items

shown on the Board Meeting agenda, a member of the Board, a managing agent or other agent of the Board, or a member of the staff of the Board may do any of the following:

(A) Directors, managing agents, and other agents or staff members of the Board may briefly respond to statements made or questions posed by a person speaking at an open Board Meeting;

(B) Directors, managing agents, and other agents or staff members of the Board may ask a question for clarification, make a brief announcement, or make a brief report on the director's own activities, whether in response to a question posed by a Member or passed on the director's own initiative;

(C) The Board or any director may provide reference to, or provide other resources for factual information to, the Board's managing agent or other agents or staff;

(D) The Board or any other director may request the managing agent of the Association or other agents or staff to report back to the Board at a subsequent meeting concerning any matter, or take action to direct the managing agent, other agents, or staff to place a matter of business on a future agenda;

(E) The Board or any director may direct the Association's managing agent or other agents or staff to perform administrative tasks that are necessary to carry out the requirements of Civil Code Section 4900, *et seq.*

7.12.4 Authority to Take Action on Certain Items Not on the Published Agenda

Notwithstanding the general rules that Board actions must be restricted to items shown on the Board Meeting agenda, the Board may take action on any Item of Business not appearing on the posted Board Meeting agenda under any of the following conditions:

(A) On a determination made by a majority of the Board present at the Board Meeting that an emergency situation exists. An emergency situation exists if there are circumstances that could not have been reasonably foreseen by the Board, that require immediate attention and possible action by the Board; and that, of necessity, make it impracticable to provide notice;

(B) On a determination made by the Board by a vote of two-thirds ($\frac{2}{3}$) of the members of the Board who are present at the Board Meeting, or if less than two-thirds ($\frac{2}{3}$) of total membership of the Board is present at the Board Meeting, by a unanimous vote of the Board members present, that there is a need to take immediate action and that the need for action came to the attention of the Board after the agenda for the Board Meeting was posted and distributed to the Members; or

(C) The item appeared on an agenda that was posted and distributed to the Members for a prior Board Meeting that occurred not more than thirty (30) calendar days before the date that action is taken on the item and, at the prior Board Meeting, action on the item was continued to the Board Meeting at which the action is taken. Before discussing any item under this **Section 7.12.4**, the Board shall openly identify the item to the Members in attendance at the Board Meeting.

7.12.5 Board Meeting Minutes

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

ARTICLE VIII POWER AND DUTIES OF THE BOARD OF DIRECTORS

8.1 Powers and Duties

The Board shall manage the affairs of the Association and shall have all the powers and duties necessary for the administration of the Property and may do all such acts and things as are not prohibited by the Governing Documents. In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board shall have the power to and be responsible for the following, by way of illustration, but not limitation:

8.1.1 Powers of Non-Profit Corporation

Exercise all powers vested in the Association as a California non-profit corporation.

8.1.2 Appointment of Agents and Employees

Appoint such agents and employ such other employees, including attorneys and accountants, as it sees fit to assist in the operation of the Association, and to fix their duties and to establish their compensation.

8.1.3 Insurance

Contract for and pay premiums for fire, casualty, liability and other insurance and bonds (including indemnity bonds) which may be required from time to time by the Association.

8.1.4 Contracts

Contract for and pay for maintenance, landscaping, utilities, materials, supplies, labor and services that may be required from time to time in relation to the Property.

8.1.5 Payment of Taxes

Pay all taxes, and charges which are or would become a lien on any portion of the Common Areas.

8.1.6 Contract for Reconstruction

Contract for and pay for construction or reconstruction of any portion or portions of the Property which have been damaged or destroyed and which are to be rebuilt.

8.1.7 Entry for Maintenance

Enter Separate Interest as necessary, subject to the notice requirements of the Declaration, in connection with construction, maintenance or emergency repairs for the benefit of the Property, as more fully provided in Section 2.4 of the Declaration.

8.1.8 Annual Budget

Prepare and adopt an annual budget, in which there shall be established the contribution of each Member to the common expenses.

8.1.9 Assessments

Make assessments to defray the common expenses, as more fully set forth in the Declaration.

8.1.10 Collection of Assessments

Collect the assessments, deposit the proceeds thereof in a bank depository which it shall approve and use the proceeds to administer the Association.

8.1.11 Bank Accounts

Open bank accounts on behalf of the Association and designate the signatories required.

