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RECORDED IN OFFICIAL RECORDS OF SAN DIEGO COUNTY, CA

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VERA L. LYLE COUNTY RECORDER

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REQUEST OF FIRST AMERICAN TITLE CO.

RECORDING REQUESTED BY:

ATTORNEY

WHEN RECORDED, MAIL TO:

STERNBERG, EGGERS, KIDDER & FOX
A Professional Corporation
225 Broadway, Suite 1900
San Diego, California 92101
Attn: James Henry Fox

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SPACE ABOVE FOR RECORDER'S USE

LOS RIOS

CONDOMINIUM PROJECT

DECLARATION OF RESTRICTIONS

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LOS RIOS CONDOMINIUM PROJECT

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS, is made and executed by BREHM COMMUNITIES, a California corporation, herein referred to as "Declarant" (more specifically defined in Article 1 hereof).

WITNESSETH THAT:

WHEREAS, Declarant is the owner of the property in San Diego County, California, described as:

Lots 416, 434 and 435 of BERNARDO HEIGHTS UNIT NO. 22, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 10979, filed in Office of the County Recorder of San Diego County June 28, 1984.

WHEREAS, Declarant has caused to be recorded a Condominium Plan (as such term is defined in California Civil Code Section 1351) affecting Lot 416 described above.

WHEREAS, Declarant is about to sell and convey condominiums and Declarant desires and intends to hereby subject the same, pursuant to California Civil Code Section 1355, to certain limitations, restrictions, conditions and covenants herein set forth.

WHEREAS, Declarant (i) is the owner of the property described in Exhibit A attached hereto and made a part hereof, (ii) contemplates causing to be recorded, as to the property described in said Exhibit A (or any portion thereof), one or more Condominium Plans (as the same is described in California Civil Code Section 1351) and (iii) intends to subject said property (or any portion thereof), pursuant to California Civil Code Section 1355 and the provisions of this Declaration, to the limitations, restrictions, conditions and covenants herein set forth.

NOW, THEREFORE, by this Declaration of Restrictions, Declarant hereby certifies and declares that it has established, and does hereby establish, protective limitations, restrictions, conditions and covenants upon the property first described above, subject to which each and every condominium shall be conveyed by Declarant and thereafter held, leased, encumbered, sold and/or conveyed by each and every successor in interest of Declarant, all in furtherance of a plan for the improvement of said property.

ARTICLE 1

Definitions

1.1 Each of the following words and phrases shall, in this instrument, have the respective meaning shown below, unless a contrary meaning shall, by the context, be evident:

1.1.1 "Articles" shall mean the Articles of Incorporation of the Association as the same may be amended from time to time.

1.1.2 "Association" shall mean the Los Rios Owners' Association, Inc., a California nonprofit mutual benefit corporation, formed and maintained pursuant to the California Nonprofit Mutual Benefit Corporation Law (California Corporations Code Sections 7110 et seq.), composed of the Owners as defined hereinbelow.

1.1.3 "Board of Directors" shall mean the Board of Directors of the Association.

1.1.4 "Bylaws" shall mean the Bylaws of the Association as the same may be amended from time to time.

1.1.5 "Common Area" shall mean Common Area as the same is defined in the Plan as defined hereinbelow.

1.1.6 "Community Articles" shall mean the Articles of Incorporation for the Community Association.

1.1.7 "Community Assessments" shall mean the assessments levied by the Community Association pursuant to Article IV of the Community Declaration.

1.1.8 "Community Association" shall mean The Community Association Of Bernardo Heights, a California nonprofit mutual benefit corporation, or any successor entity charged with duties, obligations and powers of said Community Association.

1.1.9 "Community Bylaws" shall mean the Bylaws for the Community Association duly adopted by the Community Board.

1.1.10 "Community Declaration" shall mean the Declaration of Covenants, Conditions and Restrictions for The Community of Bernardo Heights.

1.1.11 "Condominium" shall mean an estate in the Project, as defined hereinbelow and in California Civil Code Section 783.

1.1.12 "Declarant" shall mean (i) Brehm Communities, a California corporation, and (ii) any successor in interest of Brehm Communities, a California corporation, to whom all or any of the rights of Declarant under the Articles, Bylaws and this Declaration have been transferred and who is (a) a grantee under a deed executed and delivered prior to the conveyance of the first Condominium, which deed conveys the entire Project (defined below) or (b) a grantee under a deed conveying two or more Condominiums. Notwithstanding the provisions of the Article hereof entitled "Amendment" to the contrary, this Paragraph may not be amended, modified or rescinded without (i) prior written consent of Declarant and (ii) recording of said written consent in the Office of the County Recorder of San Diego County, California.

1.1.13 "Declaration" shall mean this instrument as the same may be (i) amended pursuant to the Article entitled "Amendment" or (ii) affected by any "Declaration of Annexation and Restrictions" described in the Article entitled "Annexation."

1.1.14 "Eligible Mortgage Holder" shall mean a First Mortgagee (hereinafter defined) who, in a written document delivered to the Association, has requested that the Association notify such First Mortgagee of any proposed action that, by the terms of the Articles, the Bylaws or the Declaration, requires the consent of a specified percentage of such First Mortgagees.

1.1.15 "Exclusive Use Area" shall mean those portions of the Common Area to which an exclusive right to use is granted to an Owner (as shown on the Plan) and shall consist of atriums, balconies and decks.

1.1.16 "First Mortgage" shall mean any deed of trust or mortgage which is the only deed of trust or mortgage encumbering a Condominium or which is first in priority, under the recording laws of the State of California, of a series of two or more mortgages or deeds of trust encumbering the same Condominium.

1.1.17 "First Mortgagee" shall mean a Mortgagee whose mortgage or deed of trust, as the case may be, is a First Mortgage.

1.1.18 "Interested Person" shall mean any First Mortgagee or any insurer or guarantor of a First Mortgage.

1.1.19 "Member" shall mean an Owner, as defined hereinbelow, entitled to membership in the Association. Membership shall be appurtenant to and may not be separated from ownership of a Condominium.

1.1.20 "Mortgagee" shall mean the mortgagee under any real property mortgage or beneficiary under any deed of trust, which mortgage or deed of trust encumbers any Condominium.

1.1.21 "Owner" shall mean Declarant prior to the first conveyance of a Condominium and thereafter, shall mean the person(s) who holds record title to any Condominium, including Declarant for as long as Declarant holds title to a Condominium.

1.1.22 "Plan" shall mean (i) that certain Condominium Plan recorded Jan 22, 1985, File/Page No. 85-021257, Official Records of San Diego County, California, being a condominium plan as the same is described in California Civil Code Section 1351, including any amendments thereto, and (ii) any recorded condominium plan or plans, including any amendments thereto, affecting any property which has been annexed pursuant to the Article hereof entitled "Annexation."

1.1.23 "Project" shall mean all of the land encompassed by the Plan, including all structures situated thereon, and the Recreation Area.

1.1.24 "Recreation Area" shall mean the real property owned by the Association for the common use and enjoyment of the Owners.

1.1.25 "Restricted Common Area" shall mean the back and side yard areas directly adjacent to each of the Units. The lateral boundaries of each such Restricted Common Area shall consist of the inner surfaces of the masonry walls (if any), wrought iron gates (if any), wrought iron fences (if any), and walls of adjoining Units (if any) as constructed and installed by Declarant. The lower boundary of each such Restricted Common Area shall consist of an imaginary horizontal plane ten feet below the finished floor elevation of the living area of the Unit benefited thereby and the upper boundary thereof shall consist of an imaginary horizontal plane nine feet above the finished floor elevation of such living area and parallel to said lower boundary. The use of each back and side yard area shall be restricted to allow the Owner of the Unit which is directly adjacent thereto to have the exclusive use and benefit of such side and back yard area.

1.1.26 "Unit" shall mean the elements of a Condominium which are not owned in common with the owners of other Condominiums; each Unit, and the boundaries thereof, are described in the Plan.

ARTICLE 2

Use

2.1 Each Unit shall be improved, used and occupied only for residential purposes.

2.1.1 Each Owner shall be responsible for the maintenance, repair and replacement of the (i) doors and windows enclosing such Owner's Unit, (ii) interior of the Unit and all appliances, whether built-in or free-standing, within the Unit, (iii) interior surfaces of the Unit, (iv) utility systems and equipment, including, without limitation, gas, plumbing, electrical, heating, telephone and cable television, servicing the Unit which are located entirely within the airspace(s) of such Unit, (v) the Exclusive Use Areas which are appurtenant to such Unit and (vi) the Restricted Common Area which is directly adjacent to such Unit. Any such maintenance, repair or replacement of any of the foregoing which is visible from outside of a Unit, shall be consistent with the existing design, aesthetics and architecture of the Project and shall be approved by the Board of Directors (or by the Architectural Control Committee if the Board of Directors has delegated such power and authority to said Committee).

2.1.2 Each Owner shall have the exclusive right to (i) paint, repaint, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, doors and fences in or bounding such Owner's Unit and (ii) alter such Owner's Unit, provided such alteration shall not affect the Common Area and Recreation Area, any other Unit or the structural portions of any building, wall or fence.

2.1.3 No shutter, screen, blind, curtain, drape, covering, object or appurtenance shall be constructed, permitted or maintained in or on any window or door without the express written consent of the Board of Directors.

2.2 No Unit shall be occupied or used for any purpose or in any manner which shall cause any structure in the Project to be uninsurable against loss by fire or the perils covered under the multi-peril policy(ies) of hazard insurance or the policy of boiler and machinery insurance which the Board of Directors is required to keep in force pursuant to the Article hereof entitled "Destruction; Insurance," or cause any policy(ies) representing such insurance to be cancelled or suspended or the company issuing the same to refuse renewal thereof.

2.3 No Unit shall be used in such manner as to interfere with the enjoyment of occupants of other Units or to annoy them by unreasonable noises or otherwise; nor shall any nuisance, or illegal activity, be committed in, or be permitted to occur in, any Unit. No noxious or offensive activity shall be carried on in the Common Area or Recreation Area, nor shall anything be done therein which may be or become an annoyance or nuisance to the Owners.

2.4 Each Owner may raise or keep in its Unit (i) not more than two domesticated dogs, cats or other commonly accepted household pets, (ii) any number of birds in one or more bird cages and (iii) any number of fish in one or more household aquariums; provided, however, that such pets and other animals, including birds and fish, must be kept for noncommercial purposes. In the event the Board of Directors determines that any such pets or other animals create an unreasonable annoyance or nuisance to the Owners, the raising or keeping thereof shall be discontinued within a reasonable time after such determination. The Board of Directors shall adopt regulations establishing the conditions under which pets will be permitted in the Common Area.

2.5 Each Exclusive Use Area shall be appurtenant to the Unit which bears the same Unit number as such Exclusive Use Area, as shown on the Plan. The right to use an Exclusive Use Area shall be exercisable only by the Owner or the occupants of the Unit, and the guests of said Owner and occupants, to which such Exclusive Use Area is appurtenant. Conveyance of a Unit shall effect the conveyance of any Exclusive Use Area(s) appurtenant thereto and transfer all rights related to such Exclusive Use Area(s) to the vested Owner of such Unit. No Exclusive Use Area or any rights thereto shall be conveyed or transferred apart from the conveyance of the Unit to which it is appurtenant. Each Exclusive Use Area shall be deemed to be Common Area and shall be subject to all of the limitations, restrictions, conditions and covenants set forth in this Declaration which are not inconsistent with the provisions of this Paragraph.

2.6 Each Restricted Common Area shall be appurtenant to the Unit which is directly adjacent thereto. The right to use a Restricted Common Area shall be exercisable only by the Owner or the occupants of the Unit, and the guests of said Owner and occupants, to which such Restricted Common Area is appurtenant. Conveyance of a Unit shall effect the conveyance of any Restricted Common Area appurtenant thereto and transfer all rights related to such Restricted Common Area to the vested Owner of such Unit. No Restricted Common Area or any rights thereto shall be conveyed or transferred apart from the conveyance of the Unit to which it is appurtenant. No Owner shall construct or install any improvement to a Restricted Common Area including, without limitation, any fence, wall, spa or landscaping; or make any alteration to any existing improvements in such Restricted Common Area without obtaining the prior consent of the Architectural Control Committee as provided in the Article hereof entitled "Architectural and Landscaping Control." Notwithstanding the foregoing, wrought iron and/or glass may be inserted and installed in the masonry walls which are the lateral boundaries of a Restricted Common Area; however, prior to installing such wrought iron and/or glass, the Owner shall comply with the provisions of the Article hereof entitled "Architectural and Land-

scaping Control," including, without limitation, submitting plans and specifications for such improvements to the Architectural Control Committee. Each Owner shall be responsible for the maintenance, repair and replacement of the improvements located within the Restricted Common Area which is appurtenant to such Owner's Unit and any wrought iron and/or glass inserted in the masonry walls which are the lateral boundaries of such Restricted Common Area. The Association shall be responsible for the maintenance of such masonry walls (if any), wrought iron gates (if any), wrought iron fences (if any) and walls of adjoining Units (if any). Each Restricted Common Area shall be deemed to be Common Area and shall be subject to all of the limitations, restrictions, conditions and covenants set forth in this Declaration which are not inconsistent with the provisions of this Paragraph.

2.7 All leases and rental agreements of Condominiums shall (i) be in writing, (ii) provide that the terms thereof are subject to the provisions of this Declaration, the Articles, the Bylaws and the regulations, if any, adopted by the Board of Directors relating to the use of and activity in the Unit and the Common Area and (iii) provide that any failure by the tenant thereunder to comply with the terms of said documents shall constitute a default under such lease or rental agreement. No Owner shall lease or rent its Condominium for a term of less than 30 days, except an Owner who is a lender in possession of a Condominium following (i) a default in a first mortgage, (ii) a foreclosure proceeding or (iii) any deed or other arrangement in lieu of foreclosure. Other than the foregoing, and subject to the provisions of Paragraph 2.14 hereof, there shall be no restriction on the right of any Owner to lease its Condominium.

2.8 The Common Area and Recreation Area, except buildings, shall be improved and used only for (i) vehicular parking, (ii) vehicular and pedestrian movement within the Project, including access to the Units, (iii) recreational use by the Owners and occupants of Units and their guests, subject to regulations adopted by the Board of Directors, and (iv) beautification of the Project and providing privacy to the residents thereof through landscaping and such other means as the Board of Directors shall deem appropriate. Notwithstanding the foregoing provisions of this Paragraph, no (i) pickup truck having a gross vehicle weight in excess of 10,000 pounds, (ii) tractor, (iii) truck "cab," (iv) bus, (v) dune buggy, (vi) boat, (vii) trailer, (viii) recreational vehicle, (ix) mobile home, (x) motor home, or (xi) camper shell detached from a vehicle or otherwise not mounted upon a vehicle shall be parked or stored in the Common Area or Recreation Area; however, the Board of Directors may give written authorization to any Owner permitting temporary parking of any such equipment or vehicle owned by such Owner in the Common Area.

2.9 Nothing shall be done in any Unit or in, on or to the Common Area or Recreation Area which would impair the structural integrity of any building or which would structurally change any building except as is otherwise provided herein. No drilling or mining operations of any kind shall be permitted upon or in any Unit, the Common Area or Recreation Area. All equipment, garbage cans and other containers shall be kept screened and concealed from view from neighboring Units, streets and the Common Area and Recreation Area. All rubbish, trash and garbage shall be regularly removed from each Unit and shall not be allowed to accumulate thereon or on the adjacent Common Area or Recreation Area. No wearing apparel, garments, linens, towels, laundry or the like shall be kept or maintained on a deck, atrium, terrace, patio or balcony, if any, of a Unit, nor shall equipment be kept or maintained thereon or therein. No Owner shall cause its deck, atrium, terrace, patio or balcony, if any, to be enclosed without the prior written consent of the Board of Directors. The Board of Directors shall have the right and power to adopt reasonable rules and regulations relating to the type(s) and kind(s) of fixtures, personal property or other objects which may be kept or maintained upon a deck, atrium, terrace, patio or balcony of a Unit (and/or the manner in which any of the same may be kept or maintained on a deck, atrium, terrace, patio or balcony if permitted to be kept or maintained thereon by such rules and regulations).

2.10 No activity shall be carried on in the Common Area or Recreation Area which shall be contrary to the regulations of the Board of Directors relating to use of and activity in the Common Area and Recreation Area.

2.11 No Owner shall make any alteration or improvement to the Common Area or Recreation Area or move or remove any planting, structure, furnishing or other object therefrom, except with the prior written consent of the Board of Directors. An Owner shall be liable to the Association for all costs incurred by the Association for the replacement or repair of any personal property owned by the Association (including without limitation, plants, furniture, rugs, kitchenware and pictures) damaged or removed by such Owner, its guests or any occupant of such Owner's Unit.

2.12 An Owner shall be liable to the Association for all damage to or destruction of the Common Area, Recreation Area or to any improvements thereon or thereto (including, but not limited to, buildings, recreational facilities and landscaping) or to any wall or fence adjacent to the Common Area or Recreation Area caused by the act or omission (including the failure to maintain such Owner's Unit) of such Owner, its guests or any occupant of such Owner's Unit. An Owner shall be liable for all damage to or destruction of any other Owner's Unit, or any

portion thereof, or any contents located therein, caused by the act or omission (including the failure to maintain such former Owner's Unit) of such former Owner, its guests or any occupant of such former Owner's Unit. Nothing contained in this paragraph shall be construed to limit the ability of the Association or any Owner to pursue any other remedy provided by law, the Bylaws or this Declaration.

2.13 The Owner of a Unit damaged or destroyed by fire or other calamity shall, unless partition shall be undertaken pursuant to the Article entitled "Partition and Severance," shall cause the interior of such Unit to be repaired or restored at the expense of the Owner. This obligation shall not extend to the installation of furniture and the like, but is for the purpose of preventing unsightliness with respect to such damaged Unit and any resultant health or safety problems to other Owners or the public. Nothing herein shall be construed, in any manner whatsoever, to alter or modify the obligation of the Association to repair or restore under the Article entitled "Destruction; Insurance."

2.14 No sign of any nature shall be displayed or posted by an Owner in the Common Area or Recreation Area. Further, no sign of any nature shall be displayed by an Owner to the public view on or from such Owner's Unit without the prior written approval of the Board of Directors as to (i) the size, shape, color and content thereof and (ii) the location on the Unit proposed by such Owner for the display thereof, except that such approval shall not be necessary in connection with the display of any sign of reasonable dimensions and design located on or in such Owner's Unit notifying the public that said Unit is "for rent," "for sale" or "for exchange" and containing the owner's or agent's name, address and telephone number; provided, however, that any Owner displaying a "for rent," "for sale" or "for exchange" sign shall, in good faith and using its reasonable best efforts, endeavor to effect the rental, sale or exchange of its Unit, as the case may be. Notwithstanding the foregoing, Declarant may display or post any signs, flags, poles or other objects in the Common Area, Recreation Area or in any Unit(s) owned by it which Declarant in its sole discretion deems appropriate in connection with its sale or leasing of Condominiums until the earlier of (i) that certain date on which Declarant has conveyed the last Condominium within the Project, including any development phase which may be annexed to and made a part of the Project pursuant to the Article hereof entitled "Annexation" or (ii) on that certain date which is three years after the date of the original issuance of the then most recent Final Subdivision Public Report issued by the California Department of Real Estate for a phase of development of the Project. Anything in the Article hereof entitled "Amendment" to the contrary notwithstanding, this Paragraph shall not be amended, modified or rescinded until

Declarant has conveyed the last Condominium within the Project, including any development phase which may be annexed to and made a part of the Project pursuant to the Article hereof entitled "Annexation," without the (i) prior written consent of Declarant and (ii) recording of said written consent in the Office of the County Recorder of San Diego County, California.

2.15 No radio or television antenna, or radio transmitter tower or facility of any kind shall be constructed, erected or otherwise placed in the Common Area or Recreation Area, excepting therefrom (i) one or more master television antenna(e) which may be erected thereon by Declarant or the Association and thereafter maintained or (ii) any facility for cable television which may be contracted for in accordance with an agreement entered into between the Association (or the Declarant for the benefit of the Association) and a cable television company, provided such cable television services will be made available to each and every Unit in the Project.

2.16 Anything in the preceding paragraphs of this Article to the contrary notwithstanding, Declarant (and any successor in interest of Declarant) may use any Units owned by it in any phase of development of the Project, not exceeding at any one time five in number, for the purpose of maintaining a sales/rental office, a construction office and/or sales/rental models. Such use shall be made of said Units only during reasonable hours. Further, such use of said Units shall terminate on the earlier of (i) that certain date on which Declarant has conveyed the last Condominium within the Project, including any development phase which may be annexed to and made a part of the Project pursuant to the Article hereof entitled "Annexation" or (ii) on that certain date which is three years after the date of the original issuance of the then most recent Final Subdivision Public Report issued by the California Department of Real Estate for a phase of development of the Project. Anything in the Article hereof entitled "Amendment" to the contrary notwithstanding, this Paragraph shall not be amended, modified or rescinded until Declarant has conveyed the last Condominium within the Project, including any development phase which may be annexed to and made a part of the Project pursuant to the Article hereof entitled "Annexation," without the (i) prior written consent of Declarant and (ii) recording of said written consent in the Office of the County Recorder of San Diego County, California.

ARTICLE 3

Common Area and Recreation Area

3.1 The Common Area of each phase of development is and shall be owned by the Owners of Condominiums in such phase as

tenants in common in fractional undivided interests as shown in Declarant's deed to each such Owner. Any transfer or conveyance (by operation of law or otherwise) of a Unit shall be presumed to transfer or convey the entire Condominium, including but not limited to, the interest of the Owner of such Unit in and to the Common Area. Anything in the Article hereof entitled "Amendment" to the contrary notwithstanding, this Article shall not be amended, modified or rescinded until Declarant has conveyed the last Condominium within the Project, including any development phase which may be annexed to and made a part of the Project pursuant to the Article hereof entitled "Annexation," without the (i) prior written consent of Declarant and (ii) recording of said written consent in the Office of the County Recorder of San Diego, California.

