

**AMENDED AND RESTATED**  
**BYLAWS**  
**OF**  
**TICONDEROGA OWNERS' ASSOCIATION, INC.**

**ARTICLE I**  
**NAME AND LOCATION**

The name of this nonprofit corporation is Ticonderoga Owners' Association, Inc. (the "Association"). The principal office of the Association initially shall be located at HC 75, Box 81, Chama, New Mexico, 87520-9705, but meetings of Members and Directors may be held at such places within the County of Rio Arriba, State of New Mexico, as may be designated by the Board of Directors.

**ARTICLE II**  
**DEFINITIONS**

In addition to such other terms as are hereafter defined in these Bylaws, when used in these Bylaws, the following initially capitalized terms shall have the following meanings.

**Section 1:** "Association" shall mean and refer to Ticonderoga Owners' Association, Inc., and its successors and assigns.

**Section 2:** "Declaration" shall mean and refer to the Amended and Restated Declaration of Protective Covenants recorded in Book 522, page 2300 of the real property records of Rio Arriba County, New Mexico, as amended from time to time as therein allowed.

**Section 3:** "Lot" and "Lots" shall have the same meaning as set forth in the Declaration, as amended from time to time as therein allowed.

**Section 4:** "Member" and "Members" shall mean and refer to every Owner, as a member of the Association.

**Section 5:** "Owner" shall mean and refer to every person or entity that holds record title to a fee or undivided fee interest in any Lot. Notwithstanding the foregoing, an Owner shall include the holders of equitable title (e.g. the purchasers), and shall exclude the holders of record title (e.g. the sellers) of a Lot under a real estate contract, so long as the real estate contract is not in default. If a real estate contract is in default, then the holders of record title (e.g. the sellers) to the Lot in question shall be an Owner, and the holders of equitable title (e.g. the purchasers) shall be excluded from

being an Owner. The foregoing is not intended to include persons or entities that hold an interest in any Lot merely as security for the performance of an obligation.

Any other initially capitalized terms used herein and not specifically defined herein shall have the meanings ascribed to such terms in the Declaration.

### **ARTICLE III** **MEMBERSHIP AND VOTING RIGHTS**

**Section 1: Membership.** Every person or entity that is a record owner of a fee or undivided fee interest in any Lot, as defined in the Declaration, shall be a Member of the Association. Notwithstanding the foregoing, membership in the Association shall include the holders of equitable title (e.g. the purchasers), and shall exclude the holders of record title (e.g. the sellers) of a Lot under a real estate contract, so long as the real estate contract is not in default. If a real estate contract is in default, then the holders of record title (e.g. the sellers) to the Lot in question shall be entitled to membership in the Association, and the holders of equitable title (e.g. the purchasers) shall be excluded from membership. The foregoing is not intended to include persons or entities that hold an interest in any Lot merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from record ownership of any Lot.

**Section 2: Voting Rights.** Each of the Members shall be entitled to two (2) types or classes of votes, namely (i) one (1) vote for each Lot owned (the "Lot Vote"), and (ii) one (1) vote for each acre (rounded to the nearest whole acre) contained within and constituting each Lot owned (the "Acreage Vote"). Notwithstanding any provision of the Declaration, the Articles of Incorporation, or these Bylaws to the contrary, express or implied, whenever the provisions of the Declaration, the Articles, or these Bylaws shall require the vote of Members of the Association, such vote shall be both the vote of Members on a Lot Vote basis, and a vote of Members on an Acreage Basis, and such matter shall not be approved unless such matter receives the requisite amount of votes of Members on both a Lot Vote basis and an Acreage Vote basis. When more than one person holds an interest in any Lot, all such persons shall be Members, however, the Lot Vote and the Acreage Vote for such Lot shall be exercised as such Members, among themselves, shall determine, but in no event shall more than the requisite number of Lot Votes and Acreage Votes be cast with respect to any Lot.