8.1.12 Accounting Books

Keep books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred. All books and records shall be kept in accordance with generally accepted accounting practices.

8.1.13 Reserve Funds

Establish and maintain an adequate reserve fund for replacement, repair and maintenance of the Property as required by the Declaration.

8.1.14 Maintenance

Provide for the operation, care, upkeep, and maintenance of the Common Area.

8.1.15 Personnel

Designate, hire, and dismiss the personnel necessary for the maintenance, operation, repair and replacement of the Association, its property and the areas over which the Association is responsible and, where appropriate, provide for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties.

8.1.16 Rules and Regulations

Adopt and publish rules and regulations governing the use of the Property and Separate Interests, as more fully provided in Section 5.5 of the Declaration, and the personal conduct of the Members and their guests thereon, and establish and impose monetary penalties, temporary suspensions of a Member's rights as a Member, or other appropriate discipline for the infractions

thereof or for violations of provisions of Governing Documents, all as more fully set forth in **Section 8.5** of these Bylaws.

8.1.17 Acquisition and Disposition of Property

The Association shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the Association subject to the limitation contained in **Section 8.6** of these Bylaws.

8.1.18 Expenditure of Reserve Funds

The Board may only expend funds designated as reserve funds for the purpose of repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established.

8.1.19 Transfer of Reserve Funds

The Board may authorize the temporary transfer of moneys from a reserve fund to the Association's general operation fund to meet short-term cashflow requirements or other expenses, if the Board has provided notice of its intent to consider the transfer in a notice of meeting to the Members per **Section 7.4**. 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, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the moneys will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one (1) year of the date of the initial transfer, except that the Board may, 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 interests of the Association, temporarily delay the restoration. 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. This Special Assessment is subject to the limitation imposed by Civil Code Section 5605. The Board may, at its discretion, extend the date the payment on the Special Assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid Special Assessment.

8.1.20 Prosecution and Defense of Lawsuits

The Board has the authority to prosecute or defend, in the name of the Association, any action affecting or relating to the Common Area or property owned by the Association, and any action in which all or substantially all of the Members have an interest.

8.2 Management Agent

The Board shall have the power to employ a professional management agent or agents, at a compensation established by the Board, to perform such duties and services as the Board shall authorize. The Board shall use every effort to secure a management contract that contains a termination clause permitting termination, with or without cause, upon no more than sixty (60) days written notice. No management contract shall have a term in excess of one (1) year.

8.3 Borrowing and Expenditures

The Board shall have the authority to borrow money on behalf of the Association and to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for the money borrowed or debts incurred so long as the vote or written consent of a Majority of a Quorum of Members has been obtained.

8.4 Delegation

The Board has the power to delegate its authority and powers to committees, officers or employees of the Association or to a manager employed by the Association. The Board may not delegate to any nonboard member the authority to make expenditures for capital additions or improvements chargeable against the reserve funds; to conduct hearings concerning compliance by a Member or his or her tenant, lessee, guest or invitee with the Declaration or rules and regulations promulgated by the Board, or to make a decision to levy monetary fines, impose Special Assessments against Separate Interests, temporarily suspend a Member's rights as a Member of the Association or otherwise impose discipline following any such hearing; to make a decision to levy Annual or Special assessments; or to make a decision to bring suit, record a claim of lien, or institute foreclosure proceedings for default in payment of Assessments. The Board may delegate to a manager any of its other duties, powers or functions. Any such delegation shall be revocable by the Board at any time. Any such manager may be either a person or firm. The members of the Board, individually or collectively, shall not be liable for any omission or improper exercise by the manager of any such duty, power or function so delegated by written instrument executed by a majority of the Board.

8.5 Procedure for Disciplinary Action

In addition to the general powers of enforcement as described in the Declaration, the Association may discipline its Members for violation of any of the provisions of the Governing Documents by (a) suspending the violators' voting rights, privileges or use of the Common Area, (b) imposing monetary penalties for such violations, and/or (c) by imposing a monetary charge as a means of reimbursing the Association for costs incurred by the Association to repair damage to the Common Area and facilities caused by a Member or the Member's guest or tenant, as long as the Association complies with the following procedure prior to imposition of discipline:

(A) When the Board is to meet and consider or impose discipline upon a Member, the Board shall notify the Member, in writing, by either personal delivery or Individual Notice, at least ten (10) days prior to the meeting.