3.2 In the event any portion of the Common Area or Recreation Area encroaches upon any Unit or any Unit encroaches upon the Common Area, Recreation Area or another Unit as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the improvements, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists. Said valid easement shall apply only to encroachments. There shall be easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachments; provided, however, that in no event shall an easement for encroachment be created in favor of an Owner if said encroachment occurred due to the willful misconduct of any Owner. In the event any portion of a structure on the Project is partially or totally destroyed and then repaired or rebuilt, each Owner agrees that easements over adjoining Units, Common Area or Recreation Area for encroachments and for the maintenance of said encroachments shall exist for as long as said encroachments shall exist. A nonexclusive easement for ingress, egress and support throughout the Common Area and Recreation Area is and shall be appurtenant to each Unit, and the Common Area and Recreation Area are and shall be subject to such easement. Each Owner shall have a perpetual, unrestricted right of ingress and egress to and from such Owner's Condominium and such right shall pass with any conveyance of the Condominium whether or not the instrument effecting such conveyance specifically refers to and/or grants such right.

3.3 Prior to, or concurrently with, the conveyance by Declarant of the first Condominium in the Project, Declarant shall convey Lots 434 and 435 described above to the Association for the recreational use and enjoyment by the Members. The Association shall maintain, repair, restore and, from time to time, alter as the Association deems appropriate, the recreational facilities and other common improvements now and hereafter situated on the Recreation Area, which facilities shall be used

only by the present and future Owners of Condominiums in all phases of development of the Project, as they may exist from time to time, and the family members and social guests of said Owners.

3.4 No Owner shall possess any property right or interest in or to any personal property owned by the Association.

3.5 Notwithstanding anything contained in this Declaration to the contrary, Declarant, for itself and its successors in interest, hereby reserves a nonexclusive easement over, under, upon and across the Common Area and the Recreation Area for common driveway purposes, drainage and encroachment purposes and for ingress and egress, all for Declarant's reasonable use in completing the improvements and performing necessary repair work within the Project (including but not limited to improvements and repair work in connection with any development phase annexed to and made a part of the Project pursuant to the Article entitled "Annexation"), said reservation of easement becoming effective concurrently with the conveyance by Declarant of the first Condominium in the Project without necessity of Declarant setting forth such reservation in the deed with respect to said conveyance. Said reservation of easement shall expire and be of no further force and effect upon the earlier of (i) that certain date on which Declarant has conveyed the last Condominium within the Project, including any development phase which may be annexed to and made a part of the Project pursuant to the Article hereof entitled "Annexation" or (ii) on that certain date which is seven years after the original issuance by the California Department of Real Estate of a Final Subdivision Public Report concerning the first phase of development of the Project. Notwithstanding the Article entitled "Amendment," no amendment, revocation or rescission of said reservation of easement may be had prior to the conveyance by Declarant of the last Condominium within the Project, including any development phase which may be annexed to and made a part of the Project pursuant to the terms and provisions of the Article hereof entitled "Annexation," without the (i) written consent of the Declarant and (ii) recording of such consent in the Office of the Recorder of San Diego County, California.

ARTICLE 4

Partition and Severance

4.1 Except as set forth in the following paragraphs, the Common Area shall remain undivided, and there shall be no judicial partition thereof or the Recreation Area. Nothing herein shall be deemed to prevent partition of a cotenancy in a Condominium.

4.2 An action may be brought by any Owner for partition of the Project by sale of the entire Project, as if the Owners of all of the Condominiums in all development phases of the Project were tenants in common in the entire Project in the same proportion as their interests in the Common Area; provided, however, that partition shall be made only upon the showing that (i) three years after damage or destruction to the Project which renders a material part thereof unfit for its use prior thereto, the Project has not been rebuilt or repaired substantially to its state prior to its damage or destruction, (ii) three-fourths or more of the Project has been destroyed or substantially damaged (or that three-fourths or more of the Units has been rendered unfit for use prior thereto), and that Owners holding in the aggregate more than a 50 percent interest in the Common Area are opposed to repair or a restoration of the Project, (iii) the Project has been in existence in excess of 50 years, that it is obsolete and uneconomic, and that Owners holding in the aggregate more than a 50 percent interest in the Common Area of the entire Project and are opposed to repair or restoration of the Project or (iv) any of the conditions as specified in Section 1354 of the California Civil Code have been fulfilled. Any proceeds from such sale of the entire Project in the event of a partition as herein provided shall, notwithstanding anything contained herein to the contrary, be equitably distributed among the Owners (and their Mortgagees as their respective interests may appear) so that each Owner (and its Mortgagees as their interests may appear) shall be entitled to a portion of such proceeds based upon the proportion that the fair market value of such Owner's Condominium (determined by a real estate appraiser, selected by the Board of Directors, who has been awarded the professional designation of Member Appraisal Institute) bears to the aggregate of the fair market value of all Condominiums within the Project (similarly determined).

4.3 The Board of Directors is hereby granted an irrevocable power of attorney to sell the entire Project for the benefit of all Owners thereof when partition of Project may be had pursuant to Paragraph 4.2 above. The aforesaid power of attorney shall (i) be binding upon all of the Owners, (ii) be exercisable by a majority of the members of Board of Directors and (iii) be exercisable only after recordation of a certificate, signed and acknowledged by said members of the Board of Directors, which states that said power is properly exercisable hereunder and under Subsection (b) (9) of Section 1355 of the California Civil Code, and said certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith. Notwithstanding the foregoing provisions of this Paragraph, said power of attorney shall not apply to the Administrator of Veterans Affairs, an officer of the United States of America.

4.4 No Owner(s) shall voluntarily or involuntarily sever, one from the other(s), any of the component interests which comprise his, her or their Condominium. The restriction set forth in this Paragraph shall not extend beyond the period in which the right to partition is suspended.

4.5 Except as set forth in this Article or when provided by statute in case of condemnation or substantial loss to the Units and/or the Common Area, neither the Owners nor the Association shall, by act or omission, without the prior written consent of at least 67 percent of all first Mortgagees (based upon one vote for each first mortgage or deed of trust owned), be entitled to:

(i) Abandon or terminate the condominium character of the Project;

(ii) Change the pro rata interest or obligations of any individual Condominium for the purpose of levying assessments or charges, or allocating distributions of hazard insurance proceeds or condemnation awards, or determining the pro rata share of ownership of the Common Area or Recreation Area which is to be appurtenant to and part of each Condominium;

(iii) Partition or subdivide any Condominium;

(iv) Abandon, partition, subdivide, encumber, sell or transfer the Common Area or Recreation Area; provided, however, that the granting of easements for public utilities or other public purposes consistent with the uses of the Common Area and the Recreation Area shall not be deemed a transfer within the meaning of this provision; or

(v) Use hazard insurance proceeds for losses to any portion(s) of the Project (whether to Units or to the Common Area) for other than the repair, replacement or reconstruction of such portion(s) of the Project.

ARTICLE 5

The Association

5.1 The Association is, effective upon the recordation hereof, the "management body" to provide for the management, control, maintenance, architectural control and preservation of the Common Area and Recreation Area, all as more specifically set forth in this Declaration, the Articles, the Bylaws and the regulations from time to time adopted by the Board of Directors. The Common Area improvements to be maintained by the Association shall include, without limitation, the exterior walls and roofs of all Units.

5.2 Each Owner shall be and become a Member of the Association contemporaneously with its acquisition of a Condominium (whether such acquisition occurs by (i) conveyance of a Condominium by Declarant, (ii) voluntary transfer, assignment or conveyance of a Condominium, (iii) involuntary transfer of a Condominium, including without limitation by reason of the death of an Owner, or (iv) foreclosure [by trustee's power of sale or by judicial process] of a deed of trust or other lien on a Condominium) without necessity of documentation or other action, of any kind, by any person. The Board of Directors may require that any person acquiring a Condominium notify the Association in writing of such acquisition so as to facilitate accurate record keeping of the membership. Where two or more persons hold, as joint tenants or otherwise, a Condominium, they shall constitute a single Member.

5.3 Members shall be divided into two classes for the purposes of voting, Class A and Class B. Class A Member(s) shall be all Owners of Condominiums except Declarant and said Class A Member(s) shall be entitled to one vote for each Condominium owned. The lone Class B Member shall be Declarant who shall be entitled to three votes for each Condominium owned. Declarant's Class B voting status shall cease and convert to Class A voting status on the earlier occurrence of one of the following: (i) when the total votes outstanding in Class A equal the total votes outstanding in Class B or (ii) on that certain date which is two years after the original issuance by the California Department of Real Estate of the most recent Final Subdivision Public Report for a phase of development of the Project or (iii) on that certain date which is four years after the original issuance by the California Department of Real Estate of a Final Subdivision Public Report with respect to the first phase of development of the Project. If record title to a Condominium is held in the name of more than one person, such persons shall collectively constitute a single Member and there shall be only one vote attributable to such Member (unless such Member is Declarant, in which case such Member shall have the number of votes attributable to Declarant as set forth in this Paragraph). Each of such persons collectively constituting a single Member shall otherwise be individually entitled to the benefits of membership in the Association. The manner of casting and counting such vote shall be controlled by the provisions of the paragraph of the Bylaws entitled "Voting Rights; Required Vote; Cumulative Voting."

5.4 The officers, agents, employees and independent contractors of the Association shall have a nonexclusive easement to enter any Unit in the Project for the purpose of performing or satisfying the duties and obligations of the Association hereunder, provided that such entry shall occur (i) at a reasonable hour and (ii) after reasonable notice has been given to the Owner of such Unit. In the event that there is an emergency and no one

is in the Unit at the time of such emergency, the agents, employees and independent contractors of the Association may enter such Unit immediately and without notice for the sole purpose of taking such action as is necessary under the circumstances. The Association shall have the right to grant permits, licenses and easements over the Common Area and the Recreation Area for utilities, roads and other purposes necessary for the proper operation of the Project. Each Owner, by acquiring its interest in a Unit, shall be deemed to have designated the Association as such Owner's attorney in fact to execute, on behalf of such Owner, any document effecting the grant of any such permit, license or easement.

5.5 In addition to all other rights, powers and duties possessed by and vested in the Board of Directors under this Declaration, the Articles and the Bylaws, the Board of Directors shall possess and be vested with the right and power to (i) impose reasonable monetary penalties, in amounts not to exceed the sums allowed by law (See, e.g., Title 1, Part 4 of Division 3 [Section 1725] of the California Civil Code), against an Owner and (ii) seek reimbursement for costs as follows:

5.5.1 As a disciplinary measure for any breach of any of the (i) limitations, restrictions, conditions or covenants set forth in this Declaration (other than a breach by failure to pay an assessment), (ii) provisions of the Articles or the Bylaws or (iii) rules or regulations adopted by the Board of Directors pursuant to this Declaration, the Articles or the Bylaws.

5.5.2 As a means of reimbursing the Association for costs incurred by the Association (i) for the repair of damages to the Common Area, the Recreation Area or any improvements or personalty thereto or thereon allegedly caused by such Owner, its guests or any occupant of such Owner's Unit or (ii) in bringing such Owner or the occupant of such Owner's Unit and/or said Unit into compliance with this Declaration (other than the payment of assessments), the Articles, Bylaws or said rules and regulations.

5.6 Any procedure seeking to impose such a monetary penalty, or to obtain reimbursement for such costs incurred as contemplated by Paragraph 5.5 above, must be done in good faith and in a fair and reasonable manner. The Association, at its option, shall have the right and power to institute a legal action against an Owner seeking a personal judgment against such Owner to impose such a monetary penalty and/or to obtain reimbursement of such costs, together with court costs and reasonable attorneys' fees incurred in any such action, and the institution and prosecution of such action shall be deemed to be a fair and reasonable procedure as required by this Paragraph. Alternatively, prior to the institution of such a legal action, the Association may follow the non-judicial procedure hereinafter set

forth. The Owner shall be given 15 days' prior notice of the imposition of a monetary penalty, or the amount of the costs to be reimbursed. Said notice must set forth the reasons for the imposition of the monetary penalty or for seeking reimbursement of such costs and may be given by any method reasonably calculated to provide actual notice. Any notice given by mail must be given by first-class, registered or certified mail sent to the last address of the Owner shown on the Association's records. The Owner must be provided an opportunity to be heard, orally or in writing, not less than five days before the effective date of the imposition of each monetary penalty, or by which such costs are to be so reimbursed, by a properly convened meeting of the Board of Directors. Any such breach which is not remedied in the calendar month in which any such monetary penalty is imposed against an Owner by reason thereof shall, until fully remedied, be deemed to constitute a new breach in each succeeding calendar month for which the Board of Directors may in each such calendar month impose a new monetary penalty pursuant to this Paragraph.

5.7 The Association shall provide to an Owner, upon such Owner's written request, a statement of any delinquent assessments, penalties, attorneys' fees and other charges on such Owner's Unit as of the date of such request.

5.8 Upon written request, the Association shall, within ten days after the mailing of such request if such request is sent by mail, or within ten days after delivery of such request if such request is delivered other than by mail, provide to an Owner, Mortgagee or Interested Person making such request, a copy of the Declaration, the Bylaws and the Articles, together with a true statement in writing as to any delinquent assessments, penalties, attorneys' fees and other charges as of the date of such request on the Unit owned by such Owner or in which such Mortgagee or Interested Person has an interest. The Association may impose a fee for providing such documents and statement, but in no event shall the fee exceed the reasonable cost to prepare and reproduce the requested documents. A properly executed statement of the Association as to the status of assessments on a Unit is binding upon the Association as of the date of its issuance.

ARTICLE 6

The Community Association

6.1 The officers, agents, employees and independent contractors of the Community Association shall have a nonexclusive easement to enter upon the real property, or any portion thereof, constituting the Project for the purpose of performing or satisfying the duties and obligations of the Community Association as set forth in the Community Declaration, the Community

Bylaws, the Community Articles and the rules and regulations of the Board of Directors of the Community Association and the Architectural Committee of the Community Association.

6.2 The lien of any assessment imposed upon any Condominium pursuant to this Declaration shall be subordinate and inferior to the lien of any assessment imposed upon such Condominium pursuant to the Community Declaration.

6.3. Declarant, for each Condominium which it owns within the Project, hereby covenants, and each Owner of any Condominium by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, does and is hereby deemed to covenant and agree to pay to the Community Association the Community Assessments imposed upon such Condominium pursuant to the Community Declaration. The Community Assessments shall be levied and collected as provided in the Community Declaration.

6.3.1 The Community Association, in its sole and absolute discretion, may elect to require the Association to administer, levy, collect and enforce the Community Assessments imposed upon Condominiums within the Project. All such funds collected by the Association shall be held in trust by the Association for the benefit of the Community Association, and such funds shall be disbursed to the Community Association as provided in the Community Declaration.

6.3.2 The Community Association, in its sole and absolute discretion, may elect to administer, levy, collect and enforce the assessments provided for under this Declaration. All such funds collected by the Community Association shall be utilized in the manner and for the purposes specified in this Declaration and in the Community Declaration, the Community Bylaws, the Community Articles, and the rules and regulations of the Board of Directors of the Community Association and the Architectural Committee of the Community Association.

6.4 Breach of any of the limitations, restrictions, conditions and covenants set forth in this Declaration, or the continuation thereof, may be enjoined, abated or remedied by appropriate legal proceedings by the Community Association. The Community Association shall be deemed to be a person who may enforce the provisions of this Declaration pursuant to Article 12 hereof. The failure of the Community Association to enforce any of said limitations, restrictions, conditions or covenants shall not constitute a waiver of the right to enforce the same thereafter. No liability shall be imposed on, nor incurred by, the Community Association as a result of such failure. The prevailing party in any action at law or in equity instituted by the Community Association to enforce or interpret said limitations,

restrictions, conditions or covenants, shall be entitled to all costs incurred in connection therewith, including, without limitation, reasonable attorneys' fees.

6.5 In addition to all of the rights and obligations which have been conferred or imposed upon the Association pursuant to this Declaration, the Bylaws or the Articles, the Association shall be entitled to exercise any of the rights conferred upon it and be subject to all of the obligations imposed upon it pursuant to the Community Declaration, the Community Bylaws or the Community Articles. The Association (including, without limitation, the Architectural Committee of the Association) shall also be subject to all superior rights and powers which have been conferred upon the Community Association pursuant to the Community Declaration, the Community Bylaws and the Community Articles.

6.5.1 Each Owner and such Owner's Condominium(s) shall be subject to all of the covenants, conditions, restrictions and provisions contained in the Community Declaration.

6.5.2 In the event of any conflict between any of the covenants, conditions, restrictions or provisions of this Declaration, the Bylaws or the Articles with any of the covenants, conditions restrictions or provisions of the Community Declaration, the Community Bylaws or the Community Articles, then, in such event, the covenants, conditions, restrictions and provisions of the Community Declaration, the Community Bylaws and the Community Articles shall govern and prevail.

ARTICLE 7

Architectural and Landscaping Control

7.1 An Architectural Control Committee consisting, at all times of three persons, shall be formed as set forth below and in the Bylaws, for the purposes of performing its duties as described in this Declaration and the Bylaws and as may be delegated to it, from time to time, by the Board of Directors. The original Architectural Control Committee shall be appointed in accordance with the Bylaws (subject to Declarant's rights herein reserved). Declarant hereby reserves to itself the power to appoint a majority of the members of the Architectural Control Committee until (i) 90 percent of the Condominiums in all phases of development of the Project have been sold by Declarant or (ii) the fifth anniversary of the original issuance by the California Department of Real Estate of a Final Subdivision Public Report for the first phase of development of the Project, whichever first occurs.

7.2 No building, fence, wall, sign, spa or other structure, or exterior addition to or change or alteration thereof (including painting) or landscaping shall be commenced, constructed, erected, placed, altered, maintained or permitted to remain on the Project, or any portion thereof, until the building or alteration plans, landscaping plans, specifications, location plat and color scheme thereof have been approved by the Architectural Control Committee. In considering any such plans, the Architectural Control Committee shall take into account (i) the quality of workmanship and materials to be used, (ii) harmony of external design with existing structures in the Project, (iii) the interference, or potential for interference with the view from any Condominium and (iv) compliance with this Declaration. In the event the Architectural Control Committee fails to approve or disapprove any such plans, specifications, plats or schemes within 30 days after all necessary documents have been received by the Architectural Control Committee, the Owner requesting said approval may submit a written notice to the Architectural Control Committee advising the same of its failure to act; only if the Architectural Control Committee fails to approve or disapprove any such plans, specification, plats or schemes within 30 days after the receipt of said notice from the Owner, said plans, specifications, plats or schemes shall be incontrovertibly deemed to be approved.

7.3 Anything herein to the contrary notwithstanding, Declarant, or any successor thereof, shall not be obligated to obtain the approval of the Architectural Control Committee for any signs, structures or improvements whatsoever made in connection with the construction and development of the Project. Further, Declarant, or any successor thereof, shall not be interfered with or prohibited from completing the construction and development of the Project.

7.4 Anything in the Article hereof entitled "Amendment" to the contrary notwithstanding, this Article shall not be amended, modified or rescinded until Declarant has conveyed the last Condominium within the Project, including any development phase which may be annexed to and made a part of the Project pursuant to the Article hereof entitled "Annexation," without the (i) prior written consent of Declarant and (ii) recording of said written consent in the Office of the County Recorder of San Diego, California.

ARTICLE 8

Assessments

8.1 Pursuant to California Civil Code Sections 1355(e)(1) and 1356, the Board of Directors has and shall have the right and

power to make from time to time reasonable assessments upon the Owners to meet anticipated authorized expenditures (which shall include the establishment of an adequate reserve fund for maintenance, repair and replacement of facilities and improvements in and to the Common Area and the Recreation Area) of the Association, and to change from time to time the amount, installments and/or frequency of payment of assessments.

8.1.1 No increase or decrease in the amount of such reasonable assessments for anticipated authorized expenditures of the Association in any one fiscal year of the Association which exceeds 20 percent of the regular assessment for the immediately preceding fiscal year may be made without the vote or written ballot of (i) the Owners entitled to exercise a majority of the total voting power in each of the two voting classes of the Association as provided in the Article of the Bylaws entitled "Voting Rights" or (ii) upon cessation of one of the two voting classes, the Owners entitled to exercise a majority of the total voting power in the remaining voting class, provided that such vote or written ballot shall include the votes of a majority of Owners other than Declarant. Each Owner shall be assessed separately for a share of such anticipated authorized expenditures, which share shall be levied against each Owner according to the ratio of the number of Condominiums owned by the Owner to the total number of Condominiums subject to assessment.

8.1.2 Separate written notices of the making of such assessment (including in such notice the amount thereof and the frequency of payment) shall be deposited into the United States mail, postage prepaid, directed to the attention of each Owner, bearing the address of the Unit owned by such Owner (or such other address to which such Owner shall have directed the Association to deliver such notice), at least 60 days prior to the beginning of a fiscal year; such assessment shall be a debt of the Owner thereof at the time such assessment is made. The amount of any such assessment, together with any late payment penalty incurred pursuant to this Article, costs and reasonable attorneys' fees in the event enforcement is commenced, shall be and become a lien upon any Condominium, the Owner of which is assessed, when the Board of Directors cause to be recorded with the County Recorder of San Diego County, California, a notice of assessment, which shall state the amount of such assessment and any late payment penalty incurred, costs and attorneys' fees, a description of the Condominium upon which such assessment shall constitute a lien and the name of the record Owner thereof. Upon payment of said assessment and charges in connection with which such notice has been so recorded, or other satisfaction thereof, the Board of Directors shall cause to be recorded a further notice stating the satisfaction and the release of the lien thereof. Unless sooner satisfied and released or the enforcement thereof initiated as herein provided, such lien shall expire and

be of no further force or effect one year from the date of recordation of said notice of assessment; provided, however, that said one-year period may be extended by the Board of Directors for not more than one additional year by recording a written extension thereof.