### **ARTICLE IV** **PROPERTY RIGHTS: RIGHTS OF ENJOYMENT**

Subject to matters set forth in the Declaration, every Owner shall have a non-exclusive right to, and easement of, use and enjoyment, in common with other Owners, in and to the Common Areas, Common Easements and Common Recreational Facilities, which right and easement shall be appurtenant to and shall automatically pass with, and not be severed from, the title to every Lot. Subject to matters set forth in the Declaration, any Owner may delegate his or her right of enjoyment to the Common Areas, Common Easements and Common Recreational Facilities, to family

members, tenants, etc., who reside on the Owners' Lot.

**ARTICLE V**  
**MEETING OF MEMBERS**

*CHANGE FROM BUDGET*  
**Section 1: Annual Meeting.** The regular meetings of the Members shall be held on the first Saturday in August of each year, at the hour of nine o'clock a.m. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the next succeeding business day.

**Section 2: Special Meetings.** Special meetings of the Members may be called at any time by the President or any Member of the Board of Directors, or upon written request of Members holding one-third (1/3) or more of each class of votes in the Association.

**Section 3: Notice of Meetings.** Written notice of each meeting of the Members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by personally delivering, mailing, or sending an electronic mail copy of such notice, not less than ten (10) nor more than fifty (50) days before the date for such meeting, to each Member entitled to vote thereat. If such notice is mailed it shall be mailed postage prepaid, addressed to the Member's address last appearing on the books of the Association. Such notice shall specify the place, date and hour of the meeting, and, in the case of special meeting, the purpose or purposes of the meeting. No business shall be transacted at any special meeting except as stated in such notice. It is the obligation of the Owners to notify the Board of their current address.

**Section 4: Quorum and Voting.** The presence at the meeting of Members, or of proxies, entitled to cast a majority of each class of the votes of Members shall constitute a quorum for any action, except as otherwise expressly provided in the Articles of Incorporation, the Declaration or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented. When a quorum is present or represented at any meeting, a majority vote of each class of votes of the Members present or represented thereat will be required to decide any question brought before such meeting, unless the question is one upon which express provision of law, or of the Articles, Bylaws or Declaration, a larger or different vote is required, in which case such express provision shall govern and control the decision of such question. Voting of the Members shall be in accordance with Article V of the Articles of Incorporation and Section 2 of Article III of these Bylaws.

**Section 5: Proxies.** At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary prior to the meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot.

**Section 6: Action by Consent.** Any action required to be taken at a meeting of the Members may be taken without a meeting if a written consent, setting forth the action so taken, shall be signed by all the Members entitled to vote with respect to the subject matter thereof. Such consent shall have the effect of a unanimous vote.

## **ARTICLE VI**

### **BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE**

**Section 1: Number.** The affairs of this Association shall be managed by a Board of five (5) directors. After the initial Board of Directors, all of the members of the Board of Directors must be Members of the Association. The number of directors may be increased and decreased from time to time by the vote of each class of votes of the Members of the Association; provided, however, that in no event shall the number of directors be less than three (3). Any vacancy created by any increase in the number of directors shall be filled by the Board of Directors.

CHANGED  
FROM 100  
WRS  
WRS

**Section 2: Term of Office.** At the annual meeting, the Members shall elect directors for a term of one year. Nothing herein contained shall prevent the election of a director whose term has expired to a new term as a director.

**Section 3: Removal.** Any director may be removed from the Board, with or without cause, by a majority vote of each class of votes of the Members of the Association. Upon the death, resignation or removal of a director, his successor shall be selected by the remaining directors and shall serve for the unexpired term of his predecessor.

**Section 4: Compensation.** No director shall receive compensation for any service rendered to the Association. However, any director may be reimbursed for the director's actual expenses incurred in the performance of the director's duties.

**Section 5: 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 consent of all the directors. Any action so approved shall have the same effect as a unanimous vote taken at a meeting of the directors.