(B) The notification shall contain, at a minimum, the date, time and place of meeting, the nature of the alleged violation for which a Member may be disciplined, and/or the nature of the damage to the Common Area and facilities for which a monetary charge may be imposed, and a statement that the Member has a right to attend and may address the Board at the meeting.

(C) If the Board imposes discipline on a Member and/or imposes a monetary charge on the Member for damage to the Common Area and facilities, the Board shall provide written notification of the decision by either personal delivery or Individual Notice to the Member within fifteen (15) days following the action. A disciplinary action shall not be effective against a Member unless the Board fulfills the requirements of this Section.

(D) In the event Civil Code Section 5855 is amended or modified by the legislature, the Board may follow the disciplinary procedures set forth therein or any related statute and such action shall be deemed in compliance with these Bylaws.

8.6 Limitation on Board Authority and Liability

Except with the vote or written assent of the Members, the Board may not take certain actions as more fully specified in the Section 5.3 of the Declaration. Directors, officers, committee members, employees, or other agents of the Association have limited liability as more fully set forth in Section 5.4 of the Declaration.

ARTICLE IX OFFICERS AND THEIR DUTIES

9.1 Enumeration of Officers

The officers of this Association shall be Directors. The Officers shall be a president, a secretary and a treasurer and other such officers as the Board may from time to time create by resolution. Non-officers are directors at large.

9.2 Election of Officers

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

9.3 Term

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

9.4 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.

9.5 Resignation and Removal

Any officer may be removed from office (but not from the Board, if he or she is also a Board member) by the Board with or without cause. Any 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.

9.6 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 or she replaces.

9.7 Duties

The duties of the officers are as follows:

9.7.1 President

The president shall preside at all Board Meetings; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall sign all promissory notes. He or she shall have the general powers and duties of management usually vested in the office of the president of a California nonprofit mutual benefit corporation, and shall have such powers and duties as may be prescribed by the Board or by these Bylaws.

9.7.2 Secretary

The secretary shall record or cause to be recorded the votes and keep or cause to be kept the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with the addresses; and shall perform such other duties as required by the Board.

9.7.3 Treasurer

The treasurer shall oversee receipt and deposit of funds in appropriate bank accounts of the Association and disbursements as directed by resolution of the Board; shall sign all promissory notes of the Association; shall oversee proper books of account; shall oversee preparation and distribution of financial statements to each member as set forth in **Article X**.

9.7.4 Delegation of Duties

The foregoing duties may be delegated to a manager appointed by the Board.

9.8 Agreements, Contracts, Deeds, Leases, etc.

All agreements, contracts, deeds, leases, promissory notes and other instruments of the Association shall be executed by the president or by such other person or persons as may be designated by resolution of the Board.

ARTICLE X

ANNUAL REPORTS AND BOARD REVIEW OF FINANCIALS

10.1 Annual Policy Statement

The Association shall provide Individual Notice of the Annual Policy Statement, Annual Budget Report and an Assessment and Reserve Funding Disclosure Summary to all Members within thirty (30) to ninety (90) days before the end of the fiscal year. Summaries thereof may be provided as permitted under Civil Code Section 5320.

10.2 Year-End Financial Statement

Within one hundred-twenty (120) days after the close of the fiscal year, the Association shall provide Individual Notice to Members of the Association's year-end financial statement review consisting of at least the following: a balance sheet as of the end of the fiscal year, an operating (income) statement for the fiscal year, a statement of changes in financial position for the fiscal year, a statement advising Members of the place where the names and addresses of the current Members are located, and 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.

10.3 Review of Operating and Reserve Accounts

The Board shall review all of the following on at least a quarterly basis: a reconciliation of the Association's operating and reserve accounts, current year's actual reserve revenues and expenses compared to the current year's budget, the latest account statements prepared by the financial institutions where the operating and reserve accounts are located, and an income and expense statement for the Association's finances. Additionally, the Board shall review on an annual basis the reserve study and implement necessary adjustments.

10.4 Signatories of Reserve Accounts

The signatures of at least two (2) persons, who shall be members of the Association's Board shall be required for the withdrawal of reserve funds from the Association's reserve accounts.