8.1.3 Such lien may be enforced by sale of the Condominium by the Board of Directors or other person authorized by the Board of Directors to conduct the same, after failure of the Owner to pay such an assessment in accordance with its terms; such sale shall be conducted in accordance with the provisions of California Civil Code Sections 2924, 2924b and 2924c, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. The Board of Directors on behalf of the Association shall have the right to (i) bid at any foreclosure sale of a Condominium, (ii) a credit, in any such bidding, in the amount of the aggregate of the unpaid assessment(s) and said late payment penalty, fees and other charges (as permitted by law) and (iii) hold, lease, mortgage and convey said Condominium in the name of the Association.

8.2 The Board of Directors may also levy and collect special assessment(s) for capital improvements or other purposes. Every special assessment shall be levied and collected upon the same basis as that prescribed for the levying and collecting of regular assessments as described in Paragraph 8.1, except that a special assessment against Owners to raise funds for major repair or rebuilding of the structural Common Area and Recreation Area portions of buildings containing the Units shall be levied upon the basis of the ratio of the square footage of the floor area of the Unit to be assessed to the total square footage of floor area of all Units to be assessed. The amount of any such special assessment, together with any late payment penalty incurred pursuant to this Article, costs and reasonable attorneys' fees in the event enforcement is commenced, shall be and become a lien upon any Condominium in the same manner as regular assessments become a lien. Provided, however, no such special assessment exceeding, in the aggregate, five percent of the budgeted gross expenses of the Association for the then current fiscal year of the Association may be levied without the vote or written ballot of (i) the Owners entitled to exercise a majority of the total voting power in each of the two voting classes as provided in the Article in the Bylaws entitled "Voting Rights" or (ii) upon cessation of one of the two voting classes, the Owners entitled to exercise a majority of the total voting power in the remaining voting class, provided that such vote or written ballot shall include the votes of a majority of the Owners other than Declarant. The provisions of the preceding sentence shall not apply to special assessment(s) for repair, or the like, described in the Article entitled "Destruction; Insurance."

8.3 In the event the Association does not receive an Owner's payment of the entire amount of a regular or special assessment imposed upon its Condominium pursuant to this Article within 30 days after the due date thereof, a late payment penalty by way of damages shall be immediately due and payable by such Owner. Each of the Owners recognizes and acknowledges that the late payment of assessments will cause the Association to incur additional costs and expenses in connection with its management of the Project. In the event of any such late payment, the Association shall be entitled to damages for the detriment caused thereby, but it is extremely difficult and impractical to ascertain the extent of such damages. Accordingly, each Owner shall pay to the Association a late payment penalty for any late payment equal to such amount as may be provided under rules or regulations then promulgated by the Board of Directors, provided that such amount shall not exceed the sums for such late payment penalties allowed by law (See, e.g., Title 1, Part 4 of Division 3 of the California Civil Code). Such late payment penalty shall be liquidated damages for all such costs and expenses (other than attorneys' fees, court costs and other costs incurred by the Association in connection with the creation and/or foreclosure of a lien for delinquent regular or special assessments). The Association and each of the Owners agree that such late payment penalty represents a fair and reasonable estimate of the costs and expenses (other than attorneys' fees, court costs and other costs incurred by the Association in connection with the creation and/or foreclosure of a lien for delinquent regular or special assessments) which the Association will incur by reason of such late payment. Acceptance of any such late payment penalty by the Association shall in no event constitute a waiver of such Owner's default with respect to the late payment (i.e., the overdue amount), nor prevent the Association from exercising any of its other rights and remedies hereunder or at law. In addition to the late payment penalty described above, each Owner shall pay to the Association the amount of reasonable attorneys' fees, court costs and other costs incurred by the Association in connection with the creation and/or foreclosure of a lien for delinquent regular or special assessments.

8.4 Until such time as the Board of Directors shall change the same pursuant to Paragraph 8.1, such assessments shall be due and payable monthly on the first day of each calendar month, commencing, as to all Condominiums in the Project, on the first day of the calendar month next following the first conveyance by Declarant of a Condominium. Declarant shall be absolutely liable for the monthly installment of assessment, and any special assessment, constituting a lien on any Condominium and accruing prior to the conveyance thereof by Declarant. Provided, however, that insofar as an assessment may be imposed against a subdivision interest which Declarant owns and which does not include a structural improvement for human occupancy (such as an unim-

proved, annexed phase), Declarant shall be exempt from the payment of that portion of any such assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of structural improvements. Such exception from the payment of assessments shall be in effect only until there has been recorded a notice of completion of a structural improvement constructed on the property subject to the exemption, or until 120 days after the issuance of a building permit for the construction of a structural improvement on such property, whichever first occurs.

8.5 Anything in Paragraph 8.1 to the contrary notwithstanding, if any tax is assessed upon the entire Project, or upon the Common Area and/or Recreation Area only, a share thereof shall be included in the assessment upon each Owner which share shall be based upon the ratio of the square footage of the floor area of the Unit to be assessed to the total square footage of floor area of all Units to be assessed.

ARTICLE 9

Destruction; Insurance

9.1 The Board of Directors shall keep, under one Association master policy, (i) all buildings and other insurable improvements in the Project and (ii) all fixtures, building service equipment, supplies and personalty owned by the Association, insured against loss by perils under a multi-peril policy(ies) of hazard insurance for the interest of all Owners and protecting against, at least, (i) loss or damage by fire and all other hazards that are normally covered by the standard extended coverage endorsement, and (ii) perils covered for similar condominium projects, including those covered by the standard "all risk" endorsement. If the purchase price of any fixtures, equipment or other personal property which is to be located inside a Unit (whether or not such fixture, equipment or property is part of the Common Area), is financed, and such financing is secured by the same mortgage that secures the financing for the purchase of the Condominium as a whole, the Association Master Policy of Insurance shall, at the request of Declarant, also cover such fixtures, equipment and other personal property so located inside a Unit. In addition, the Association Master Policy shall contain a so called "agreed amount and inflation guard endorsement" if one is available from the insurance carrier. Further, such Association Master Policy shall contain so called "construction code endorsements" if, at the time such policy is obtained, there is a construction code provision that requires changes to undamaged portions of building or other improvements which constitute a part of the Common Area or the Recreation Area, even

when only part of the Project is destroyed by an insured hazard. Typically, such endorsements include demolition cost endorsements, contingent liability from operation of building laws endorsement and increased cost of construction endorsement.

9.1.1 In addition to the foregoing, the Association Master Policy of Insurance shall include such other endorsements as may be required by the FNMA to purchase, guarantee, insure or subsidize any mortgage encumbering a Condominium at any time that FNMA has acquired, or proposes to acquire, an interest in any such mortgage. The amount of coverage of such insurance shall be not less than 100 percent of the insurable value (based on replacement cost) of said buildings and improvements, and the fair market value of such fixtures, building service equipment, supplies and personalty as determined annually by an insurance carrier selected by the Board of Directors.

9.1.2 The name of the insured under each policy of such insurance shall be substantially "Los Rios Owners' Association, Inc. for the use and benefit of the individual owners," followed, if required by law, or if desired by either the Association or the insurance carrier(s), by the designation of the Owners. Authority to adjust losses covered by the Association's policy shall be vested in the Board of Directors, and insurance proceeds shall be payable directly to the Association or to Mortgagees as their interests appear.

9.2 If, within the Common Area or the Recreation Area a steam boiler is in operation, the Board of Directors shall keep in force boiler explosion insurance evidenced by a standard form of boiler and machinery insurance policy and providing coverage as a minimum, \$100,000 per accident per location. If a steam boiler is in operation within a Unit, the Owner of said Unit shall provide such insurance. If the Project is or becomes located in an area identified by the Secretary of Housing and Urban Development or the Federal Emergency Management Agency as an area having special flood hazards, a "master" or "blanket" policy of flood insurance on the Project must be maintained in the amount of the lesser of (i) the maximum coverage available under the National Flood Insurance Act of 1968, as amended, for all buildings and other insurable property within any portion of the Project located within such area identified as having special flood hazards or (ii) the greater of either (a) 100 percent of current "replacement cost" of all such buildings and other insurable property or (b) the outstanding principal balances of mortgage loans on all Condominiums. The name of the insured under each such policy of insurance shall be as set forth in Paragraph 8.1 above.

9.3 In the event of any loss, damage or destruction of any of the buildings or improvements in the Project, the Board of

Directors shall cause the same to be replaced, repaired or rebuilt. In the event the cost of such replacement, repair or rebuilding exceeds the hazard insurance proceeds received therefor, the Board of Directors shall levy and collect a special assessment from each Owner for a share of such deficiency, which share shall be based upon the ratio of the square footage of the floor area of the Unit to be assessed to the total square footage of floor area of all Units to be assessed. In any event, all hazard insurance proceeds received for such loss, damage or destruction shall be used for replacement, repair or rebuilding.

9.4 Copies of all such insurance policies (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Association and open for inspection by Owners at any reasonable time(s). All such insurance policies shall (i) provide that they shall not be reducible or cancellable by the insurer, without first giving ten days' prior notice in writing to the Association and all First Mortgagees (ii) contain a waiver of subrogation by the insurer(s) against the Association, the Board of Directors and the Owners, (iii) contain or have attached a standard mortgagee clause or endorsement (customarily used by private institutional lenders in the county in which the Project is located) in favor of all First Mortgagees, (iv) provide that any insurance trust agreement will be recognized, (v) provide that the Insurance will not be prejudiced by any acts or omissions of Owners that are not under the control of the Association, (vi) provide that the policy will be primary, even if an Owner has other insurance that covers the same loss, and (vii) contain such other endorsement(s) as any First Mortgagee may require to fully protect their interests.

9.5 Said multi-peril policy(ies) of hazard insurance shall be issued by an insurance carrier which (i) has a financial rating by Best's Insurance Reports of (a) Class VI or better, provided it has a general policy holder's rating of at least B, or (b) Class V or better, provided it has a general policy holder's rating of at least A, and (ii) is authorized to transact business within the State of California.

9.6 The Board of Directors shall procure and keep in force during the term hereof insurance in the name of the Association against dishonest acts on the part of Board of Directors, volunteers and other persons responsible for handling funds belonging to or administered by the Association; such insurance or, in lieu thereof, fidelity bond, shall be written in an amount not less than one and one-half times the Association's estimated annual operating expenses and reserves.

9.7 The Board of Directors shall procure and keep in force during the term hereof insurance (with a "severability of interest" endorsement) in the name of the Association and the Owners

against any liability to the public resulting from any occurrence in or about the Common Area and/or Recreation Area with coverage in the amount of at least \$1,000,000 per occurrence, for personal injury (including deaths of persons) and/or property damage in connection with the operation, maintenance or use of the Common Area and/or Recreation Area, and legal liability arising out of lawsuits related to employment contracts of the Association. The policy(ies) of such insurance shall contain a waiver of subrogation by the insurer(s) against (i) the Association, (ii) each of the directors serving from time to time on the Board of Directors, and (iii) the Owners.

9.8 No Owner shall purchase a policy of insurance which duplicates, in any respect, insurance coverage already existing under the Association master policy. Any Owner who does procure insurance duplicating, in whole or in part, coverage existing under the Association policy, thereby breaching this provision, shall be liable to the Association for any loss or damage caused to the Association by such duplication.

9.9 Nothing contained in this Article shall be construed to supersede any provision of the Article entitled "Partition and Severance."

ARTICLE 10

Condemnation

10.1 In the event of any conflict between the provisions of this Article and those of any other Article of this Declaration, the provisions of this Article shall govern and control.

10.2 In this Article, the following words and phrases shall have, respectively, the following meanings:

10.2.1 "Appropriation" means any taking of or damage to any part of the Project (or any interest therein) by reason of any exercise of the power of eminent domain (whether by condemnation proceedings, inverse condemnation or otherwise) or by reason of any transfer of any part of the Project (or any interest therein) made in avoidance of such an exercise.

10.2.2 "Condemnor" means any governmental entity or person possessing the right and power of eminent domain which exercises said right and power, or threatens so to do, with respect to any part of the Project (or any interest therein).

10.2.3 "Award" means compensation, including, but not limited to, monetary and other consideration, paid a Condemnor for an Appropriation.

10.2.4 "Condominium Total Value" means the cash fair market value of a Condominium the Unit of which is determined (pursuant to Paragraph 10.4) to be unsuitable for the purpose intended as a result of (i) an appropriation and (ii) the use to which appropriated land will thereafter be put and (iii) restoration and repair of any Common Area or Recreation Area damaged or destroyed as a result of such appropriation.

10.2.5 "Condominium Partial Value" means the diminution in cash fair market value of a Condominium the Unit of which is determined (pursuant to Paragraph 10.4) to be, as a result of (i) an appropriation and (ii) the use to which the land appropriated will thereafter be put and (iii) restoration and repair of any Common Area or Recreation Area damaged or destroyed as a result of such appropriation, suitable for the purpose for which it was intended.

10.3 The Board of Directors is hereby irrevocably appointed as the agent for every Owner to (i) negotiate with any condemnor for settlement of an award for any appropriation, (ii) defend any action brought for an appropriation, and to engage and compensate counsel and expert witnesses therefor or to aid the Board of Directors in the exercise of any of its powers under this Article, (iii) conduct, arrange or supervise an independent appraisal to determine the relative values of the Units, the Common Area and the Recreation Area affected by any appropriation, (iv) receive in the name of the Association any award and to retain the same, pending its disbursement, in a noninterest-bearing bank account in the name of the Association and (v) disburse the same as soon as may be practicable, pursuant to the following Paragraphs of this Article. Notwithstanding any provision herein to the contrary, Mortgagees shall automatically be entitled to join in any appropriation proceedings. No settlement of an award negotiated by the Association on behalf of the Owners shall be binding upon said Mortgagees without their prior written consent.

10.4 In the event of any appropriation, the Board of Directors shall, within ten days of the initiation of such proceedings, notify all Mortgagees (whose security interest shall be affected by such appropriation) thereof; and as soon as may be practicable, shall determine upon competent evidence, which evidence shall include an independent appraisal, satisfactory to it:

10.4.1 Whether, as to each Unit, the same will be suitable or unsuitable for the purpose for which it was intended, as a result of and after an appropriation and/or the use to which the land appropriated will thereafter be put.

10.4.2 As to any Unit so determined to be unsuitable for the purpose for which it was intended, the identity, descrip-

tion and the Condominium Total Value of the Condominium of which such Unit is a part.

10.4.3 As to any Unit so determined to be suitable for the purpose for which it was intended, the identity, description and the Condominium Partial Value, if any, of the Condominium of which such Unit is a part.

10.5 Any determination made by the Board of Directors pursuant to Paragraph 10.4 shall be binding upon all Owners. Nothing herein contained shall be construed to preclude the Board of Directors from reconsidering, and changing, any such determination.

10.6 If a condemnation award affecting all or a part of the Project is not apportioned among the Owners by court judgment or by agreement between the Condemnor and each of the affected Owners or the Board of Directors as the Owners' agent, and after the relative values of the Units, the Common Area and the Recreation Area affected by any appropriation have been determined by independent appraisal, as soon as may be practicable after the receipt by the Association of any award, the Board of Directors will disburse the same pursuant to the following:

10.6.1 First, to Mortgagees as their interests may appear.

10.6.2 Second, to contractors, subcontractors, materialmen and others for the costs of the repair or restoration of damage or destruction to the Common Area or Recreation Area caused by an Appropriation, or to the Association in reimbursement for such costs.

10.6.3 Third, to the Association as its interests may appear by reason of ownership of that certain in gross easement affecting the Recreation Area; the balance of the award is hereinafter referred to as the award balance.

10.6.4 Fourth, the award balance to Owners as follows:

(a) If the award balance equals or exceeds the aggregate of Condominium Total Values and Condominium Partial Values (i) to each Owner the amount of the Condominium Total Value or Condominium Partial Value, if any, determined, pursuant to Paragraph 10.4, for such Owner's Condominium and (ii) to the Association, the remainder of the award balance.

(b) If the award balance is less than the aggregate of Condominium Total Values and Condominium Partial Values, to each Owner that portion of the award balance which bears to the award balance the same ratio as the Condominium Total Value

(or Condominium Partial Value), if any, determined, pursuant to Paragraph 10.4, for such Owner's Condominium bears to the aggregate of Condominium Total Values and Condominium Partial Values.

10.7 In the event there shall be any express or implied conflict between any provision of this Article and any provision of a note or deed of trust held by a Mortgagee, the provisions of said note or deed of trust shall govern and prevail.

ARTICLE 11

Accounting

11.1 The Board of Directors shall maintain books of account of all their receipts and expenditures and shall cause such books to be examined as of the close of each fiscal year and a report to be made thereon to the Association. The Board of Directors shall deliver a copy of such report to the Owner of each Condominium within 120 days after the end of such year. Each Owner (or its duly appointed representative) and any Mortgagee or Interested Person shall be entitled to inspect the books and records of the Association during normal business hours, and to have such books and records examined at the expense, respectively, of any such Owner or any such Mortgagee, Interested Mortgagee or Interested Person and may make excerpts or copies of such books and records or portions thereof, and each such Owner, Mortgagee or Interested Person, at its own expense, shall have the right to have such books and records independently audited by a public accountant.

ARTICLE 12

Scope; Enforcement

12.1 The limitations, restrictions, conditions and covenants set forth in this Declaration constitute a general scheme for (i) the maintenance, protection and enhancement of value of the Project and all Condominiums, and (ii) the benefit of all Owners. Said limitations, restrictions, conditions and covenants are imposed on each Condominium for the benefit of every other Condominium and the present and future Owners thereof. Said limitations, restrictions, conditions and covenants are and shall be covenants running with the land or equitable servitudes, as the case may be.

12.2 Notwithstanding the provisions of the Articles hereof entitled "Partition and Severance" and "Amendment" to the contrary, at any time, 65 years after the date of recordation of this Declaration, this Declaration and each and every limitation,

restriction, condition and covenant contained herein may be terminated and extinguished upon execution and filing for record in the Office of the County Recorder of San Diego County, California, of a written instrument which (i) declares that the provisions of this Declaration are thereby terminated and extinguished, (ii) is signed and acknowledged by the Owners entitled to exercise a majority of the total voting power of the Association and (iii) bears, or has attached thereto, the consent of two-thirds of all First Mortgagees as of the time of recordation of said written instrument.

12.3 Breach of any of said limitations, restrictions, conditions or covenants (or the continuation thereof) may be enjoined, abated or remedied by appropriate legal proceedings by (i) the Association, (ii) any Owner, its heirs, devisees, executors, administrators, successors and assigns, or (iii) any Mortgagee. Each of the foregoing constitutes an "Enforcing Person" hereunder. Damages at law for any such breach, other than breach by failure to pay assessment(s), are hereby declared to be inadequate.

12.4 The result of or condition caused by any violation of any of said limitations, restrictions, conditions or covenants is and shall be a nuisance, and every remedy at law or in equity now or hereafter available against a nuisance may be exercised by an Enforcing Person.

12.5 The failure of any Enforcing Person to enforce any of said limitations, restrictions, conditions or covenants shall not constitute a waiver of the right to enforce the same thereafter. No liability shall be imposed on or incurred by any Enforcing Person as a result of such failure.

12.6 The prevailing party in any action at law or in equity instituted by an Enforcing Person(s) to enforce or interpret the limitations, restrictions, conditions or covenants contained herein shall be entitled to all costs incurred in connection therewith, including but not limited to court costs and reasonable attorneys' fees.

ARTICLE 13

Rights of the Mortgagees

13.1 Any Owner may voluntarily or involuntarily encumber its Condominium with or by a real property mortgage, deed of trust or other instrument of hypothecation.

13.2 A breach of any of the foregoing limitations, restrictions, conditions or covenants (except as provided in this Article with respect to a breach by failure to pay any assessment)

shall not defeat or render invalid the lien of any first mortgage or first deed of trust made in good faith and for value as to a Condominium; provided, however, such limitations, restrictions, conditions and covenants shall be binding upon and effective against any person whose title to said Condominium is acquired by foreclosure, trustee's sale or otherwise.

13.3 Each and every lien created by or pursuant to this Declaration, including but not limited to, the assessment liens described in the Article entitled "Assessments," is and shall be subordinate, inferior and subject to the lien and charge of any (i) First Mortgage given for value and (ii) blanket construction (including acquisition) mortgage(s) or deed(s) of trust encumbering all or any part of the Project, which mortgage(s) or deed(s) of trust may have been expressly subordinated to this Declaration.

13.3.1 Any person who acquires title to any Condominium by purchasing the same at a foreclosure or trustee's sale of a First Mortgage shall take title to such Condominium free of any (i) claims by or on behalf of the Association for unpaid assessments, charges and/or fines (if any) levied by the Association which accrue prior to the time such purchaser takes title to such Condominium and (ii) assessment lien and/or other lien of the Association then encumbering any such Condominium. Such unpaid assessments shall be reallocated among the Owners (other than said purchaser).

13.3.2 In the event any Mortgagee (i) shall acquire title to any Condominium by judicial foreclosure, exercise of power of sale contained in any real property mortgage or deed of trust, or deed in lieu of foreclosure, and (ii) shall thereafter sell and convey such Condominium, any real property mortgage or deed of trust received by such lender as security for all or a portion of the purchase price of such Condominium shall be incontrovertibly deemed "given for value." Notwithstanding the provisions of Paragraph 13.3 above, any lien created by or pursuant to this Declaration, which lien arises from the failure to pay assessment(s) accruing during the period of such Mortgagee's holding of title to said Condominium, shall be a lien superior to the lien of said real property mortgage or deed of trust received to secure a portion of said purchase price.

13.4 Each Mortgagee and any Interested Person shall be entitled, upon request, to (i) receive written notice of any and all meetings of the Association, (ii) designate a representative to attend such meetings on its behalf, (iii) to receive notice of any condemnation or casualty loss that affects either a material portion of the Project or the Condominium securing a mortgage in which such person has an interest, (iv) to receive written notice of any 60 day delinquency in the payment of any assessment or

charges owned by the Owner of any condominium in which such person has an interest, (v) receive notice of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association (vi) receive written notice of any action on which requires the prior approval of Mortgagees and/or Interested Persons and (vii) receive written notice of any breach or default hereunder by any Owner in the event such breach or default is not cured within 60 days after its occurrence. Provided, however, failure to give such notice shall in nowise affect any right or remedy of any Enforcing Person under the Article entitled "Scope; Enforcement." To obtain any of the notices specified in this Paragraph, the Mortgagee or any such Interested Person shall deliver to the Association a written request setting forth both the name and address of the Mortgagee or such Interested Person and the address or Unit number of the Condominium in which such person has an interest.