**Section 6: Indemnification.** The directors shall not be liable to the Owners for any mistake of judgment, negligence, or otherwise, except in the event of willful misconduct or recklessness. The Association shall indemnify and hold harmless each of the directors against all liabilities to and claims and demands made by others arising out of contracts made by the Board of Directors upon behalf of the Association and its Members, and in connection with any acts performed pursuant to the Declaration or these Bylaws, unless such director or directors are adjudged guilty of willful misconduct or recklessness in the performance of their duties as directors.

**ARTICLE VII**  
**NOMINATION AND ELECTION OF DIRECTORS**

**Section 1: Nomination.** Nomination for election to the Board of Directors shall be made from the floor at the annual meeting of Members.

**Section 2: Election.** At such annual meeting, the Members or their proxies may cast, by secret written ballot, as many votes of each class of votes as they are entitled to exercise under the provisions of the Articles of Incorporation. The Member receiving the largest number of votes on a Lot Vote basis and the Member receiving the largest number of votes on an Acreage Vote basis each shall be elected. The two (2) persons so elected to the Board shall then select a third person, who does not need to be a Member, to serve on the Board of Directors.

**ARTICLE VIII**  
**MEETINGS OF DIRECTORS**

**Section 1: Regular Meetings.** Regular meetings of the Board of Directors shall be held at least semi-annually, without notice, at such place and hour as may be fixed from time to time by resolution of the Board, at least one such meeting occurring immediately after the regular annual meeting of Members. Should said meeting fall upon a weekend or legal holiday, then that meeting shall be held at the same time on the next succeeding business day.

**Section 2: Special Meetings.** Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any director, after not less than two (2) days notice to each director. Attendance by a director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the directors are present at a meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

**Section 3: Quorum.** A majority of the number of directors present in person or by proxy shall constitute a quorum for the transaction of business. Directors may participate in such meetings by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting as provided herein shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Every act or decision done or made by a majority of the directors present in person and by proxy at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

**ARTICLE IX**  
**POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

**Section 1: Powers.** The Board of Directors shall have the power to exercise for the Association all powers, duties and authority vested in or delegated to this Association herein, in the Articles of Incorporation and the Declaration, and not reserved to the Members by other provisions of these Bylaws, the Articles of Incorporation or the Declaration.

**Section 2: Duties.** It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or any special meeting when such statement is requested in writing by Members holding a majority of the votes of each class of votes of the Association;

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

(c) as more fully provided herein and in the Declaration, to fix and collect the amount of assessments against each Lot, and, in addition to the rights of each Member, insure compliance with the Declaration, other than those provisions dealing with the Recreational Association, Recreational Areas or Recreational Facilities;

(d) issue, or to cause an appropriate officer to issue, upon demand by any Member, a certificate setting forth whether or not assessments have been paid on any Lot. (A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.);

(e) procure and maintain adequate liability and hazard insurance on property owned or maintained by the Association;

(f) procure liability and errors and omissions insurance on the acts of directors and officers in connection with the Association's duties and activities;

(g) cause any property or assets owned by the Association to be maintained and taxes thereon to be paid;

(h) cause all bills of the Association to be paid from assessment funds.

**ARTICLE X**  
**OFFICERS AND THEIR DUTIES**

**Section 1: Enumeration of Officers.** The officers of this Association shall be a president, vice-president and secretary, and a treasurer, and such other officers as the Board of Directors may from time to time create, all of which officers shall be at all times members of the Board of Directors. The offices of president, secretary and treasurer may be held by the same person.

**Section 2: Election of Officers.** The election of officers shall take place at the regular meeting of the Board of Directors immediately following each annual meeting of the Members.

**Section 3: Term.** The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless such officer shall sooner resign, or shall be removed, or otherwise be disqualified to serve.

**Section 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.

**Section 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, 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.

**Section 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 replaced.

**Section 7: Duties.** The duties of the officers are as follows:

(a) **President.** The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments on behalf of the Association.

(b) **Vice-President.** The vice-president, if any, 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.

(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 notice of meetings of the Board and of the Members; 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.