ARTICLE XI COMMITTEES

The Board may appoint committees as deemed appropriate in carrying out its purpose. No committee, regardless of Board resolution, may: (a) take any final action on matters which, under the Nonprofit Corporation Law of California, also require members' approval; (b) fill vacancies on the Board or in any committee; (c) amend or repeal Bylaws or adopt new Bylaws; (d) amend or repeal any resolution of the Board; (e) appoint any other committees of the Board or the members of those committees; (f) approve any transaction to which the Association is a party and in which one (1) or more directors have a material financial interest.

ARTICLE XII BOOKS AND RECORDS

12.1 Owner Preferences

To be effective, the following Member requests shall be made in writing by Delivery to the Association as defined in **Section 2.5** of these Bylaws:

- (A) to change the Members' information on the membership list;
 - (B) to add or remove a second address for delivery of Individual Notices to the Member;
 - (C) for Individual Notice of General Notices to the Member, or a request to cancel a prior request for Individual Notice of General Notices;
 - (D) to opt out of the membership list or to request to cancel a prior request to opt out of the membership list;
 - (E) to receive a full copy of a specific Annual Budget Report or Annual Policy Statement;
- and
- (F) a request to receive all reports in full.

12.2 Inspection by Members

Association records and enhanced Association records as defined in Civil Code Section 5200 shall be made available for inspection and copying by any Member of the Association, or by his or her designated representative in accordance with Civil Code Section 5205.

12.3 Rules for Inspection

The Board shall establish reasonable rules for inspection and copying of Association records in accordance with Civil Code Section 5200, *et seq.*

12.4 Documents Provided by Association

Upon written request, the Association, through the management company, or if there is no management company, through the Secretary, shall, within the applicable timeframe set forth in Civil Code Section 5210 provide the Member with an opportunity to inspect the Association records and/or enhanced Association records. The type of Association record being requested by a Member dictates the length of time the Association has to provide the Association record requested. Association records prepared during the current fiscal year, shall be provided to the Member within ten (10) business days following the Association's receipt of the request while Association records prepared during the previous two (2) years, shall be provided within thirty (30) calendar days following the Association's receipt of the request. The Association may bill the Member for certain costs incurred for complying with a Member's request for Association records in accordance with Civil Code Section 5200, *et seq.*, and Corporations Code Section 8330.

12.5 Membership Lists

The Association has the right, within ten (10) business days after receiving a demand for inspection and/or copying the Association's membership list, to deliver to the person or persons making the demand a written offer of an alternative method of achieving the purpose identified in the Members' demand without providing access to or a copy of the membership list, itself. In addition, if the Association reasonably believes that the membership information will be used for a purpose other than the purpose stated by the requesting Member(s), or when the Association provides a reasonable alternative to access to the list, the requesting Members may be denied access to the list. Prohibited uses of membership lists are set forth in Corporations Code Section 8338.

12.6 Inspection by Directors

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 the documents.

12.7 Prohibited Uses of Records

The accounting books and records and the minutes of proceedings of the Association, and any information derived from those books, records, and minutes, may not be sold, used for a commercial purpose, or used for any other purpose that is not reasonably related to the requesting Member(s)' interest as a Member of the Association. Under Civil Code Section 5230 the Association has the right to seek injunctive relief and actual damages for any violation of these restrictions on the use of Association information and records, and, if successful, to obtain an award of its reasonable costs of suit, including reasonable attorney fees.

ARTICLE XIII AMENDMENTS

13.1 Procedure

These Bylaws may be amended only by the affirmative vote or written consent of a Majority of a Quorum of Members. However, the percentage of voting power necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

13.2 Conflict Between Documents

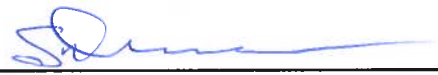
In the case of any conflict between the Articles of Incorporation and the Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control. In case any of these Bylaws conflict with the provisions of the California Common Interest Subdivision Act or the Mutual Benefit Nonprofit Corporations Code, the provisions of said statutes shall control.

CERTIFICATION OF SECRETARY

KNOW ALL PERSONS BY THESE PRESENTS:

The undersigned, Secretary of Smoke Tree - Adobe Falls Owners' Association, Inc., a California nonprofit mutual benefit corporation, does hereby certify that the above and foregoing Bylaws were duly adopted by the Board of Directors and Members of the Association on the 20th day of November, 2018, and that they now constitute the Bylaws of said Association.

Dated: 7/2, 2019



Secretary