13.5 In the event there shall be any express or implied conflict between any provision of this Article and any other provision of this Declaration, the provisions of this Article shall govern and prevail.

ARTICLE 14

Declarant's Security for Its Obligations

14.1 If the Association is obligee under a bond (the "Bond") obtained pursuant to Business and Professions Code Section 11018.5 (a)(2)(A), to secure completion of improvements in and to the Common Area and Recreation Area, the following provisions shall govern any action brought by the Association to enforce the obligations under the Bond:

14.1.1 The Board of Directors shall, within ten days after passage of the Grace Period (hereinafter defined), consider and vote on the question of action to be taken by the Association to enforce the obligations under the Bond with respect to any improvement in or to the Common Area or Recreation Area for which a Notice of Completion has not been filed within 60 days (the "Grace Period") after the completion date specified for that improvement in the "Planned Construction Statement" appended to the Bond. If the Association has, in writing, extended the time for completion of any improvement in or to the Common Area or Recreation Area, the Board of Directors shall consider and vote on the question of action to be taken to enforce the obligations under the Bond if a Notice of Completion has not been filed for said improvement within 30 days (the "Grace Period") after the expiration of said extended time period. Any such extension granted by the Association shall override any contrary decision of the Board of Directors.

14.1.2 If the Board of Directors fail to consider and vote on the question of action to be taken by the Association to enforce the obligations under the Bond or should the Board of Directors decide not to initiate action to enforce said obligations, a special meeting of Members shall be held to consider and vote on such action if Members having at least five percent of the voting power of the Association sign and submit to the Board of Directors a petition demanding such meeting. Such meeting shall be held not less than 35 days nor more than 45 days after receipt by the Board of Directors of said petition. At such special meeting, all Members other than Declarant shall be entitled to vote.

14.1.3 If, at such special meeting, Members (other than Declarant) having a majority of the voting power of the Association (exclusive of the voting power attributed to Declarant) vote in favor of taking action to enforce the Bond, the Board of Directors shall immediately initiate and thereafter pursue appropriate action in the name of the Association to enforce the obligations under the Bond. If the Board of Directors refuses to pursue such action, then any Member(s) may initiate and pursue appropriate action in the name of the Association to enforce the obligations under the Bond. Funds for pursuing such action shall be obtained by means of a special assessment of the Owners pursuant to the Article hereof entitled "Assessments"; such funds shall be kept in a separate account at a bank designated by the Association and used only for initiation and prosecution of said action.

14.1.4 If, at such special meeting, Members (other than Declarant) having a majority of the voting power of the Association (exclusive of the voting power attributed to Declarant) vote against taking action to enforce the Bond, then no such action may be taken by the Board of Directors or any Member on behalf of the Association for a period of 60 days after said special meeting. If no Notice of Completion is filed for said improvements in or to the Common Area or Recreation Area within 60 days after the date of said special meeting, the provisions of the foregoing Paragraphs shall govern the action to be taken by the Board of Directors and the Association with respect to enforcing the obligations under the Bond.

14.2 If Declarant posts a surety bond or deposits funds (pursuant to Section 2792.9, Article 12, Chapter 6, Title 10, California Administrative Code) for the benefit of the Association, to assure the fulfillment by Declarant of its obligations to pay assessments, the exoneration or release of such bond or funds being subject to the conditions set forth in said Section 2792.9, and a dispute arises between Declarant and the Association with respect to the question of satisfaction of such conditions for exoneration or release, then, in such event, such

dispute shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof. The fee payable to the American Arbitration Association to initiate such arbitration shall be remitted by Declarant; however, the costs of such arbitration shall ultimately be borne as determined by the Arbitrator(s) under the aforesaid Rules.

ARTICLE 15

Annexation

15.1 Declarant has, and shall have, the absolute right to impose this Declaration upon all or any portion of the property described in Exhibit A by annexation of any such property in the manner hereinafter set forth and, when such annexation is accomplished, this Declaration shall be of the same force and effect with respect to such annexed property as if such annexed property was originally described herein. Such annexation may occur from time to time, may affect all or any portion of the property described in Exhibit A and any such annexation shall be accomplished as follows:

15.1.1 Prior to the annexation of all or any portion of the property described in Exhibit A, Declarant shall file for record in the Office of the County Recorder of San Diego County, California, on or before three years after the date of the original issuance of the then most recent Final Subdivision Public Report issued by the California Department of Real Estate for a phase of development of the Project, a Declaration of Annexation and Restrictions describing the property to be annexed and otherwise substantially in form as set forth in Exhibit B.

15.1.2 Following the recordation of any such Declaration of Annexation and Restrictions, the annexation into the Project of the property described in such Declaration of Annexation and Restrictions shall be accomplished upon the first conveyance of a Condominium in such property.

15.1.3 At any time following the recordation of a Declaration of Annexation and Restrictions, but prior to the first conveyance of a Condominium in the property described in such Declaration of Annexation and Restrictions, Declarant shall have the right to record a Termination and Extinction of Declaration of Annexation and Restrictions describing all or any portion of such property and otherwise substantially in form as set forth in Exhibit C and, upon recordation thereof, (i) any Declaration of Annexation and Restrictions described therein shall cease to be of any force or effect with respect to the property described

in such Termination and Extinction of Declaration of Annexation and Restrictions and (ii) any subsequent conveyance of a Condominium or other interest in the property described in such Termination and Extinction of Declaration of Annexation and Restrictions (or the conveyance of any other interest therein) shall not accomplish the annexation into the Project of the property described in such Termination and Extinction of Declaration of Annexation and Restrictions.

15.1.4 A Declaration of Annexation and Restrictions may contain complementary additions to and/or reasonable modifications of the provisions of this Declaration as may be appropriate to reflect the different character, if any, of the developmental plan for the property to be annexed.

15.2 Nothing contained herein shall be construed to permit, expressly or by implication, Declarant to (i) annex or deannex any portion of the property described in Exhibit A which does not constitute a legal lot or parcel or (ii) sell Condominiums in any phase of development of the Project without first having obtained a Final Subdivision Public Report thereon from the Department of Real Estate of the State of California (if such Report must be obtained pursuant to the regulations of the Commissioner of the Department of Real Estate).

15.3 Upon annexation of all or any portion of the property described in Exhibit A, and, except to the extent Declarant may be entitled to an exemption by reason of the provisions of Paragraph 8.4 of this Declaration, assessments (as provided in the Article hereof entitled "Assessments") against the Condominiums in such annexed property shall commence on the first day of the calendar month next following the recording of the first conveyance by Declarant of a Condominium in such annexed property. At the time of such commencement of assessments, the anticipated authorized expenses of the Association shall be adjusted to reflect the increased or decreased costs to the Association of the management, operation and maintenance of the Project arising by reason of such annexation, and the assessment upon each Condominium then subject to assessment shall be accordingly adjusted so as to apportion all of said costs equally among all of the Condominiums then subject to assessment.

15.4 During any period in which assessments have not commenced with respect to all or a portion of the property described in Exhibit A, Declarant shall hold harmless the Association (and other Owners) for any charges or costs incurred by the Association with respect to such property for which assessments have not commenced.

15.5 No vote(s) in the Association shall be attributable to ownership of all or any portion of the property described in

16.2 Anything contained in this Declaration to the contrary notwithstanding, this Declaration will not be amended, modified nor rescinded (i) at any time prior to September 30, 1990, without the prior written consent of Genstar Development, Inc., a New York corporation (Genstar Southwest Development), (ii) without the prior written consent of the Board of Directors of the Community Association and (iii) without the recording of said written consent or consents, as appropriate, in the Office of the County Recorder of San Diego County, California.

16.3 If, for any reason, the consent of any Eligible Mortgage Holder is desired but not required by the provisions of Paragraph 16.1 above, any Eligible Mortgage Holder shall be, respectively, conclusively deemed to have consented to an addition or amendment to this Declaration for which such consent is not so required if any such Eligible Mortgage Holder fails to submit a response to any written proposal for such an addition or amendment within 30 days after the deliver of such proposed addition or amendment to such Eligible Mortgage Holder.

16.4 It is the intent of Declarant that this Declaration, the Articles and Bylaws of the Association, and the Project meet all requirements necessary to purchase, guarantee, insure or subsidize any mortgage of a Condominium by FHLMC, FNMA, Federal Housing Administration and Veterans Administration. In the furtherance of that intent, Declarant expressly reserves the right and shall be entitled by unilateral amendment of this Declaration, as long as Declarant owns more than 25 percent of the Condominiums, to incorporate any provisions that are, in the opinion of the cited entities or governmental agencies, required to conform the Declaration, the Articles, the Bylaws or the Project to the requirements of any of the entities or governmental agencies including, without limitation, the execution on behalf of the Association of a regulatory agreement between the Association and the Federal Housing Commissioner. Provided, however, that any such provision shall first have been approved by the California Department of Real Estate in connection with its issuance of a Final Subdivision Public Report or amendment to it with respect to the Project. Each Owner and each Mortgagee by acceptance of a deed of, or encumbrance against, a Condominium consents to the incorporation in this Declaration of any such provisions as if set forth herein in full. The Board of Directors and each Owner shall take any action or shall adopt any resolutions required by Declarant or any Mortgagee to conform this Declaration or the Project to the requirements of any of the cited entities or agencies.

16.5 Each such amendment to this Declaration shall become effective only upon being filed for record as hereinabove provided and shall, from and after its effective date, be as effective as this instrument as to all (i) the Common Area and Recre-

ation Area, (ii) the Units, (iii) the Condominiums, (iv) the Project and (v) the Owners (as of said effective date) and their successors in interest.

ARTICLE 17

General Provisions

17.1 Notices required by the Declaration, or desired, to be given shall be conclusively deemed served (i) if personally served, at the time of such service, and (ii) 48 hours after deposit thereof in the United States mail, postage prepaid, addressed to the person(s) to whom such notice is to be given at the last known address of such person(s).

17.2 In the event any limitation, condition, restriction, covenant or provision contained in this Declaration is to be held invalid, void or unenforceable by any court of competent jurisdiction, the remaining portions of this Declaration shall, nevertheless, be and remain in full force and effect.

17.3 No provision of the Articles of Incorporation or Bylaws and no action of the Association, in violation or contravention of any provision of this Declaration shall be valid, subsisting or of any effect whatsoever.

17.4 The use herein of the neuter gender includes the masculine and the feminine genders, and the use herein of the singular number includes the plural, whenever the context so requires.

17.5 Captions in this Declaration are inserted for convenience of reference only and do not define, describe or limit the scope or the intent of this Declaration or any of the terms hereof.

17.6 All exhibits, if any, referred to herein and attached hereto are a part hereof.

17.7 This Declaration and every provision hereof shall be construed to facilitate the operation of the Project.

IN WITNESS WHEREOF, this Declaration has been executed at San Diego, California, as of the 15 day of January, 1985.

BREHM COMMUNITIES,
a California corporation

By [Signature]
Title: Vice President

Lots 415, 417 through 433, inclusive, 436 and 437 of BERNARDO HEIGHTS UNIT NO. 22, in the City of San Diego, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County June 28, 1984.

STATE OF CALIFORNIA)
COUNTY OF San Diego) ss.

On January 15, 1988, before me, the undersigned, a Notary Public in and for said State, personally appeared Alan J. Cummings and

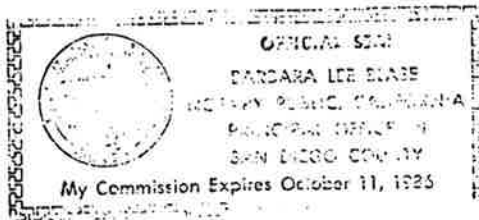
_____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons who executed the within instrument as _____

Vice President and _____ Secretary, on behalf of _____

Breda Investments the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature Barbara Lee Blase



(This area for official notarial seal)

Insurance Company

RECORDING REQUESTED BY:

DECLARANT

WHEN RECORDED MAIL TO:

X
X
X
X
X
X
X
X
X
X
X

SPACE ABOVE FOR RECORDER'S
USE

DECLARATION OF ANNEXATION AND RESTRICTIONS

THIS DECLARATION OF ANNEXATION AND RESTRICTIONS, made and executed by BREHM COMMUNITIES, a California corporation, herein referred to as "Declarant,"

WITNESSETH THAT:

WHEREAS, Declarant is the owner of the property described as:

[LEGAL DESCRIPTION OF PROPERTY TO BE ANNEXED]

WHEREAS, Declarant (or Declarant's predecessor in interest) has caused to be executed, acknowledged and recorded a Declaration of Restrictions, recorded _____, 19__, File/Page

No. _____, Official Records of _____ County, California.

WHEREAS, said Declaration of Restrictions provides, inter alia, for the annexation and incorporation into the Project described in said Declaration of Restrictions of the property described above (the "Annexation Property").

WHEREAS, Declarant has caused to be executed, acknowledged and recorded a condominium plan (as the same is described in California Civil Code Section 1351) affecting the Annexation Property.

WHEREAS, Declarant desires to effect said annexation and incorporation and to subject the Annexation Property to said Declaration of Restrictions as set forth therein.

NOW, THEREFORE, by this Declaration of Annexation and Restrictions, Declarant hereby declares that upon the first conveyance of a Condominium in the Annexation Property (i) such property shall be annexed into the Project described in said Declaration of Restrictions and (ii) the Annexation Property and each and every condominium therein or thereon, shall be hereafter held, leased, encumbered, sold and/or conveyed by Declarant, and each and every successor in interest of Declarant, subject to the limitations, restrictions, conditions and covenants set forth in said Declaration of Restrictions.

IN WITNESS WHEREOF, this Declaration of Annexation and Restrictions has been executed at _____, California, as of the ____ day of _____, 19__.

EXHIBIT
DO NOT SIGN

STATE OF CALIFORNIA)
) SS
COUNTY OF SAN DIEGO)

On _____, 198__, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the _____ President, and _____, personally known to me or proved to me on the basis of satisfactory evidence to be the _____ Secretary, of BREHM COMMUNITIES, a California corporation, and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its Board of Directors.

WITNESS my hand and official seal.

Notary Public in and for
said County and State
EXHIBIT
DO NOT SIGN

RECORDING REQUESTED BY:
DECLARANT
WHEN RECORDED MAIL TO:

XXXXXXXXXXXX

SPACE ABOVE FOR RECORDER'S
USE

TERMINATION AND EXTINCTION OF
DECLARATION OF ANNEXATION AND RESTRICTIONS

THIS TERMINATION AND EXTINCTION OF DECLARATION OF ANNEXATION
AND RESTRICTIONS, made and executed by BREHM COMMUNITIES, a
California corporation, herein referred to as "Declarant,"

WITNESSETH THAT:

WHEREAS, Declarant is the owner of the property described
as:

[LEGAL DESCRIPTION OF PROPERTY TO BE DELETED]

WHEREAS, Declarant (or Declarant's predecessor in interest)
has caused to be executed, acknowledged and recorded a Declara-
tion of Restrictions, recorded _____, 19__, File/Page
No. _____, Official Records of _____ County,
California.

WHEREAS, said Declaration of Restrictions provides, inter alia, for the annexation and incorporation into the Project described in said Declaration of Restrictions of certain property described therein, including, but not limited to the above-described property.

WHEREAS, Declarant has caused to be executed, acknowledged and recorded a Declaration of Annexation and Restrictions, recorded _____, 19__, File/Page No. _____, Official Records of _____ County, California, which describes all or a portion of the property described above.

WHEREAS, said Declaration of Restrictions provides that prior to the conveyance of a condominium in the property described in said Declaration of Annexation and Restrictions, Declarant has the right to record a Termination and Extinction of Declaration of Annexation and Restrictions substantially in form as set forth herein.

WHEREAS, Declarant has not conveyed a condominium in the property described in said Declaration of Annexation and Restrictions.

WHEREAS, Declarant desires to terminate and extinguish the effect of said Declaration of Annexation and Restrictions as set forth herein.

NOW, THEREFORE, by this Termination and Extinction of Declaration of Annexation and Restrictions, Declarant hereby declares that upon the first conveyance of a Condominium, or any

other interest, in the above-described property (i) such property shall not be annexed into the Project described in said Declaration of Restrictions and (ii) the above-described property, and each and every condominium therein or thereon, shall be hereafter held, leased, encumbered, sold and/or conveyed by Declarant, and each and every successor in interest of Declarant, free and clear of the limitations, restrictions, conditions and covenants set forth in said Declaration of Restrictions.

IN WITNESS WHEREOF, this Termination and Extinction of Declaration of Annexation and Restrictions has been executed at _____, California, as of the ____ day of _____, 19__.

**EXHIBIT
DO NOT SIGN**

STATE OF CALIFORNIA)
) SS
COUNTY OF SAN DIEGO)

On _____, 198____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the President, and _____, personally known to me or proved to me on the basis of satisfactory evidence to be the Secretary, of BREHM COMMUNITIES, a California corporation, and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its Board of Directors.

WITNESS my hand and official seal.

Notary Public in and for
said County and State

EXHIBIT
DO NOT SIGN

BYLAWS OF
LOS RIOS
OWNERS' ASSOCIATION, INC.

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BYLAWS
OF
LOS RIOS
OWNERS' ASSOCIATION, INC.

ARTICLE 1

Definitions

1.1 Articles.

1.1.1 "Articles" shall mean the Articles of Incorporation of the Association as the same may be amended from time to time.

1.2 Association.

1.2.1 "Association" shall mean the Los Rios Owners' Association, Inc., a California nonprofit mutual benefit corporation, formed and maintained pursuant to the California Nonprofit Mutual Benefit Corporation Law (California Corporations Code Sections 7110 et seq.), composed of the Owners as defined hereinbelow.

1.3 Board of Directors

1.3.1 "Board of Directors" shall mean the Board of Directors of the Association.

1.4 Bylaws.

1.4.1 "Bylaws" shall mean the Bylaws of the Association as the same Bylaws may be amended from time to time.

1.5 Common Area.

1.5.1 "Common Area" shall mean Common Area as the same is defined in the Plan as defined hereinbelow.

1.6 Community Articles.

1.6.1 "Community Articles" shall mean the Articles of Incorporation for the Community Association.

1.7 Community Assessments.

1.7.1 "Community Assessments" shall mean the assessments levied by the Community Association pursuant to Article IV of the Community Declaration.

1.8 Community Association.

1.8.1 "Community Association" shall mean The Community Association Of Bernardo Heights, a California non-profit mutual

benefit corporation, or any successor entity charged with the duties, obligations and powers of said Community Association.

1.9 Community Bylaws.

1.9.1 "Community Bylaws" shall mean the Bylaws for the Community Association duly adopted by the Community Board.

1.10 Community Declaration.

1.10.1 "Community Declaration" shall mean the Declaration of Covenants, Conditions and Restrictions for The Community Of Bernardo Heights.

1.11 Condominium.

1.11.1 "Condominium" shall mean an estate in the Project as such estate is defined in California Civil Code Section 783.

1.12 Declarant.

1.12.1 "Declarant" shall mean (i) Brehm Communities, a California corporation, which constitutes the Declarant under the Declaration (defined below), and (ii) any successor in interest of Brehm Communities, a California corporation, to whom all or any of the rights of Declarant under the Articles, Declaration and these Bylaws have been transferred and who is (a) a grantee under a deed executed and delivered prior to the conveyance of the first Condominium, which deed conveys the entire Project (defined below) or (b) a grantee under a deed conveying two or more Condominiums. Notwithstanding the provisions of the Article hereof entitled "Amendments to Bylaws" to the contrary, this Paragraph may not be amended without the (i) prior written consent of Declarant and (ii) recording of said written consent in the Office of the County Recorder of San Diego County, California.

1.13 Declaration.

1.13.1 "Declaration" shall mean that certain Declaration of Restrictions recorded _____, 19____, File/Page No. _____, Official Records of San Diego County, California, as the same may be (i) amended pursuant to the Article thereof entitled "Amendment" or (ii) affected by any "Declaration of Annexation and Restrictions" described in the Article thereof entitled "Annexation."

1.14 Eligible Mortgage Holder.

1.14.1 "Eligible Mortgage Holder" shall mean a First Mortgagee (hereinafter defined) who, in a written document delivered to the Association, has requested that the Association

notify such First Mortgagee of any proposed action that, by the terms of the Articles, the Bylaws or the Declaration, requires the consent of a specified percentage of such First Mortgagees.

1.15 First Mortgage.

1.15.1 "First Mortgage" shall mean any deed of trust or mortgage which is the only deed of trust or mortgage encumbering a Condominium or which is first in priority, under the recording laws of the State of California, of a series of two or more mortgages or deeds of trust encumbering the same Condominium.

1.16 First Mortgagee.

1.16.1 "First Mortgagee" shall mean a Mortgagee whose mortgage or deed of trust, as the case may be, is a First Mortgage.

1.17 Interested Person.

1.17.1 "Interested Person" shall mean any First Mortgagee or any insurer or guarantor of a First Mortgage.

1.18 Member.

1.18.1 "Member" shall mean an Owner, as defined hereinbelow, entitled to membership in the Association. Membership shall be appurtenant to and may not be separated from ownership of a Condominium.

1.19 Mortgagee.

1.19.1 "Mortgagee" shall mean the mortgagee under any real property mortgage or beneficiary under any deed of trust which mortgage or deed of trust encumbers any Condominium.

1.20 Owner.

1.20.1 "Owner" shall mean Declarant prior to the first conveyance of a Condominium and, thereafter, shall mean the person(s) who holds record title to any Condominium, including Declarant for as long as Declarant holds title to a Condominium.