(d) **Treasurer.** The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by promissory notes of the Association; keep proper books of account; and shall prepare an annual budget and a statement of income and expenditures to be represented to the membership at its regular annual meeting, and deliver a copy of each to the Members.

**Section 8: Indemnification.** Officers of the Association shall be indemnified for any act they may perform upon behalf of the Association in the same manner herein provided for indemnification of the Board of Directors.

## **ARTICLE XI** **BOOKS AND RECORDS**

The books, records and papers of the Association shall, at all times during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

## **ARTICLE XII** **ASSESSMENTS**

**Section 1: Creation of the Lien and Personal Obligation of Assessments.** By the acceptance of ownership of a Lot, each Owner is deemed to and does hereby covenant and agree to pay to the Association:

(a) Annual assessments for the costs and expenses for maintaining, repairing and replacing the Common Areas, Common Facilities, and Common Easements, and otherwise for the operation of the Association, which, except as hereinafter provided, are to be shared and paid equally by Owners on a per Lot basis, irrespective of whether or not such Owners are actually using the Common Areas, Common Easements, and/or Common Facilities;

(b) Special assessments for shortfalls in annual assessments, extraordinary expenditures not originally included in annual assessments (other than extraordinary expenditures for capital improvements), and the like, which, except as hereinafter provided, are to be shared and paid equally by Owners on a per Lot basis, irrespective of whether or not such Owners are actually using the Common Areas, Common Easements, and/or Common Facilities;

(c) Special assessments for capital improvements to or relating to the Common Areas, Common Facilities, and Common Easements, including reserves for future capital improvements, that are approved and authorized by Owners, which are to be shared and paid by the



Owners of Lots on a pro-rata basis, based upon the total acreage (rounded to the nearest whole acre) contained within the Lot(s) owned by each respective Owner to the total acreage (again rounded to the nearest whole acre) contained within all of the Lots in the Property, irrespective of whether or not such Owners are actually using the Common Areas, Common Easements, and/or Common Facilities; and,

(d) Special assessments for fines for violation of the Declaration or Owners' Association Rules, and special assessments for damages caused by an Owner, or such Owner's tenants, guests or invitees, to the Common Areas, Common Facilities, and/or Common Easements which shall be paid solely by the responsible Owner.

The annual and special assessments, together with such interest therein and costs of collection thereof, including reasonable attorneys' fees, shall be a charge on each Lot and shall be a continuing lien upon each Lot and against which each assessment is made, as provided in the Declaration. Each such assessment, together with such interest, cost and reasonable attorneys' fees also shall be the personal obligation of the Owners of each Lot as also provided in the Declaration.

**Section 2: Manner of Determining Assessments.**

(a) **Annual Assessments.** Each year, before the regular meeting of the Members, the Board of Directors of the Association shall adopt a proposed budget estimating the total amount of funds necessary to pay the costs and expenses of maintaining, repairing and replacing the Common Areas, Common Easements, and/or Common Facilities, and otherwise for operating the Association, for the ensuing calendar year, together with a reasonable amount considered by the Board to be necessary as a reserve for contingencies. At the regular meeting of Members, the proposed budget shall be presented and discussed, and the Members shall be entitled to vote thereon. Unless the Members, by a majority vote of each class of votes of the Members present or represented thereat, vote to reject or amend such budget, such budget shall be deemed to be adopted for the ensuing year. If the Members shall so vote to reject such budget, but do not approve or adopt an alternate budget by a majority vote of each class of votes of the Members present or represented thereat, then the existing budget, and annual assessments, shall continue until a budget is so approved by Members. Within thirty (30) days after the adoption of a budget, the Board of Directors of the Association shall send each Owner or Owners of a Lot a copy of the written budget setting forth the type and amounts of the anticipated expenditures and reserves, the amount of the annual assessment per each Lot, and the dates when due. The earliest date when such assessment, or any portion thereof, shall become due shall be at least thirty (30) days after the date of the mailing or delivering of the written budget. Each Owner or Owners of each Lot shall pay to the Association their pro-rata share of the assessment, on the date(s) when due. If such amount is not paid by such date, then a late fee of \$100.00 shall be assessed and be due and owing, and the unpaid amount shall bear interest at twenty percent (20%) per annum.