1.21 Plan.

1.21.1 "Plan" shall mean (i) that certain Condominium Plan recorded _____, 19__, File/Page No. _____, Official Records of San Diego County, California, being a condominium plan as the same is described in California Civil Code Section 1351, including any amendment thereto, and (ii) any recorded

condominium plan or plans, including any amendments thereto, affecting the property (or any portion thereof) described in Exhibit A to the Declaration.

1.22 Project.

1.22.1 "Project" shall mean all of the land encompassed by the Plan, including all structures and improvements situated thereon and the Recreation Area.

1.23 Recreation Area.

1.23.1 "Recreation Area" shall mean the real property owned by the Association for the common use and enjoyment of the Owners.

1.24 Restricted Common Area.

1.24.1 "Restricted Common Area" shall mean the back and side yard areas directly adjacent to each of the Units. The lateral boundaries of each such Restricted Common Area shall consist of the inner surfaces of the masonry walls (if any), wrought iron gates (if any), wrought iron fences (if any), and walls of adjoining Units (if any) as constructed and installed by Declarant. The use of each back and side yard shall be restricted to allow the Owner of the Unit which is directly adjacent thereto to have the exclusive use and benefit of such side and back yard area.

1.25 Unit.

1.25.1 "Unit" shall mean the elements of a Condominium which are not owned in common with the owners of other Condominiums; each Unit, and the boundaries thereof, are described in the Plan.

ARTICLE 2

Functions of the Association

2.1 Purpose.

2.1.1 The Association shall (i) be the owner of the Recreation Area holding the same for the recreational use and enjoyment of the Members and (ii) act as a "management body" for the management, preservation, maintenance, architectural control and improvement of the Common Area and the Recreation Area. The Association is subject to the limitations, covenants, conditions, restrictions, terms and provisions of the Declaration.

2.2 Assessments.

2.2.1 Pursuant to the Article of the Declaration entitled "Assessments," it shall be the duty of the Board of Directors to fix, alter, collect and enforce assessments upon Owners. Each Owner shall pay to the Association each assessment levied upon such Owner's Condominium(s) under the provisions of the Declaration.

ARTICLE 3

Membership

3.1 Members.

3.1.1 The Association shall have one class of Members only, and the property and other rights, interests and privileges of each Member in good standing shall be equal; except that there shall be two classes of Members for the purposes of voting as set forth in Article 5. No Owner shall hold more than one membership in the Association. No certificate of membership, identity card or other document evidencing membership in the Association shall be issued except by resolution of the Board of Directors and in conformance with California Corporations Code Sections 7313 and 7314.

3.2 Transfer of Membership.

3.2.1 Each Owner shall be and become a Member contemporaneously with his acquisition of a Condominium (whether such acquisition occurs by (i) conveyance of a Condominium by Declarant, (ii) voluntary transfer, assignment or conveyance of a Condominium, (iii) involuntary transfer of a Condominium, including without limitation by reason of the death of an Owner, or (iv) foreclosure [by trustee's power of sale or by judicial process] of a deed of trust or other lien on a Condominium), without necessity of documentation or other action of any kind by any person. The Association may require that any person acquiring a Condominium shall notify the Association in writing of such acquisition so as to facilitate accurate record keeping of the membership. When two or more persons hold, as joint tenants or otherwise, a Condominium, they shall constitute a single Member. Prior to the conveyance of a Condominium by Declarant, Declarant shall be a Member as to such Condominium. Transfer of membership in the Association shall be only by the above-specified means.

3.2.2 The Association shall, within a reasonable time after the Association is first notified of a proposed transfer and before the membership is transferred on the books and records of

the Association, give notice to the transferee that a copy of restrictions upon the transferability of membership is on file with the secretary of the Association and are open for inspection by a Member on the same basis as the records of the Association.

ARTICLE 4

Meetings of Members

4.1 Place of Meetings.

4.1.1 All meetings of Members shall be held within the Project or at such other place in San Diego County, California, in reasonable proximity to the Project, as may be designated for that purpose from time to time by the Board of Directors. Unless unusual conditions exist, as determined solely by the Board of Directors, Members' meetings shall not be held outside of said county.

4.2 Annual (Regular) Meetings.

4.2.1 A regular meeting of Members shall be held annually. The first annual meeting of Members shall be held on such date and at such time as shall be designated by the Board of Directors, which date shall be within 45 days after the sale and conveyance by Declarant of 51 percent of the Condominiums in Phase I of the Project, but in no event later than six months after the sale and conveyance by Declarant of the first Condominium in the Project. Subsequent annual meetings of Members shall be held on the anniversaries of the first annual meeting of Members and shall be held at such time on said date as may be designated by the Board of Directors. If the date of the annual meeting shall be a legal holiday, then the meeting shall be held on the next-succeeding business day, at the same hour.

4.2.2 At the annual meeting, Members shall elect directors, consider reports of the affairs of the Association and transact such other business as may properly be brought before the meeting.

4.3 Special Meetings.

4.3.1 Special meetings of Members, for any lawful purpose or purposes whatsoever, shall be promptly scheduled by the Board of Directors in response to (i) the vote of the Board of Directors itself or (ii) receipt by the Board of Directors a written request for such a meeting signed by Members representing at least five percent of the total voting power of the Association.

4.3.2 Notwithstanding the provisions of Paragraph 4.4.1 to the contrary, whenever a special meeting of Members is called by Members representing at least five percent of the total voting power of the Association, upon request in writing signed by Members entitled to call a meeting of Members and delivered by first class, certified or registered mail to the Board of Directors at the principal office of the Association, or delivered to the Board of Directors in person, it shall be the duty of the Board of Directors forthwith to cause notice to be given to the Members that a meeting will be held at a time fixed by the Board of Directors not less than 35 nor more than 90 days after the receipt of the request; provided, however, if a special meeting is called to enforce the obligations under a bond obtained to secure completion of improvements in and to the Common Area and Recreation Area, pursuant to Section 2792.4 of Title 10 of the California Administrative Code, a meeting will be held at a time fixed by the Board of Directors not less than 35 nor more than 45 days after receipt of the request. If said notice is not given within 20 days after receipt of the request, the Members entitled to call the meeting may fix the date and time of the meeting and give notice thereof in the manner provided by these Bylaws. The date of any meeting fixed by Members as hereinabove provided shall be at such time in the future as will permit adherence to the notice requirements set forth in Paragraph 4.4.

4.4 Notice of Meetings.

4.4.1 Written notice for meetings called by the Board of Directors, whether annual or special, shall be given to Members who are entitled to vote at such meetings not less than 10 days nor more than 90 days before the date of such meeting; provided, however, that, if notice is given by mail and the notice is not mailed by first-class, registered or certified mail, notice shall be given not less than 20 days before the meeting. Notice of any meeting of Members, whether annual or special and whether called by the Board of Directors or by Members entitled to call a meeting of Members, shall specify the place, the date and time of the meeting and (i) in case of a special meeting, the general nature of the business to be transacted and that no other business may be transacted or (ii) in the case of an annual meeting, those matters which the Board of Directors, at the time notice is given, intends to present for action by the Members; provided, however, notwithstanding the foregoing, any proper matter may be presented for action by the Members at an annual meeting. The notice of any meeting at which directors are to be elected shall include the names of all those who are nominees for election to the Board of Directors at the time notice is given to Members.

4.4.2 Notices of meetings, whether annual or special, shall be given by the Board of Directors, or in the case of neglect or refusal by the Board of Directors, by any officer, director or Member. All notices shall be given either personally or by mail sent to the address of each Member appearing on the books of the Association or to the address supplied by him to the Association for the purpose of receiving notice. A notice mailed or delivered as part of a newsletter, magazine or other circular regularly sent to Members shall constitute written notice when addressed and mailed or delivered to the Member or, in the case of Members who are residents of the same household and who have the same address on the books of the Association, when addressed and mailed or delivered to one of such Members, at the address appearing on the books of the Association.

4.4.3 When a Members' meeting, either annual or special, is adjourned to another time or place, notice of the adjourned meeting need not be given if the time and place thereof are announced at the meeting which is adjourned. A meeting adjourned for lack of quorum by those in attendance shall be set for a date not less than 5 days nor more than 30 days from the original meeting date. If (i) a time and place for the adjourned meeting are not fixed by those in attendance at the original meeting, (ii) for any reason a new date is fixed for the adjourned meeting after adjournment or (iii) the adjournment is for more than 30 days, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed for regular meetings. At the adjourned meeting the Association may transact any business which might have been transacted at the original meeting.

4.5 Consent to, Approval of or Attendance at Members' Meetings.

4.5.1 The transactions of any meeting of Members, whether annual or special, however called and noticed, shall be valid as though having occurred at a meeting duly held after regular call and notice if a quorum is present either in person or by proxy, and if, either before or after the meeting, each Member entitled to vote thereat not present in person or by proxy, signs a (i) written consent to the holding of such meeting or (ii) written approval of the minutes thereof. All such consents or approvals shall be filed with the records of the Association or made part of the minutes of the meeting. Attendance of a Member at a meeting shall constitute a waiver of notice of and presence at such meeting, except when the Member objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Attendance at a meeting is not a waiver of any right to object to the consideration of matters required to be included in the notice but not so included, if such objection is expressly made at the meeting.

4.6 Action by Written Ballot.

4.6.1 Any action which may be taken at any regular or special meeting of Members, except for an election in which positions on the Board of Directors are to be filled, may be taken without a meeting if the Association distributes a written ballot to every Member entitled to vote on the matter. Such ballot shall (i) set forth the proposed action, (ii) indicate the number of responses needed to meet the quorum requirement, (iii) provide an opportunity to specify approval or disapproval of any proposal, (iv) state the percentage of approvals necessary to pass the proposal, (v) provide that where the Member solicited specifies a choice with respect to the proposal the vote shall be cast in accordance therewith and (vi) provide a reasonable time within which to return the ballot to the Association and specify the time by which the ballot must be received in order to be counted. Approval by written ballot pursuant to this paragraph shall be valid only when the number of votes cast by ballot within the time period specified equals or exceeds the quorum required to be present at a meeting authorizing the action and the number of approvals equals or exceeds the number of votes that would be required to approve at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. A written ballot may not be revoked.

4.6.2 Ballots shall be solicited in a manner consistent with the requirements of Paragraph 4.4.2. All such solicitations shall indicate the number of responses needed to meet the quorum requirement and shall state the percentage of approvals necessary to pass the measure submitted. The solicitation must specify the time by which the ballot must be received in order to be counted.

4.7 Quorum.

4.7.1 The presence in person or by proxy of Members entitled to exercise a majority of the voting power of the Association shall constitute a quorum at all meetings of Members for the transaction of business thereat. Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided any action taken (other than adjournment) is approved by at least a majority of the number of Members required to constitute a quorum.

4.7.2 In the absence of a quorum at the commencement of any meeting of Members, the Members entitled to vote thereat, present in person or by proxy, shall have the power, by the vote of a majority of the votes represented, to adjourn the meeting from time to time until the requisite number of Members shall be

present or represented, but no other business may be transacted; provided, however, that any such adjournment shall be to a date not less than five and not more than 30 days from the date of the originally scheduled meeting. At such adjourned meeting the quorum requirement shall be reduced to the presence in person or by proxy of Members entitled to exercise 33-1/3 percent of the voting power of the Association. If the requisite number of Members constituting the reduced quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed.

ARTICLE 5

Voting Rights

5.1 Members' Right to Vote.

5.1.1 Only persons who are Members of the Association shall be entitled to vote at a meeting of Members.

5.2 Classes of Voting Members.

5.2.1 Members shall be divided into two classes for the purposes of voting, Class A and Class B. Class A Member(s) shall be all Owners of Condominiums except Declarant and said Class A Member(s) shall be entitled to one vote for each Condominium owned. The lone Class B Member shall be Declarant who shall be entitled to three votes for each Condominium owned. Declarant's Class B voting status shall cease and convert to Class A voting status on the earlier occurrence of one of the following: (i) when the total votes outstanding in Class A equal the total votes outstanding in Class B, (ii) on that certain date which is two years after the original issuance by the California Department of Real Estate of the most recent Final Subdivision Public Report for a phase of development of the Project or (iii) on that certain date which is four years after the original issuance by the California Department of Real Estate of a Final Subdivision Public Report with respect to the first phase of development of the Project. If record title to a Condominium is held in the name of more than one person, such persons shall collectively constitute a single Member and there shall be only one vote attributable to such Member (unless such Member is Declarant, in which case such Member shall have the number of votes attributable to Declarant as set forth in this paragraph). Each of such persons collectively constituting a single Member shall otherwise be individually entitled to the benefits of membership in the Association. The manner of casting and counting such vote shall be controlled by the provisions of the paragraph of these Bylaws entitled "Voting Rights; Required Vote; Cumulative Voting."

5.3 Voting Rights; Required Vote; Cumulative Voting.

5.3.1 On all matters, including the election of each director to be elected, a Member shall have the number of votes as set forth above for each Condominium owned by said Member.

5.3.2 When a quorum is present at any regular or special meeting of Members, the affirmative vote of a majority of the Members of each voting class of the Association present at such meeting shall be required for Members to transact any business thereat, except (i) where the item of business is the enforcement of the obligations under a bond or other arrangement pursuant to the article of the Declaration entitled "Declarant's Security for Its Obligations" or (ii) as may be otherwise provided in the Articles, Declaration or these Bylaws.

5.3.3 Every Member entitled to vote at any election of directors of the Association may cumulate his votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which he is entitled, or distribute his votes on the same principle among as many candidates as he may desire. Cumulative voting shall be required in all elections in which more than two positions on the Board of Directors are to be filled. Notwithstanding the foregoing, no Member shall be entitled to cumulate votes for a candidate or candidates unless such candidate's name or candidates' names have been placed in nomination prior to the voting and the Member has given notice at the meeting prior to the voting of the Member's intention to cumulate votes. If any one Member has given such notice, all Members may cumulate their votes for candidates in nomination. The candidates receiving the highest number of votes up to the number of directors to be elected shall be elected directors of the Association.

5.3.4 For as long as (i) a majority of the voting power of the Association resides in Declarant or (ii) there are two outstanding classes of Members for the purpose of voting as set forth in Article 5 hereof, Declarant shall not be entitled to vote in the election of one director or 20 percent of the directors to be elected, whichever is greater.

5.3.5 If a membership stands of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, husband and wife as community property, tenants by the entirety, persons entitled to vote under a voting agreement or otherwise, or if two or more persons (including proxyholders) have the same fiduciary relationship respecting the same membership, unless the secretary of the Association is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creat-

ing the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (i) if only one votes, such act binds all, or (ii) if more than one vote, the act of the majority so voting binds all.

5.4 Proxies.

5.4.1 Every Member entitled to vote or to authorize action may do so either in person or by one or more agents authorized by a written proxy executed by such Member and filed with the Secretary of the Association. No proxy shall be valid after the expiration of 11 months from the date thereof unless otherwise provided in the proxy, except that the maximum term of any proxy shall be three years from the date of execution. Every proxy continues in full force and effect until revoked by the person executing it prior to the vote pursuant thereto, except as otherwise provided in this section. Such revocation may be effected by a writing delivered to the Association stating that the proxy is revoked or by a subsequent proxy executed by the person executing the prior proxy and presented to the meeting or, as to any meeting, by attendance at such meeting and voting in person by the person executing the proxy. The dates contained on the forms of proxy presumptively determine the order of execution.

5.4.2 Anything to the contrary notwithstanding, any revocable proxy covering matters requiring a vote of the Members with respect to (i) the removal of directors, (ii) the election of a director(s) to fill any vacancy(ies) on the Board of Directors, (iii) amendment of the Articles, (iv) amendment of the Bylaws repealing, restricting, creating or expanding proxy rights, (v) the winding up and dissolving of the Association or (vi) any other matters specifically set forth in California Corporations Code Section 7613(g) is not valid as to such matters unless it sets forth the general nature of the matter to be voted on.

5.4.3 A proxy is not revoked by the death or incapacity of the maker or the termination of a membership as a result thereof unless, before the vote is counted, written notice of such death or incapacity is received by the Association.

ARTICLE 6

Directors; Management

6.1 General Powers.

6.1.1 Subject to the limitations of the Declaration, of the Articles, of these Bylaws and of the laws of the State of California as to action to be authorized or approved by Members, all

Association powers shall be exercised by or under authority of, and the business and affairs of the Association shall be controlled by, the Board of Directors. The Board of Directors may delegate the management of the activities of the Association to any person or persons, management company or committee however composed, provided that the activities and affairs of the Association shall be managed and all Association powers shall be exercised under the ultimate direction of the Board of Directors.

6.2 Specific Powers.

6.2.1 In addition to the general powers described above, the Board of Directors shall have the following specific powers:

(i) To adopt regulations not inconsistent with the provisions of the Declaration and of these Bylaws, including, but not limited to, rules and regulations relating to the use of and activities permitted in the Common Area and Recreation Area.

(ii) To maintain bank account(s) for funds coming under the control of the Association.

(iii) To levy regular and special assessments and otherwise act as set forth in (and subject to the provisions of) the Declaration, the Articles and these Bylaws.

(iv) To enforce the provisions of the Articles, the Declaration, these Bylaws, and any other instruments for the management and control of the Project; however, nothing contained in this Article shall be construed to prohibit enforcement of the Declaration by any Owner.

(v) To contract for and maintain (a) fire, casualty, liability, worker's compensation, medical, hospital, directors' and officers' liability and other insurance insuring Owners, directors and officers of the Association and other persons and (b) bonds of directors and other persons.

(vi) To contract, provide and pay for (a) maintenance, utility, gardening and other services benefiting the Common Area and Recreation Area, (b) employment of persons necessary for operation of any building and (c) legal and accounting services.

(vii) To contract for and purchase tools, equipment, materials, supplies and other personal property and services for (a) maintenance and repair of the Common Area and Recreation Area and (b) improvements to the Project.

(viii) To contract for and pay for reconstruction of any portion(s) of the Project damaged or destroyed.

(ix) To enter at all reasonable times, by it or its agents or independent contractors, any Unit when necessary in connection with maintenance, construction or emergency repair as to which the Association has rights hereunder.

(x) To pay taxes which would be a lien upon the entire Project, the Common Area, Recreation Area or any portion(s) thereof, and to pay and discharge any lien or encumbrance levied against the entire Project, the Common Area, Recreation Area or any portion(s) thereof.

(xi) To sell, at such price and terms as the Board of Directors may determine, the entire Project for the benefit of all of the Owners and mortgagees thereof, as their interests shall appear. Said power to sell shall be exercisable only (a) when partition of the Project may be had under California Civil Code Section 1354 and (b) after recordation of a certificate by those Owners consenting to the exercise of said power to sell (in accordance with said Section 1354) stating that said power is properly exercisable.

(xii) To prosecute or defend, in the name of the Association, any action affecting or relating to the Common Area or Recreation Area, or any action in which all of the Owners have an interest in the subject thereof.

(xiii) To suspend temporarily the (a) right of an Owner to use any recreational facilities within the Common Area and Recreation Area and (b) voting privileges of an Owner, for default in the payment of any regular or special assessment levied by the Association pursuant to the Declaration, or for violating any regulations adopted by or established by the Board of Directors to govern the use of and activity in the Common Area and Recreation Area, or for breaching any provision of the Declaration, the Articles or the Bylaws. Any suspension must be done in good faith and in a fair and reasonable manner. The Member must be given 15 days' prior notice of the suspension. Notice must set forth reasons for the suspension and may be given by any method reasonably calculated to provide actual notice. Any notice given by mail must be given by first-class; registered or certified mail sent to the last address of the Member shown on the Association's records. The Member must be provided an opportunity to be heard, orally or in writing, not less than five days before the effective date of the suspension by a properly convened meeting of the Board of Directors.

(xiv) To impose a reasonable monetary fine(s), if provided for in the Declaration or these Bylaws, upon an Owner for any breach of any of (a) the limitations, restrictions, conditions or covenants set forth in the Declaration (other than a

breach by failure to pay an assessment(s)), (b) the provisions of the Articles or the Bylaws or (c) the rules and regulations adopted by the Board of Directors pursuant to the Declaration, the Articles or the Bylaws. The imposition of such fine(s) must be done in good faith and in a fair and reasonable manner. The Member must be given 15 days' prior notice of the imposition of a fine(s). Notice must set forth reasons for the imposition of a fine(s) and may be given by any method reasonably calculated to provide actual notice. Any notice given by mail must be given by first-class, registered or certified mail sent to the last address of the Member shown on the Association's records. The Member must be provided an opportunity to be heard, orally or in writing, not less than five days before the effective date of the imposition of a fine(s) by a properly convened meeting of the Board of Directors.

6.2.2 No right or power conferred on the Board of Directors in this Article shall be construed as a duty, obligation or disability charged upon the Board of Directors or any director. If any right or power herein granted be exercised, any director so exercising or voting for such exercise shall act in good faith, in a manner such director believes to be in the best interest of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

6.2.3 Any contract entered into, or instrument executed, by any two or more directors pursuant to resolution of the Board of Directors shall be (i) valid and subsisting according to the tenor of such contract or instrument and (ii) a charge upon all cash, bank accounts and other personal property under the control of the Board of Directors. Any transfer, assignment or conveyance to, or any contract right in favor of, the Board of Directors shall vest in the Board of Directors, for the benefit of the Owners in the same proportion as their respective interests in the Common Area. So long as he acts within the scope of his authority as a director, no director shall have any personal liability under any such contract or instrument; however the foregoing shall not be construed to relieve any director, who is also an Owner, from liability as such Owner.

6.2.4 Anything in this Article to the contrary notwithstanding, unless the Members have approved such action (i) by a vote or written ballot of Members entitled to exercise a majority of the voting power in each of the two voting classes of the Association or (ii) upon cessation of one of the two voting classes, by a vote or written ballot of Members entitled to exercise a majority of the voting power in the remaining voting class, provided that said vote or written ballot shall include the votes of a majority of the Members other than Declarant, the Board of Directors may not:

(i) Enter into a contract with a third person for materials and/or services benefiting the Common Area, the Recreation Area or the Association for a term in excess of one year, except any:

(a) Management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration;

(b) Contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;

(c) Prepaid casualty and/or liability insurance policy which does not exceed three years' duration provided that such policy permits for short rate cancellation by the insured;

(d) Lease agreement for laundry room fixtures and equipment not to exceed five years' duration, provided that the lessor under the agreement is not an entity in which Declarant has a direct or indirect interest of 10 percent or more;

(ii) Incur aggregate expenditures for capital improvements to the Common Area or Recreation Area in any fiscal year in excess of a total of five percent of the budgeted gross expenses of the Association for such fiscal year;

(iii) Sell, during any fiscal year of the Association, property of the Association having an aggregate fair market value greater than five percent of the budgeted gross expenses of the Association for that fiscal year;

(iv) Fill a vacancy on the Board of Directors created by the removal of a director; or

(v) Pay any compensation to any director or officer of the Association for services performed in the conduct of the Association's business; however, the Board of Directors may reimburse any such director or officer for expenses incurred by him in carrying on the business of the Association.

6.2.5 Anything contained in this Paragraph 6.2 to the contrary notwithstanding, the Board of Directors shall not have the power to (i) authorize or approve any contract for the professional management of the Project, or any contract providing

for the services of Declarant, which does not permit the Association to terminate such contract without cause or payment of a termination fee, on 90 days' or less written notice and/or has a term greater than three years or (ii) grant to anyone easements or use rights which affect the Common Area or Recreation Area, except any easements over, under, upon and across the Recreation Area which are granted for public utilities or for other public purposes consistent with the intended use of such portions of the Project.

6.2.6 The Board of Directors may, from time to time and as permitted by law, delegate any of the powers enumerated herein to the officers, committees and employees of the Association.

6.3 Number.

6.3.1 The authorized number of directors of the Association shall be three until changed by an amendment to this Paragraph of these Bylaws.

6.4 Election and Tenure of Office.

6.4.1 The directors shall be elected by secret and written ballot at the annual meeting of Members, to serve for one year and until their successors are elected and have qualified or until their earlier resignation or removal. The term of office for directors shall begin immediately after their election.

6.4.2 In advance of any meeting of Members, the Board of Directors may appoint inspectors of election to act at the meeting and any adjournment thereof. If inspectors of election are not so appointed, or if any persons so appointed fail to appear or refuse to act, the chairman of any meeting of Members may, and on the request of any Member or a Member's proxy shall, appoint inspectors of election (or persons to replace those who so fail or refuse) at the meeting. The number of inspectors shall be either one or three. If appointed at a meeting at the request of one or more Members or proxies, the majority of Members represented in person or by proxy shall determine whether one or three inspectors are to be appointed. If there are three inspectors of election, the decision of a majority of inspectors of election shall govern in all respects as to the matters before them. The inspectors of election shall determine the number of memberships outstanding and the voting power of each, the number represented at the meeting, the existence of a quorum and the authenticity, validity and effect of proxies, receive votes, ballots or consents, hear and determine all challenges and questions in any way arising in connection with the right to vote, count and tabulate all votes or consents, determine when the polls shall close, determine the result and do such acts as may be proper to conduct the election or vote with fairness to all Members.

6.5 Vacancies.

6.5.1 A vacancy or vacancies shall be deemed to exist in any of the following instances: (i) the death, resignation or removal of any director, (ii) the authorized number of directors shall be increased by amendment to these Bylaws and the Members shall fail to elect the additional director(s), (iii) Members shall fail at any time to elect the full number of authorized directors, or (iv) any director shall fail to qualify to serve in the office within 30 days after notice of his election. The Board of Directors may declare vacant the office of a director who has been declared of unsound mind by a final order of court or convicted of a felony.

6.5.2 Vacancies in the Board of Directors may be filled by a majority of the remaining directors, whether or not less than a quorum, or by a sole remaining director; provided, however, that vacancies in the Board of Directors resulting from the removal of directors may only be filled by a vote of the Members as provided in the Article hereof entitled "Voting Rights." Each director so elected shall hold office until his successor is elected at an annual, regular or special meeting of Members or until his earlier resignation or removal.

6.5.3 Members may at any time elect a director to fill any vacancy not filled by the Board of Directors and may elect additional directors at such time as an amendment to these Bylaws is adopted which authorizes an increase in the number of directors.

6.5.4 Any director may resign effective upon giving written notice to the chairman of the Board of Directors, the president, the secretary or the Board of Directors, unless the notice specifies a later time for the effectiveness of such resignation. If the Board of Directors accepts the resignation of a director tendered to take effect at a future time, the Board of Directors or, if the Board of Directors should fail to act, the Members, shall have the power to elect a successor to take office when the resignation shall become effective.

6.5.5 No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of his term of office.

6.6 Removal of Directors.

6.6.1 The entire Board of Directors or any individual director may be removed from office by an affirmative vote (or written ballot) of Members holding a majority of the voting power in each voting class entitled to vote at an election of directors; provided however, unless the entire Board of Directors is

removed, an individual director shall not be removed prior to the expiration of his term of office when the votes cast against removal would be sufficient to elect such director if voted cumulatively at an election at which the same total number of votes were cast and the entire number of directors authorized at the time of the director's most recent election were then being elected. If any director(s) is so removed, a new director(s) may be elected at the same meeting.

6.6.2 Notwithstanding the foregoing, a director who, pursuant to Paragraph 5.3 hereof, has been elected solely by the votes of Members other than Declarant may be removed from office prior to expiration of his term of office only by the vote of at least a majority of the voting power residing in Members other than Declarant.

6.7 Place of Meetings.

6.7.1 Meetings of the Board of Directors shall be held within the Project.

6.8 Organizational Meetings; Notice.

6.8.1 Annual organizational meetings of the Board of Directors shall be held immediately following the adjournment of the annual meetings of Members or at such other date, time and place as the Board of Directors may designate by resolution. No notice of organizational meetings need be given to directors except that written notice setting forth the date, time and place of said meeting shall be posted at a prominent place (or places) within the Common Area and/or Recreation Area at least four days prior to the scheduled date of said meeting.

6.9 Other Regular Meetings; Notice.

6.9.1 Regular meetings of the Board of Directors, other than the annual organizational meeting, shall be held at such date, time and place within the Project as may be agreed upon from time to time by the Board of Directors except that said meetings shall be held at least every six months if business to be transacted by the Board of Directors does not justify more frequent meetings; or may be called at any time by the chairman of the Board of Directors or the president, any vice president, secretary or by any two directors of the Association. If said date shall fall upon a holiday such meeting shall be held on the next succeeding business day thereafter.

6.9.2 Notice of the date, time and place of a regular meeting shall be given to each of the directors of the Board of Directors at least four days before such meeting by (i) tele-

phone, (ii) telegraph, (iii) written notice personally delivered or (iv) letter, charges prepaid, addressed to a director at the address of such director as it is shown upon the records of the Association or, if it is not shown on such records or is not readily ascertainable, at the place where meetings of the Board of Directors are regularly held. Written notice of the resolution, if any, establishing a date of the month, the time and place of a regular meeting shall also be given to each director. Notices of the time and place of a regular meeting shall also be posted at a prominent place (or places) within the Common Area and Recreation Area at least four days before the date of the meeting.

6.9.3 Notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding the meeting, whether before or after the meeting, or who attends the meeting without protesting prior thereto or at its commencement, the lack of notice to such director. All such waivers, consents and approvals shall be filed with the Association records or made a part of the minutes of the meetings.

6.10 Special Meetings; Notice.

6.10.1 Special meetings of the Board of Directors for any purpose shall be called by written notice signed by the president or by any two directors other than the president.

6.10.2 Notice of the date, time and place of a special meeting shall be given to each of the directors of the Board of Directors by (i) telephone, (ii) telegraph, (iii) written notice personally delivered or (iv) letter, charges prepaid, addressed to a director at the address of such director as it is shown upon the records of the Association or if it is not shown on such records or is not readily ascertainable, at the place where meetings of the Board of Directors are regularly held. Such notice of a special meeting shall set forth the general nature of the business to be considered thereat. In case such notice is mailed, it shall be deposited in the United States mail at least four days prior to the date of the holding of the meeting. In case such notice is delivered personally or by telephone or telegraph, it shall be so delivered at least 72 hours prior to the date of the holding of the meeting. Such mailing, telephoning, telegraphing or personal delivery shall be due, legal and proper notice to such director.

6.10.3 Notice of the meeting need not be given to any director who signed a waiver of notice or a written consent to holding of the meeting whether before or after the meeting, or who attends the meeting without protesting prior thereto, or at its commencement, the lack of notice to such director. All such

waivers, consents or approvals shall be filed with the Association records or made a part of the minutes of the meetings.

6.10.4 Written notice of every special meeting of the Board of Directors, specifying the date, time and place of the meeting and the general nature of the business to be considered, shall be posted at a prominent place (or places) within the Common Area and/or Recreation Area at least 72 hours prior to the scheduled time of such meeting.

6.11 Adjournment.

6.11.1 A majority of the directors present at a meeting of the Board of Directors, whether or not a quorum is present at such meeting, may adjourn the meeting to another date, time and place. If the meeting is adjourned for more than 24 hours, notice of any adjournment to another date, time or place shall be given prior to the time of such adjourned meeting to the directors who are not present at the time of the adjournment.

6.12 Quorum; Required Vote.

6.12.1 A majority of the authorized number of directors as designated by these Bylaws shall be necessary to constitute a quorum for the transaction of business. The action of a majority of the directors present at any meeting at which there is a quorum, when duly assembled, is valid as a corporate act; provided that a 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 at least a majority of the required quorum for such meeting. A majority of the directors present at any meeting at which a quorum is not present may adjourn from time to time, but may not transact any business.

6.13 Open Meetings; Executive Sessions.

6.13.1 All organizational, regular and special meetings of the Board of Directors shall be open to all Members; however, Members who are not on the Board of Directors may not participate in deliberations or discussions at any such meeting unless expressly so authorized by the vote of a majority of a quorum of the Board of Directors.

6.13.2 Notwithstanding anything to the contrary contained in this Article, the Board of Directors may, with the approval of a majority of a quorum thereof, adjourn any meeting and reconvene in executive session to discuss, consider or vote upon (i) items related to or involving personnel, (ii) litigation in which the Association is or may become involved and/or (iii) matters of a similar nature, provided that the nature of any and all such business to be considered in executive session shall first be announced in the open meeting.

6.14 Action by Unanimous Written Consent

6.14.1 Any action required or permitted to be taken by the Board of Directors may be taken without a meeting, if all members of the Board of Directors shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board of Directors. Such action by written consent shall have the same force and effect as a unanimous vote of the directors.

6.14.2 If the Board of Directors takes action by unanimous written consent as provided in Paragraph 6.14.1 above, an explanation of such action shall be posted at a prominent place or places within the Common Area and/or Recreation Area within three days after all of the written consents of the directors have been received by the Secretary of the Association.

ARTICLE 7

Officers

7.1 Officers.

7.1.1 The officers of the Association shall be a president, vice president, secretary and chief financial officer. The Association may also have, at the discretion of the Board of Directors, a chairman of the Board of Directors, one or more additional vice presidents, one or more assistant secretaries, one or more assistant financial officers and such other officers as may be appointed in accordance with the provisions of Paragraph 7.3. Any two or more offices, except those of president and secretary, may be held by the same person.

7.2 Appointment.

7.2.1 Each officer of the Association, except such officers as may be appointed in accordance with the provisions of Paragraphs 7.3 or 7.5, shall be chosen annually by the Board of Directors, and shall hold office until a successor shall be appointed or until the earlier resignation, removal or disqualification of such officer.

7.3 Subordinate Officers.

7.3.1 The Board of Directors may at any time appoint, or may designate an officer to appoint, such other officers as the business of the Association may require, each of whom shall hold

office for such period, have such authority and perform such duties as are provided in the Bylaws or as the Board of Directors may from time to time determine.

7.4 Removal and Resignation.

7.4.1 Any officer may be removed, either with or without cause, by the Board of Directors at that time in office at any organizational, regular or special meeting of the Board of Directors; and additionally, any subordinate officers not appointed by the Board of Directors may be removed by any officer upon whom such power of removal has been conferred by the Board of Directors.

7.4.2 Any officer may resign at any time by giving written notice to the Board of Directors, or to the president or to the secretary of the Association. Any such resignation shall take effect as of the date of the 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.

7.5 Vacancies.

7.5.1 A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in the Bylaws for regular appointments to such office.

7.6 Chairman of the Board.

7.6.1 The chairman of the Board of Directors, if there be such an officer, shall, if present, preside at all meetings of the Board of Directors, and exercise and perform such other powers and duties as may be from time to time assigned to the chairman by the Board of Directors or prescribed by the Bylaws.

7.7 President.

7.7.1 Subject to such supervisory powers, if any, as may be given by the Board of Directors to the chairman of the Board of Directors, if there be such an officer, the president shall be the general manager and chief executive officer of the Association and, subject to the control of the Board of Directors, shall have the general power to supervise, direct and control the business and officers of the Association. The president shall preside at all meetings of the Members and in the absence of the chairman of the Board of Directors, or if there be none, at all meetings of the Board of Directors. The president shall be an ex officio member of all standing committees and shall have the

general powers and duties of management usually vested in the office of president of a corporation and shall have such other powers and duties as may be prescribed by the Board of Directors or the Bylaws.

7.8 Vice President(s).

7.8.1 In the absence or disability of the president, the vice president or, if there is more than one vice president, the vice presidents in order of their rank as fixed by the Board of Directors (or if not ranked, the vice president designated by the Board of Directors), shall perform all the duties of the president, and when so acting shall have all the powers of, and be subject to all the restrictions upon the president. The vice president(s) so performing the duties of the president shall have such other powers and perform such other duties as from time to time may be prescribed for him (them) respectively by the Board of Directors or the Bylaws.

7.9 Secretary and Assistant Secretary.

7.9.1 The secretary shall keep, or cause to be kept, at the principal office of the Association or such other place as the Board of Directors may order, a book of minutes of all meetings of the Board of Directors and Members showing (i) the date, time and place of holding; (ii) whether regular or special, and if special, how authorized; (iii) the notice thereof given; (iv) the names of those present at the Board of Directors' meetings; (v) the number of Members present or represented at the Members' meetings; and (vi) the proceedings thereof.

7.9.2 The secretary shall keep, or cause to be kept, at the principal office of the Association or at such other place as the Board of Directors may designate, a membership book showing the names and addresses of the Members and the date on which membership ceased.

7.9.3 The secretary shall keep, or cause to be kept, at the principal office of the Association or at such other place as the Board of Directors may designate, current copies of the Declaration, Bylaws, Articles and other rules and regulations concerning the Project as may be promulgated from time to time by the Board of Directors.

7.9.4 The secretary shall (i) give, or cause to be given, notice of all the meetings of the Members and of the Board of Directors required by the Bylaws or by statute to be given, (ii) keep the seal of the Association in safe custody and (iii) have such other powers and perform such other duties as may be prescribed by the Board of Directors or the Bylaws.

7.9.5 The assistant secretary, if there shall be such an officer or if there be more than one, the assistant secretaries in the order determined by the Board of Directors (or if there be no such determination, then in the order of their appointment), shall, in the absence of the secretary or in the event of the inability or refusal of the secretary to act, perform the duties and exercise the powers of the secretary and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

7.10 Chief Financial Officer
and Assistant Chief Financial Officer.

7.10.1 The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Association, including accounts of its assets, liabilities, receipts, disbursements, gains, losses and surplus. The books of account shall at all reasonable times be open to inspection by any director.

7.10.2 The chief financial officer shall deposit all moneys and other valuables in the name and to the credit of the Association with such depositories as may be designated by the Board of Directors. The chief financial officer shall disburse the funds of the Association as may be ordered by the Board of Directors, shall render to the president and Board of Directors, whenever they request it, an account of all transactions by the chief financial officer and of the financial condition of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or the Bylaws.

7.10.3 If required by the Board of Directors, the chief financial officer shall give the Association a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for (i) the faithful performance of the duties of the office of chief financial officer and (ii) the restoration to the Association of all books, papers, vouchers, money and other property, of whatever kind, belonging to the Association and in the possession or under the control of the chief financial officer upon the death, resignation or removal from office of the chief financial officer.

7.10.4 The assistant chief financial officer if there shall be such an officer or if there shall be more than one, the assistant financial officers in the order determined by the Board of Directors (or if there be no such determination, then in the order of their appointment), shall, in the absence of the chief financial officer or in the event of the inability or refusal of

the chief financial officer to act, perform the duties and exercise the powers of the chief financial officer and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

ARTICLE 8

Committees

8.1 Architectural Control Committee.

8.1.1 There shall be an Architectural Control Committee for the purposes of performing such duties as may have been delegated to it pursuant to the Declaration and such other responsibilities as may be delegated to it, from time to time, by the Board of Directors.

8.1.2 The Architectural Control Committee shall, at all times, consist of three individuals. Prior to the first conveyance of a Condominium, Declarant shall appoint three individuals who shall constitute the first Architectural Control Committee and shall serve for one year from the date of the original issuance by the California Department of Real Estate of the Final Subdivision Public Report for the first phase of development of the Project and until their successors are appointed or until their earlier resignation or removal. Declarant has, pursuant to the Article of the Declaration entitled "Architectural and Landscaping Control," reserved the power to appoint a majority of the members of the Architectural Control Committee (who need not be Members or directors) until (i) 90 percent of the Condominiums in all phases of development of the Project have been sold by Declarant or (ii) the fifth anniversary of the original issuance of the Final Subdivision Public Report for the first phase of development of the Project, whichever is the first to occur. All members of the Architectural Control Committee who are appointed by Declarant shall serve at the pleasure of Declarant.

8.1.3 Commencing one year after the date of the original issuance by the California Department of Real Estate of the Final Subdivision Public Report for the first phase of development of the Project, and so continuing each year thereafter until (i) 90 percent of the Condominiums in all phases of development of the Project have been sold by Declarant or (ii) the fifth anniversary of the original issuance of the Final Subdivision Public Report for the first phase of development of the Project, whichever first occurs, the Board of Directors shall appoint one of the members of the Board of Directors to serve on the Architectural Control Committee for a term of one year and until such director's successor is appointed or until such director's earlier

resignation or removal. All members of the Architectural Control Committee appointed by the Board of Directors shall serve at the pleasure of the Board of Directors.

8.1.4 Any vacancy on the Architectural Control Committee by reason of death, resignation or removal by the Board of Directors of any of its appointees shall be promptly filled by the Board of Directors with a member of the Board of Directors within 30 days after such vacancy first occurs. Notwithstanding anything contained in this Article to the contrary, any vacancy on the Architectural Control Committee by reason of death, resignation or removal by Declarant of any of its appointees shall be promptly filled by Declarant with a person (who need not be a Member or a director) within 30 days after such vacancy first occurs.

8.1.5 At the end of the term of the last member of the Architectural Control Committee appointed by Declarant pursuant to this Article, the Architectural Control Committee shall be and become a committee of the Board of Directors of the Association, and the members of the Architectural Control Committee shall at all times thereafter be (i) appointed by the Board of Directors and (ii) members of the Board of Directors.

8.1.6 Meetings of the Architectural Control Committee shall be held, from time to time, at such times as deemed necessary by any two of the three members of the Architectural Control Committee in order for the Architectural Control Committee to properly perform its duties. All meetings of the Architectural Control Committee shall be held within the Project. Notice of all meetings of the Architectural Control Committee shall be given and posted in the same manner as required by these Bylaws for regular meetings of the Board of Directors. Additionally, the provisions of these Bylaws pertaining to waivers of notice, written consents, quorum requirements, required vote, open meetings, executive sessions and unanimous written consents as related to Board of Directors' meetings shall also pertain to meetings of the Architectural Control Committee. The Architectural Control Committee shall keep and maintain a record of all actions taken by it at such meetings or otherwise.

8.2 Executive and Other Committees.

8.2.1 The Board of Directors may, by resolution adopted by a majority of the number of directors then in office, provided that a quorum is present, create an Executive Committee, and such other committees as may be necessary from time to time, each consisting of two or more directors and with such powers as it may designate, consistent with the Articles, these Bylaws and the laws of the State of California. Appointments to such committees shall be by a majority vote of the directors in office at the

time of appointment. The Board of Directors may appoint one or more directors as alternate members of any committee, who may replace any absent member at any meeting of the committee. Such committee members shall hold office at the pleasure of the Board of Directors and need not be reappointed annually.

ARTICLE 9

Association Records and Reports; Inspection

9.1 Records.

9.1.1 The Association shall maintain (i) adequate and correct accounts, books and records of its business and properties, (ii) a register of Members as contemplated by Subparagraph 7.9.2 of these Bylaws, (iii) minutes of proceedings of the Association, the Board of Directors, the Executive Committee, if any, the Architectural Committee and other committees of the Association and (iv) current copies of the Declaration, Bylaws, Articles and other rules and regulations concerning the Project as may be promulgated from time to time by the Board of Directors. All such books, records, accounts, registers, minutes and copies shall hereinafter be referred to collectively as the "Books and Records." The Books and Records shall be kept at the principal place of business of the Association in the State of California or at such other place as may be designated by the Board of Directors from time to time.

9.2 Inspection of Books, Records and Property of the Association.

9.2.1 Each Member, Mortgagee and Interested Person shall be entitled to inspect the Books and Records during normal business hours and to have the Books and Records examined, at the expense of any such Member, Mortgagee or Interested Person, by an attorney or an accountant representing such Member, Mortgagee or Interested Person, and may make excerpts or copies of the Books and Records or portions thereof, and each such Member, Mortgagee or Interested Person, at its own expense, shall have the right to have the Books and Records independently audited by a public accountant. The Books and Records shall be exhibited at any time when required by a demand at any Members' meeting of at least ten percent of the Members represented at such meeting.

9.2.2 Each director of the Association and each director of the Community Association will 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 foregoing right of inspection includes a

right to make extracts and copies of documents, and when such right is exercised by a director of the Community Association, all extracts and copies of documents requested by such director shall be at his or her expense.