(b) **Regular Special Assessments.** If the existing cash on hand of the Association proves inadequate for any reason, including the making of any extraordinary expenditures (other than extraordinary expenditures for capital improvements), non-payment of any assessment, or need to

replenish reserves, the Board of Directors of the Association may at any time levy an additional, special assessment against Lots. The Board of Directors shall provide a statement in writing to the Owners giving the amount and reasons for the additional assessment and the dates when due. The earliest date when such special assessment, or any portion thereof, shall become due shall be at least thirty (30) days after the date of the mailing or delivering of the written notice of such assessment. If such amount is not paid by such date, then a late fee of \$100.00 shall be assessed and be due and owing, and the unpaid amount shall bear interest at twenty percent (20%) per annum.

(c) **Special Assessments for Capital Improvements.** Special assessments for capital improvements to or relating to the Common Areas, Common Facilities, and Common Easements, including reserves for future capital improvements, shall require the approval of Owners, by a majority vote of each class of votes of the Owners present or represented at any regular meeting or special meeting of Owners, or by the unanimous written consent of Owners. If the Owners shall so approve a special assessment for capital improvements, then the Board of Directors shall provide a statement in writing to the Owners giving the amount and reasons for the special assessment for capital improvements and the dates when due. The earliest date when such special assessment for capital improvements, or any portion thereof, shall become due shall be at least thirty (30) days after the date of the mailing or delivering of the written notice of such assessment. If such amount is not paid by such date, then a late fee of \$100.00 shall be assessed and be due and owing, and the unpaid amount shall bear interest at twenty percent (20%) per annum

**Section 3: Fines and Damage.** If damage to the Common Areas, Common Easements, and/or Common Facilities is caused by the negligence, recklessness or intentional act of an occupant or Owner (for example an improperly filled road cut, rutting of road surface by heavy construction traffic during the winter or other wet months, etc.) such Owner or Owners and occupant shall be jointly and severally liable to pay for the costs of the repair of such damage by way of special assessment. The Board of Directors shall also be authorized to assess reasonable fines against an Owner for violation of the Declaration or the Owners' Association Rules. The Board of Directors of the Association shall serve a statement in writing to the affected Owner giving the amount and reason for the special assessment and the special assessment shall be paid by the Owner within thirty (30) days of the date of the mailing or delivery of the written statement of such assessment. If such amount is not paid by such date, then a late fee of \$100.00 shall be assessed and be due and owing, and the unpaid amount shall bear interest at twenty percent (20%) per annum.

**Section 4: Effect of Non-Payment of Assessments; Remedies of the Association.** If any assessment is not paid as of the date due, then the assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, become a continuing lien on the Lot in question, which shall bind such Lot in the hands of the then Owner, his heirs, devisees, personal representatives and assigns, without the necessity of filing or notice. Sale or transfer of any Lot shall not affect the assessment lien. If the assessment is not paid when due, then a late fee of \$100.00 shall be assessed and be due and owing, and the unpaid amount shall bear interest at twenty percent (20%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same and to foreclose the lien against the Lot and there shall

be added to the amount of such assessment the costs of preparing, filing and pursuing the complaint in such action, and if a judgment is obtained, such judgment shall include interest on the assessment as above provided and reasonable attorneys' fees to be fixed by the court together with the costs of the action.

**ARTICLE XIII**  
**AMENDMENTS**

**Section 1:** These Bylaws may be amended at a regular or special meeting of the Members, by Members representing two-thirds (2/3) of the votes of each class of votes of the Association.

**ARTICLE XIV**  
**FISCAL YEAR**

**Section 1: Fiscal Year.** The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, the undersigned President and Secretary, respectively, of the Association have hereunto set our hands this 3 day of September, 2004.

  
Jimmy D. Cunningham  
President

  
G. Randolph Bevis  
Secretary