9.2.3 An inspection demand other than at a Members' meeting shall be made in writing upon the President, Secretary or Assistant Secretary of the Association. The Board of Directors shall establish reasonable rules with respect to (i) hours and days of the week when such an inspection may be made which hours shall include normal business hours, (ii) the place where such an inspection may be made, which shall be at the Office of the Association or such other place within the Project as the Board of Directors shall prescribe, and (iii) payment of the cost of reproducing copies of the Books and Records requested by a Member, a director, a Mortgagee or any of the Interested Persons.

9.2.4 The Association shall provide to an Owner, upon such Owner's written request, a statement of any delinquent assessments, penalties, attorneys' fees and other charges on such Owner's Unit as of the date of such request.

9.3 Certification and Inspection of Bylaws.

9.3.1 The original or a copy of these Bylaws as amended or otherwise altered to date, certified by the Secretary, shall be open to inspection by Members, Mortgagees and Interested Persons at the Association's principal place of business at all reasonable times during office hours.

9.4 Checks, Drafts, Etc.

9.4.1 All checks, drafts or other orders for payment of money, notes or other evidences or indebtedness, issued in the name of or payable to the Association, shall be signed or endorsed by such person or persons and in such manner as shall be determined from time to time by resolution of the Board of Directors.

9.5 Contracts, Etc.; How Executed.

9.5.1 The Board of Directors, except as otherwise provided in these Bylaws, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Association. Such authority may be general or confined to specific instances. Unless so authorized by the Board of Directors, no officer, agent or employee shall have any power or authority to bind the Association by any contract or engagement, or to pledge its credit, or to render it liable for any purpose or to any amount.

9.6 Financial Statements.

9.6.1 The Board of Directors shall cause to be prepared and shall distribute to each Member, the following financial statements concerning the Association:

(i) A budget for each fiscal year consisting of at least the following information shall be distributed not less than 45 days prior to the beginning of the fiscal year. The budget shall include all of the following:

(a) Estimated revenue and expenses on an accrual basis.

(b) The amount of the total cash reserves of the Association currently available for replacement of major repair of common facilities and for contingencies.

(c) An itemized estimate of the remaining life of, and the methods of funding to defray repair, replacement or additions to major components of the common areas and facilities for which the Association is responsible.

(d) A general statement setting forth the procedures used by the Board of Directors in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the common areas and facilities for which the Association is responsible.

(ii) A balance sheet (as of an accounting date which is the last day of the month closest in time to six months from the date of closing of the first sale of a Condominium) and an operating statement for the period from the date of the first closing to the said accounting date, shall be distributed within 60 days after the accounting date. This operating statement shall include a schedule of assessments received and receivable identified by the number of the Condominium and the name of the entity assessed.

(iii) A report consisting of the following shall be distributed within 120 days after the close of each fiscal year.

(a) A balance sheet as of the end of the fiscal year.

(b) An operating (income) statement for the fiscal year.

(c) A statement of changes in financial position for the fiscal year.

(d) A statement of the place where the names and addresses of the current Members are located.

(e) Any other information required to be reported under Section 8322 of the California Corporations Code.

(iv) For any fiscal year in which the gross income to the Association exceeds \$75,000, a copy of the review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy.

9.6.2 If the report referred to in Paragraph 9.6.1 (iii) above is not prepared by an independent accountant, it shall be accompanied by the certificate of the Secretary of the Association that the statement was prepared from the books and records of the Association without independent audit or review.

9.6.3 In addition to financial statements, the Board of Directors shall annually distribute within 60 days prior to the beginning of the fiscal year a statement of the Association's policies and practices in enforcing its remedies against Members for defaults in the payment of regular and special assessments including the recording and foreclosing of liens against a Members' Condominium.

ARTICLE 10

Corporate Seal

The Association's corporate seal shall be circular in form, and shall have inscribed thereon the name of the Association, the date of its formation and the word "California."

ARTICLE 11

Amendments to Bylaws

11.1 By Members.

11.1.1 Except as hereinafter provided, new bylaws may be adopted or these Bylaws may be repealed or amended (i) by a vote or written ballot of Members entitled to exercise a majority of the voting power in each of the two voting classes of the Association or (ii) upon cessation of one of the two voting classes, by a vote or written ballot of Members entitled to exercise a majority of the voting power in the remaining voting class, provided that said vote or written ballot shall include

the votes of a majority of the Members other than Declarant. Any amendment of the provisions of Article 5 entitled "Voting Rights" or Paragraph 12.1.2 of these Bylaws must be approved by 51 percent (based upon one vote for each First Mortgage owned) of all Eligible Mortgage Holders.

11.2 Approval of Genstar Development, Inc. and Community Associations

11.2.1 Anything contained in these Bylaws to the contrary notwithstanding, these Bylaws will not be amended, modified nor rescinded at any time prior to September 30, 1990, without the prior written consent of Genstar Development, Inc., a New York corporation (Genstar Southwest Development) or at any time without the prior written consent of the Board of Directors of the Community Association; no such amendment, modification or rescission will be effective without the filing of said written consent or consents as appropriate with the secretary of the Community Association.

11.3 No Amendment by Directors.

11.3.1 Notwithstanding anything to the contrary contained herein, the Board of Directors shall not have any right or power to adopt, amend or repeal any of these Bylaws.

11.4 Record of Amendments.

11.4.1 Whenever an amendment or new bylaw is adopted, a notation of such amendment or new bylaw and a copy of the same shall be filed in the appropriate place in the book of Bylaws with the original Bylaws. If any Bylaw is repealed, the fact of repeal with the date of the meeting at which the repeal was enacted or the date specified in the written ballots by which the same were to be received by the Association shall be stated in said book.

ARTICLE 12

Amendments to Articles

12.1 Amendments.

12.1.1 Except as hereinabove provided, amendments to the Articles may only be adopted by a vote of a majority of the directors of the Association and (i) by a vote or written ballot of Members entitled to exercise a majority of the voting power in each of the two voting classes of the Association or (ii) upon cessation of one of the two voting classes, by a vote or written ballot of Members entitled to exercise a majority of the voting

power in the remaining voting class, provided that said vote or written ballot shall include the votes of a majority of the Members other than Declarant.

12.1.2 Any written instrument amending the provisions of Article 6 of the Articles of the Association, shall comply not only with the provisions of Paragraph 12.1.1 of these Bylaws, but shall also bear, or have attached thereto, the written consent of 51 percent (based upon one vote for each first mortgage or first deed of trust owned) of all Eligible Mortgage Holders.

12.2 Record of Amendments.

12.2.1 Amendments shall be reflected in the book containing the original Articles. Upon the adoption of an amendment, the secretary of the Association shall file a certificate of amendment or restated Articles of Incorporation pursuant to California Corporations Code Section 7814 or 7819.

ARTICLE 13

Supremacy of Declaration

No provision of the Articles of Incorporation or of these Bylaws, and no action of the Association, in violation or contravention of any provision of the Declaration shall be valid, subsisting or of any effect whatsoever.

THE UNDERSIGNED, being the sole Member of the Association, as of the date hereinbelow set forth, hereby assents to the foregoing Bylaws and adopts the same as the Bylaws of the Association.

IN WITNESS WHEREOF, the undersigned has hereunto subscribed its name this 22 day of January, 1985.

BREHM COMMUNITIES, a California corporation,

By: _____

Title: _____

LOS RIOS
OWNERS' ASSOCIATION, INC.

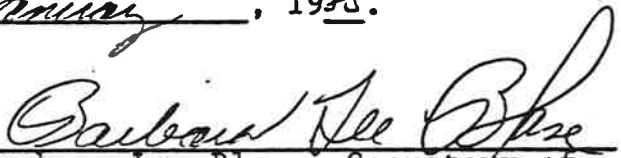
Certificate of Secretary

The undersigned, being the secretary of Los Rios Owners' Association, Inc., a California nonprofit mutual benefit corporation (the "Association"), does hereby certify that:

1. Brehm Communities, a California corporation, is the sole Member, as of the date hereinbelow set forth, of the Association; and

2. The foregoing Bylaws, comprising 33 pages, constitute the Bylaws of the Association as duly adopted by the sole Member of the Association by written ballot dated January 22, 1955.

IN WITNESS WHEREOF, the undersigned has executed this Certification this 22 day of January, 1955.


Barbara Lee Blase, Secretary of
Los Rios Owners' Association, Inc.

LOS RIOS
OWNERS' ASSOCIATION, INC.

Written Ballot of Sole Member

The undersigned, being the only person who would be entitled to vote at a meeting of the Members of LOS RIOS OWNERS' ASSOCIATION, INC., a California nonprofit mutual benefit corporation, (the "Association"), does hereby [check one] approve disapprove the adoption of the following resolution:

RESOLVED that the form of Bylaws presented to the sole Member of the Association is hereby adopted as the Bylaws of such Association.

The undersigned hereby acknowledges that (i) only the response of the undersigned is necessary to meet any quorum requirement, (ii) only an affirmative response of the undersigned is necessary for adoption of the above-proposed resolution, (iii) the vote represented by this written ballot shall be cast in accordance with the choice of approval or disapproval and (iv) this ballot must be received by the Association by _____, 198, in order to be counted.

IN WITNESS WHEREOF, the undersigned has executed this Written Ballot of Sole Member this 22 day of January, 198.

BREHM COMMUNITIES,
a California corporation

By: 

Title:

L.R.

(SPACE BELOW FOR FILING STAMP ONLY)

LAW OFFICES OF
Thomas E. Miller

DEL MAR
12625 HIGH BLUFF DRIVE, SUITE 300
SAN DIEGO, CALIFORNIA 92130
(619) 755-5590

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Attorneys for: Plaintiff BERNARDO HEIGHTS UNIT 22,
LOS RIOS, ASSOCIATION OF HOMEOWNERS

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

BERNARDO HEIGHTS UNIT 22, LOS RIOS, ASSOCIATION OF HOMEOWNERS,)	CASE NO. 610054
)	DECLARATION OF
Plaintiff,)	GLADY DURHAM
)	
v.)	
)	
BREHM COMMUNITIES, a California corporation, and DOES 1 through 400, inclusive,)	
)	
Defendants.)	

I, GLADY DURHAM, declare as follows:

I am the custodian of records of Bernardo Heights Community Association. Our company has received a Subpena Duces Tecum in the captioned action, a copy of which is attached hereto as Exhibit 1. After performing a careful and diligent search of the Company's records, I have determined that the Company does not have the documents that are described in Exhibit 1.

I DECLARE UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct, and this Declaration was executed on the 4th day of June, 1990, in San Diego, California.

Glady Durham
GLADY DURHAM

LAW OFFICES OF

Thomas E. Miller

A PROFESSIONAL CORPORATION

DEL MAR ☐
12625 HIGH BLUFF DRIVE
SUITE 300
SAN DIEGO, CA 92130
(619) 755-5590
FAX (619) 755-1693

ORANGE COUNTY ☐
24422 AVENIDA DE LA CARLOTA
SUITE 340
LAGUNA HILLS, CA 92653
(714) 859-8382
FAX (714) 859-8477

RIVERSIDE COUNTY ☐
28481 RANCHO CALIFORNIA ROAD
SUITE 202
RANCHO CALIFORNIA, CA 92390
(714) 699-4009

May 31, 1990

Ms. Glady Durham
Bernardo Heights Community Association
16150 Bernardo Heights Parkway
San Diego, CA 92128

Re: Los Rios HOA v. Brehm Communities

Dear Ms. Durham:

Enclosed please find the Declaration to be executed by you and returned to our office in the enclosed envelope. Thank you for your prompt attention to this matter.

Very truly yours,

LAW OFFICES OF THOMAS E. MILLER



Dael K. Stichter
Legal Assistant to
THOMAS E. MILLER

DKS:pap
Enclosure

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): LAW OFFICES OF THOMAS E. MILLER 12625 High Bluff Drive, Suite 300 San Diego, California 92130	TELEPHONE NO.: (619) 755-5590	CASE NUMBER: 610054
ATTORNEY FOR (Name): Plaintiff	DEPOSITION SUBPENA For Personal Appearance <input checked="" type="checkbox"/> and Production of Documents and Things	
NAME OF COURT: San Diego County Superior Court POST OFFICE and 220 West Broadway STREET ADDRESS: San Diego, California 92101-3409		
PLAINTIFF/PETITIONER: BERNARDO HEIGHTS, UNIT 22, LOS RIOS, ASSOCIATION OF HOMEOWNERS DEFENDANT/RESPONDENT: BREHM COMMUNITIES, et al.		

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone No. of deponent, if known): Custodian of Records for BERNARDO HEIGHTS COMMUNITY ASSOCIATION, 16150 Bernardo Heights Parkway, San Diego, California 92128 (619) 451-3580

1. YOU ARE ORDERED TO APPEAR IN PERSON TO TESTIFY AS A WITNESS in this action at the following time and place:

Date: 06/19/90	Time: 3:00 p.m.	Address: 12625 High Bluff Drive, Suite 300 San Diego, California 92130
----------------	-----------------	---

- a. As a deponent who is not a natural person, you are ordered to designate one or more persons to testify on your behalf as to the matters described in item 3. (Code of Civil Procedure section 2025 (d)(6).)
- b. You are ordered to produce the documents and things described in item 3.
- c. This deposition will be recorded by audiotape videotape and stenographically.
- d. This videotape deposition is intended for possible use at trial under Code of Civil Procedure section 2025 (u)(4).
- 2. The personal attendance of the custodian of records or other qualified witness and the production of the original documents are required by this deposition subpoena. The procedure authorized by Evidence Code sections 1560 (b), 1561, and 1562 will not be deemed sufficient compliance with this subpoena.
- 3. The documents and things to be produced and any testing or sampling being sought are described as follows:

Any and all as-built construction plans, as-built schematics, as-built drawings, as-built architectural maps or drawings, renderings or specifications relating in any way to the grading, fine grading, landscaping, drainage and/or fine drainage systems at the project known as Bernardo Heights, Unit 22, Los Rios in San Diego, California between 1980 and 1988.

Continued on attachment 3.

4. A deposition permits an attorney to ask questions of a witness who is sworn to tell the truth. An attorney for other parties may then ask questions also. Questions and answers are recorded stenographically at the deposition; later they are transcribed for possible use at trial. A witness may read the written record and change any incorrect answers before signing the deposition. The witness is entitled to receive witness fees and mileage actually traveled both ways. The money must be paid, at the option of the party giving notice of the deposition, either with service of this subpoena or at the time of the deposition.


5. You are ordered to appear in this civil matter in your capacity as a peace officer or other person described in Government Code section 68097.1.

Date: _____ Clerk, by _____, Deputy

DISOBEDIENCE OF THIS SUBPENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: May 23, 1990

Lynde Selden, II
(TYPE OR PRINT NAME)


(SIGNATURE OF PERSON ISSUING SUBPENA)
Attorneys for Plaintiff
(TITLE)

(See reverse for proof of service)

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

PROOF OF SERVICE OF DEPOSITION SUBPENA—PERSONAL APPEARANCE

1. I served this Deposition Subpena—Personal Appearance by personally delivering a copy to the person served as follows:

- a. Person served (*name*):
- b. Address where served:
- c. Date of delivery:
- d. Time of delivery:
- e. Witness fees and mileage both ways (*check one*):
 - (1) were paid. Amount: . . . \$ _____
 - (2) were not paid.
- f. Fee for service: \$ _____

2. I received this subpena for service on (*date*):

3. Person serving:
- a. Not a registered California process server.
 - b. California sheriff, marshal, or constable.
 - c. Registered California process server.
 - d. Employee or independent contractor of a registered California process server.
 - e. Exempt from registration under Bus. & Prof. Code section 22350(b).
 - f. Registered professional photocopier
 - g. Exempt from registration under Bus. & Prof. Code section 22451.
 - h. Name, address, and telephone number and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(For California sheriff, marshal, or constable use only)
I certify that the foregoing is true and correct.

Date:

Date:

▶ _____
(SIGNATURE)

▶ _____
(SIGNATURE)

ATTORNEY OR UNREPRESENTED PARTY (NAME AND ADDRESS): LAW OFFICES OF THOMAS E. MILLER (619) 755-5590 12625 High Bluff Drive, Suite 300 San Diego, California 92101-3409 ATTORNEY FOR (Name): Plaintiff	TELEPHONE NO.:	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO 220 West Broadway, San Diego, California 92101-3409		
PLAINTIFF: BERNARDO HEIGHTS, UNIT 22, LOS RIOS, ASSOCIATION OF HOMEOWNERS DEFENDANT: BREHM COMMUNITIES, et al.		
AFFIDAVIT FOR SUBPENA DUCES TECUM		CASE NUMBER: 610054

..... Lynde Selden, II declares: That he is attorney of record for:
 (Plaintiff ~~or Defendant or Both~~) in the above-entitled
 action; that said cause has been duly set down for ~~trial~~ (deposition) (hearing) as follows:

a. Date: 06/19/90	Time: 3:00 p.m.	Dept.:	Room:
b. Address: 12625 High Bluff Drive, Suite 300, San Diego, CA 92130			

Declarant alleges that Custodian of Records for BERNARDO HEIGHTS COMMUNITY ASSOCIATION

has in his possession or under his control the following documents, matters, or things:

(Designate and specify the exact matters or things to be produced.)

Any and all as-built construction plans, as-built schematics, as-built drawings, as-built architectural maps or drawings, renderings or specifications relating in anyway to the grading, fine grading, landscaping, drainage and/or fine drainage systems at the project known as Bernardo Heights, Unit 22, Los Rios in San Diego, California between 1980 and 1988.

Declarant states that the above documents, matters, and things are material to the proper presentation of his case and that good cause exists for the production of the above-described matters and things for the following reasons:

(State in full detail the materiality to the issues involved.)

The following documents in question are necessary to fully adjudicate the matters at bar. Plaintiff's experts need these documents to investigate Plaintiff's losses.

WHEREFORE declarant prays that Subpena Duces Tecum issue.

I certify (or declare) under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on May 23, 1990



 Lynde Selden, II (Sign here)

INSTRUCTIONS TO ESCROW DEPOSITORY (Regulation 2792.9)

RE 643 (Rev. 12/86)

UR

Subdivider has transmitted herewith to FIRST AMERICAN TITLE INSURANCE COMPANY (escrow depository)

as trustee, a surety bond cash deposit in the amount of \$ 2,839.00

This bond or deposit, is given in compliance with Section 2792.9, Chapter 6, Title 10, California Administrative Code, as security for the fulfillment of obligation of subdivider under Covenants, Conditions, and Restrictions for the subdivision known as PARCEL MAP NO. 14675
(Tract Name and/or Number)

DRE File No.(s) _____

County of San Diego, State of California, to pay regular and special assessments allocable to lots and/or units in the aforesaid subdivision to BERNARDO HEIGHTS COMMUNITY Association.

The security shall remain in the custody of escrow depository until 1) subdivider has given written notice to escrow depository that: *(check applicable box)*

(a) Single-phase projects:

He/She/It has conveyed title to 80% of the lots and/or units comprising the subdivision (or that he/she/it has leased 80% of the lots and/or units if that is the marketing plan);

OR

(b) Multi-phase projects:

1. *Separate bond posted for each phase*

He/she/it has conveyed title to 80% of the lots and/or units in PHASE 8 of the subdivision (or that he/she/it has leased 80% of the lots and/or units if that is the marketing plan);

OR

2. *Single bond covering all phases of the project or one bond for phase one with a rider for each subsequent phase*

He/she/it has conveyed title to 80% of the lots and/or units in all of the phases of the subdivision for which public reports have been issued, including the public report on this phase of the subdivision (or that he/she/it has leased 80% of the lots and/or units if that is the marketing plan);

AND 2) escrow depository has received a certified copy of a resolution of the governing body of the owners association dated not more than 30 days prior to its receipt, stating that subdivider is not delinquent in the payment of assessments for which he is obligated.

In the event of a dispute between subdivider and the aforesaid association with respect to the question of satisfaction of the conditions for exoneration or release of the security, the issue or issues shall, at the request of either party, be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA) before an arbitrator selected from the panels of the arbitrators of AAA. In the event of referral to arbitration, subdivider will remit the fee to initiate the arbitration. The parties agree, however, that the costs of arbitration shall ultimately be borne as determined by the arbitrator.

The parties further agree to abide by the determination of the arbitrator with respect to the exoneration or release of the security and with respect to payment of the costs of arbitration.

Name of Subdivider

BREHM COMMUNITIES, a California Corporation

Signature of Subdivider	Title	Date

Address of Subdivider (Street Address, City, State and Zip Code)
 835 Camino del Rio South #220 San Diego, California 92108

Name of Owners Association

Community Association of Bernardo Heights

Signature	Title	Date
	PRES.	8/24/87

Address of Owners Association (Street Address, City, State and Zip Code)
 16150 Bernardo Heights Parkway San Diego, California 92128

ESCROW DEPOSITORY

Escrow depository acknowledges receipt of an executed copy of the above instructions and agrees to carry out the terms thereof.

Name of Escrow Depository

FIRST AMERICAN TITLE INSURANCE COMPANY

Signature	Title	Date
	Escrow Officer	

Address (Street Address, City, State, and Zip Code)
 411 Ivy Street San Diego, California 92101

from the panels of the arbitrators of AAA. In the event of referral to arbitration, subdivider will remit the fee to initiate the arbitration. The parties agree, however, that the costs of arbitration shall ultimately be borne as determined by the arbitrator.

The parties further agree to abide by the determination of the arbitrator with respect to the exoneration or release of the security and with respect to payment of the costs of arbitration.

BREHM COMMUNITIES,
a California Corporation
(Subdivider)

By: Carolina B. Lee
Asst. Marketing Dir.
(Title)

2835 Camino Del Rio South #220
(Address)

San Diego, California 92108
(City and State)

Dated: _____

BERNARDO HEIGHTS COMMUNITY ASSOCIATION
(Owner's Association)

By: [Signature]
PRESIDENT
(Title)

COMMUNITY ASSOCIATION OF BERNARDO HEIGHTS
(Address) 16150 Bernardo Heights Pkwy.

San Diego, California 92128
(City and State)

Dated: 4/2/87

Escrow depository acknowledges receipt of an executed copy of the above instructions and agrees to carry out the terms thereof.

FIRST AMERICAN TITLE INSURANCE COMPANY
(Escrow Depository)

By: _____
(Title)

411 Ivy Street
(Address)

San Diego, California 92101
(City and State)

Dated: _____

①
LR
Bond ①

INSTRUCTIONS TO ESCROW DEPOSITORY
UNDER REGULATION 2792.9 (FOR SINGLE
PHASE SUBDIVISIONS)

RE FORM 643 (Rev. 9/30/80) PRINT (6-30-81)

Subdivider has transmitted herewith to First American Title Insurance Co.
(escrow depository) as trustee, a surety bond cash deposit in
the amount of \$ 2,144.00

This bond or deposit is given in compliance with Section 2792.9,
Chapter 6, Title 10, California Administrative Code, as security for
the fulfillment of obligation of subdivider under Covenants, Conditions
and Restrictions for the subdivision known as LOS RIOS PHASE 7
Bernardo Heights Unit No. 22,
(Name and/or Tract No.)

DRE File No. _____, County of San Diego

to pay regular and special assessments allocable to lots and/or units
in the aforesaid subdivision to BERNARDO HEIGHTS COMMUNITY Association.

The security shall remain in the custody of escrow depository
until (1) subdivider has given written notice to escrow depository that
he has conveyed title to 80% of the lots and/or units comprising the
subdivision (or that he has leased 80% of the lots and/or units if that
is the marketing plan) and (2) escrow depository has received a
certified copy of a resolution of the governing body of the owners
association adopted not more than 30 days prior to its receipt stating
that subdivider is not delinquent in the payment of assessments for
which he is obligated.

In the event of a dispute between subdivider and the aforesaid
association with respect to the question of satisfaction of the
conditions for exoneration or release of the security, the issue or
issues shall, at the request of either party, be submitted to
arbitration in accordance with the Commercial Arbitration Rules of the
American Arbitration Association (AAA) before an arbitrator selected

LR

**INSTRUCTIONS TO ESCROW DEPOSITORY
(Regulation 2792.9)**

RE 643 (Rev. 12/86)

Subdivider has transmitted herewith to FIRST AMERICAN TITLE INSURANCE COMPANY (escrow depository)
as trustee, a surety bond cash deposit in the amount of \$ 1,622.00.

This bond or deposit, is given in compliance with Section 2792.9, Chapter 6, Title 10, California Administrative Code,
as security for the fulfillment of obligation of subdivider under Covenants, Conditions, and Restrictions for the subdivision
known as BERNARDO HEIGHTS UNIT NO. 22
(Tract Name and/or Number)

DRE File No.(s) _____

County of San Diego, State of California, to pay regular and special
assessments allocable to lots and/or units in the aforesaid subdivision to BERNARDO HEIGHTS COMMUNITY
Association.

The security shall remain in the custody of escrow depository until 1) subdivider has given written notice to escrow
depository that: (check applicable box)

(a) Single-phase projects:

He/She/It has conveyed title to 80% of the lots and/or units comprising the subdivision (or that he/she/it has
leased 80% of the lots and/or units if that is the marketing plan);

OR

(b) Multi-phase projects:

1. *Separate bond posted for each phase*

He/she/it has conveyed title to 80% of the lots and/or units in PHASE 9 of the subdivision (or that
he/she/it has leased 80% of the lots and/or units if that is the marketing plan);

OR

2. *Single bond covering all phases of the project or one bond for phase one with a rider for each subsequent phase*

He/she/it has conveyed title to 80% of the lots and/or units in all of the phases of the subdivision for which
public reports have been issued, including the public report on this phase of the subdivision (or that
he/she/it has leased 80% of the lots and/or units if that is the marketing plan);


AND 2) escrow depository has received a certified copy of a resolution of the governing body of the owners association
accepted not more than 30 days prior to its receipt, stating that subdivider is not delinquent in the payment of assessments for
which he is obligated.

In the event of a dispute between subdivider and the aforesaid association with respect to the question of satisfaction of the conditions for exoneration or release of the security, the issue or issues shall, at the request of either party, be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA) before an arbitrator selected from the panels of the arbitrators of AAA. In the event of referral to arbitration, subdivider will remit the fee to initiate the arbitration. The parties agree, however, that the costs of arbitration shall ultimately be borne as determined by the arbitrator.

The parties further agree to abide by the determination of the arbitrator with respect to the exoneration or release of the security and with respect to payment of the costs of arbitration.

Name of Subdivider

BREHM COMMUNITIES, a California Corporation

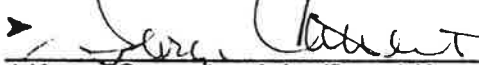
Signature of Subdivider	Title	Date
		

Address of Subdivider (Street Address, City, State and Zip Code)

35 Camino del Rio South #220 San Diego, California 92108

Name of Owners Association

Community Association of Bernardo Heights

Signature	Title	Date
	PRES.	8/24/07

Address of Owners Association (Street Address, City, State and Zip Code)


16150 Bernardo Heights Parkway San Diego, California 92128

ESCROW DEPOSITORY

Escrow depository acknowledges receipt of an executed copy of the above instructions and agrees to carry out the terms thereof.

Name of Escrow Depository

FIRST AMERICAN TITLE INSURANCE COMPANY

Signature	Title	Date
	Escrow Officer	

Address (Street Address, City, State, and Zip Code)

411 Ivy Street San Diego, California 92101

INSTRUCTIONS TO ESCROW DEPOSITORY (Regulation 2792.9)

RE 643 (Rev. 12/86)

LR

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as security for the fulfillment of obligation of subdivider under Covenants, Conditions, and Restrictions for the subdivision
known as BERNARDO HEIGHTS UNIT NO. 22
(Tract Name and/or Number)

DRE File No.(s) _____

County of San Diego, State of California, to pay regular and special
assessments allocable to lots and/or units in the aforesaid subdivision to BERNARDO HEIGHTS COMMUNITY
Association.

The security shall remain in the custody of escrow depository until 1) subdivider has given written notice to escrow
depository that: (check applicable box)

(a) Single-phase projects:

He/She/It has conveyed title to 80% of the lots and/or units comprising the subdivision (or that he/she/it has
leased 80% of the lots and/or units if that is the marketing plan);

OR

(b) Multi-phase projects:

1. *Separate bond posted for each phase*

He/she/it has conveyed title to 80% of the lots and/or units in PHASE 9 of the subdivision (or that
he/she/it has leased 80% of the lots and/or units if that is the marketing plan);

OR

2. *Single bond covering all phases of the project or one bond for phase one with a rider for each subsequent phase*

He/she/it has conveyed title to 80% of the lots and/or units in all of the phases of the subdivision for which
public reports have been issued, including the public report on this phase of the subdivision (or that
he/she/it has leased 80% of the lots and/or units if that is the marketing plan);

AND 2) escrow depository has received a certified copy of a resolution of the governing body of the owners association
dated not more than 30 days prior to its receipt, stating that subdivider is not delinquent in the payment of assessments for
which he is obligated.

In the event of a dispute between subdivider and the aforesaid association with respect to the question of satisfaction of the conditions for exoneration or release of the security, the issue or issues shall, at the request of either party, be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA) before an arbitrator selected from the panels of the arbitrators of AAA. In the event of referral to arbitration, subdivider will remit the fee to initiate the arbitration. The parties agree, however, that the costs of arbitration shall ultimately be borne as determined by the arbitrator.

The parties further agree to abide by the determination of the arbitrator with respect to the exoneration or release of the security and with respect to payment of the costs of arbitration.

Name of Subdivider

BREHM COMMUNITIES, a California Corporation

Signature of Subdivider

Title

Date

Address of Subdivider (Street Address, City, State and Zip Code)

35 Camino del Rio South #220 San Diego, California 92108

Name of Owners Association

Community Association of Bernardo Heights

Signature

Title

Date

Address of Owners Association (Street Address, City, State and Zip Code)

16150 Bernardo Heights Parkway San Diego, California 92128

ESCROW DEPOSITORY

Escrow depository acknowledges receipt of an executed copy of the above instructions and agrees to carry out the terms thereof.

Name of Escrow Depository

FIRST AMERICAN TITLE INSURANCE COMPANY

Signature

Title

Date

Address (Street Address, City, State, and Zip Code)

411 Ivy Street San Diego, California 92101

INSTRUCTIONS TO ESCROW DEPOSITORY
UNDER REGULATION 2792.9 (FOR SINGLE
PHASE SUBDIVISIONS)

FORM 643 (Rev. 9/30/80) PRINT (6-30-81)

Subdivider has transmitted herewith to First American Title Insurance Co.
(escrow depository) as trustee, a surety bond cash deposit in
the amount of \$ 2,144.00

This bond or deposit is given in compliance with Section 2792.9,
Chapter 6, Title 10, California Administrative Code, as security for
the fulfillment of obligation of subdivider under Covenants, Conditions
and Restrictions for the subdivision known as LOS RIOS PHASE 7
Bernardo Heights Unit No. 22,
(Name and/or Tract No.)

DRE File No. _____, County of San Diego

to pay regular and special assessments allocable to lots and/or units
in the aforesaid subdivision to BERNARDO HEIGHTS COMMUNITY Association.

The security shall remain in the custody of escrow depository
until (1) subdivider has given written notice to escrow depository that
he has conveyed title to 80% of the lots and/or units comprising the
subdivision (or that he has leased 80% of the lots and/or units if that
is the marketing plan) and (2) escrow depository has received a
certified copy of a resolution of the governing body of the owners
association adopted not more than 30 days prior to its receipt stating
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which he is obligated.

In the event of a dispute between subdivider and the aforesaid
association with respect to the question of satisfaction of the
conditions for exoneration or release of the security, the issue or
issues shall, at the request of either party, be submitted to
arbitration in accordance with the Commercial Arbitration Rules of the
American Arbitration Association (AAA) before an arbitrator selected

PRINT 6-30-81)

Re Form 643 (Rev. 9/30/80)

1. ANNEXATION OF ANNEXATION PROPERTY: Therefore, Declarant declares the following:

1.1 This Declaration of Annexation is issued in compliance with the Community Restrictions.

1.2 Upon the recordation of this Declaration of Annexation in the Office of the Recorder of the County of San Diego, the annexation of the Annexation Property shall be and become accomplished and all of the incidents of the annexation of said property, as set forth in the Community Restrictions, shall be in full force and effect.

2. APPLICATION OF COMMUNITY RESTRICTIONS: The terms and provisions of the covenants, conditions and restrictions of the Community Restrictions shall apply to the Annexation Property as if it were originally covered by the Community Restrictions as a part of the Community.

2.1 After this annexation, the Community Assessments established in Section 4.2 et seq., of the Community Restrictions shall be reassessed with the Annexation Property being assessed for a proportionate share of the total Community expenses on the same basis as other property in the Community.

2.2 Notwithstanding the provisions of Section 4.6 of the Community Restrictions, Community Assessments shall commence as to all of the Annexation Property upon the first day of the first month following the first to occur of (i) the closing of the sale of the first dwelling unit in the Annexation Property to an Owner other than Declarant or a merchant builder or (ii) the occupancy of the first dwelling unit in the Annexation Property under a lease or rental or occupancy agreement whether oral or written.

2.3 Upon annexation of the Annexation Property and formation of a neighborhood association for the Annexation Property, the president of such neighborhood association shall be entitled to participate in the election of the representatives to

Lot 432 of BERNARDO HEIGHTS UNIT NO. 22, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 10979, filed in the Office of the County Recorder of San Diego County, June 28, 1984.

1606

RECORDED IN
OFFICIAL RECORDS
OF SAN DIEGO COUNTY, CA.

1984 JUL 12 PM 1:58

VERA L. LYLE
COUNTY RECORDER

Recording Requested By:)
 Declarant *JENKINS & PERRY*)
)
)
 When Recorded Mail To:)
)
 Genstar Development Inc.)
 Suite 340)
 La Jolla Eastgate Building)
 9404 Genesee Avenue)
 La Jolla, California 92037)
)
)

*File
Los Rios
Annexation*

RF 6
MG 1

Space Above For Recorder's Use

DECLARATION OF ANNEXATION AND SUPPLEMENTAL RESTRICTIONS
FOR THE COMMUNITY OF BERNARDO HEIGHTS

GENSTAR DEVELOPMENT INC., a New York corporation ("Declarant"), makes this Declaration of Annexation and Supplemental Restrictions for the Community of Bernardo Heights ("this Declaration of Annexation") on the terms and conditions herein stated:

RECITALS

Declarant makes this Declaration of Annexation based on the following facts and intentions:

A. Pursuant to the reservation contained in the Grant Deed recorded June 28, 1984, File/Page No. 84-243879, Official Records of San Diego County, California, Declarant has the right to annex the real property described in Exhibit 1 attached hereto ("the Annexation Property") to the Community of Bernardo Heights ("the Community") pursuant to the provisions of the "Declaration of Covenants, Conditions and Restrictions for the Community of Bernardo Heights" filed in the Office of the County Recorder of San Diego County on September 30, 1980, File/Page No. 80-319018, as amended ("the Community Restrictions").

B. Declarant desires to annex the Annexation Property into the Community. By such annexation, Declarant intends that the covenants, conditions and restrictions of the Community Restrictions shall apply to the Annexation Property in the same manner as if it were originally covered by the Community Restrictions as

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2.3 Upon annexation of the Annexation Property and formation of a neighborhood association for the Annexation Property, the president of such neighborhood association shall be entitled to participate in the election of the representatives to the Community Board pursuant to Section 3.5 of the Community

EXHIBIT 1

Lots 415, 416, 417, 433, 434, 435, 436 and 437, of Bernardo Heights Unit No. 22, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 10979, filed in the Office of the Recorder of San Diego County, June 28, 1984.

4000.02-113/LCU12/100

2292

85-346246

RECORDED IN
OFFICIAL RECORDS
OF SAN DIEGO COUNTY, CA

1985 SEP 19 AM 11: 32

VERA L. LYLE
COUNTY RECORDER

Recording Requested By:)

Declarant)

When Recorded Mail To:)

Genstar Development Inc.)
Suite 340)
La Jolla Eastgate Building)
9404 Genesee Avenue)
La Jolla, California 92037)
Attn: Mim Scott)

Los Pinos Annex

RF	6
AR	4
TLR	
MG	1

Space Above For Recorder's Use

DECLARATION OF ANNEXATION AND SUPPLEMENTAL RESTRICTIONS
FOR THE COMMUNITY OF BERNARDO HEIGHTS

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OF SAN DIEGO COUNTY, CA

1985 SEP 19 AM 11: 32

VERA L. LYLE
COUNTY RECORDER

~~Recording Requested By:~~)
Declarant)
)
When Recorded Mail To:)
)
Genstar Development Inc.)
Suite 340)
La Jolla Eastgate Building)
9404 Genesee Avenue)
La Jolla, California 92037)
Attn: Mim Scott)

*Los Rios
Annex*

RF	6
AR	4
TLR	
MG	1

Space Above For Recorder's Use

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2299

Lot 431 of BERNARDO HEIGHTS UNIT NO. 22, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 10979, filed in the Office of the County Recorder of San Diego County, June 28, 1984.

2300

85-346248

RECORDED IN
OFFICIAL RECORDS
OF SAN DIEGO COUNTY, CALIF.

1985 SEP 19 AM 11:32

VERA L. LYLE
COUNTY RECORDER

~~Recording Requested By:~~)
Declarant)
When Recorded Mail To:)
Genstar Development Inc.)
Suite 340)
La Jolla Eastgate Building)
9404 Genesee Avenue)
La Jolla, California 92037)
Attn: Mim Scott)

Los
Rios
Annex

RF	6
AR	27
TLR	
MG	/

Space Above For Recorder's Use

DECLARATION OF ANNEXATION AND SUPPLEMENTAL RESTRICTIONS
FOR THE COMMUNITY OF BERNARDO HEIGHTS

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Declarant has executed this Declaration of Annexation at San Diego, California, on September 13, 1985.

GENSTAR DEVELOPMENT INC.,
a New York corporation

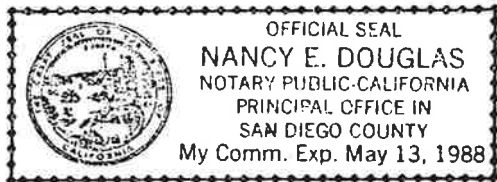
By [Signature]
Robert B. McLeod, Vice President

By [Signature]
M. R. Scott, Ass't. Vice President

STATE OF CALIFORNIA)
) SS
COUNTY OF SAN DIEGO)

On September 13, 1985, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Robert B. McLeod, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Vice President, and M. R. Scott, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Ass't. Vice President of GENSTAR DEVELOPMENT INC., a New York corporation, and acknowledged to me that they are the persons who executed the within instrument as Vice President and Ass't. Vice President on behalf of the corporation therein named and further acknowledged to me that the corporation executed the within instrument pursuant to its bylaws or a resolution of its Board of Directors.

WITNESS my hand and official seal.



[Signature]
Notary Public in and for said
County and State

2303

Lot 420 of BERNARDO HEIGHTS UNIT NO. 22, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 10979, filed in the Office of the County Recorder of San Diego County, June 28, 1984.

4000.02-113/LCU12/109

2304

3-346249

RECORDED IN
OFFICIAL RECORDS
OF SAN DIEGO COUNTY, CA

1985 SEP 19 AM 11: 32

VERA L. LYLE
COUNTY RECORDER

Recording Requested By:)
 Declarant)
)
 When Recorded Mail To:)
)
 Genstar Development Inc.)
 Suite 340)
 La Jolla Eastgate Building)
 9404 Genesee Avenue)
 La Jolla, California 92037)
 Attn: Mim Scott)

Los Rios Annex

RF	6
AR	4
TLR	
MG	1

Space Above For Recorder's Use

DECLARATION OF ANNEXATION AND SUPPLEMENTAL RESTRICTIONS
FOR THE COMMUNITY OF BERNARDO HEIGHTS

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2307

Lot 419 of BERNARDO HEIGHTS UNIT NO. 22, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 10979, filed in the Office of the County Recorder of San Diego County, June 28, 1984.

RECORDED IN
OFFICIAL RECORDS
OF SAN DIEGO COUNTY

1985 SEP 19 AM 11:32

VERA L. LYLE
COUNTY RECORDER

~~Recording Requested By:~~)
 Declarant)
)
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 When Recorded Mail To:)
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 Genstar Development Inc.)
 Suite 340)
 La Jolla Eastgate Building)
 9404 Genesee Avenue)
 La Jolla, California 92037)
 Attn: Mim Scott)

Los
Rios
Annex

RF	6
AR	4
TLR	
MG	1

Space Above For Recorder's Use

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Lot 418 of BERNARDO HEIGHTS UNIT NO. 22, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 10979, filed in the Office of the County Recorder of San Diego County, June 28, 1984.

SECOND AMENDMENT
TO
BYLAWS
OF
LOS RIOS OWNERS' ASSOCIATION, INC.

This document is prepared for the purpose of amending the Bylaws (hereafter "Bylaws") of Los Rios Owners' Association, Inc., a California non-profit mutual benefit corporation (hereafter "Association"), which were originally adopted on January 22, 1985 and later amended.

R E C I T A L S

The Bylaws of the Association were originally adopted on January 22, 1985 and later amended by the First Amendment to the Bylaws on _____, 1987.

Article 11, Section 11.1 of the Bylaws provides that the Bylaws may be repealed or amended by the vote or written ballot of the members entitled to exercise a majority of the Voting Power in the Association, provided that the vote or written ballot must include the votes of the members in the Association other than the Declarant, Brehm Communities, a California corporation. In addition, Article 11, Section 11.2 requires the prior written consent of Genstar Development, Inc. for any amendments enacted prior to September 30, 1990, and the prior written consent of the Board of Directors of The Community Association of Bernardo Heights, a California non-profit mutual benefit corporation, regardless of the date on which any such amendment is enacted.

Article VI, Section 6.4 of the Bylaws currently authorizes Board terms of one year (1 yr.).

The members of the Association, by this amendment, desire to change the Board terms to two years and to establish staggered terms, such that the terms of an two (2) directors will expire in even numbered years and the terms of three (3) directors will expire in odd numbered years.

NOW, THEREFORE, Article VI, Section 6.4.1 of the Bylaws of Los Rios Owners' Association is hereby amended in accordance with the text which follows. Additions in the text are indicated by bold faced underlining; deletions by ~~strike-outs~~.

6.4 Election and Tenure of Office.

6.4.1 The directors shall be elected by secret and written ballot at the annual meeting of Members, to serve for ~~one-year~~ a term of two years and until their successors are elected and have qualified or until their earlier resignation or removal. The term of office for directors shall begin immediately after their election. The terms of two (2) directors shall expire in even-numbered years, and the terms of three (3) directors shall expire in odd-numbered years. In the event the number of board members is increased or decreased, the terms of an even number of directors shall expire in even-numbered years, and the term of an odd number of directors shall expire in odd-numbered years. In the event it becomes necessary to elect directors to terms of different lengths at the same election, each candidate elected shall be entitled to choose his or her term of office from the terms available starting with the candidate who receives the greatest number of votes and then to the remaining candidates in descending order of votes received.

This completes the text of the amendment. This amendment shall take effect at the 1988 Annual Meeting of the Association, if it is properly adopted at or before that meeting, and if not, then at the first annual meeting after it has been properly adopted. At the first election to be held under these provisions, directors shall be elected to the appropriate number of two year and one year terms, in the manner described in Article 6, Section 6.4.1 of the Bylaws, as amended above.

WRITTEN CONSENT TO APPROVE BYLAW AMENDMENT

The Board of Directors of the Community Association of Bernardo Heights, a California non-profit mutual benefit corporation (hereafter "Board"), hereby consents to the foregoing amendment to Article 6, Section 6.4.1 of the Bylaws of Los Rios Owners' Association, Inc., a California non-profit mutual benefit corporation, as required by Article 11, Section 11.2 of the Bylaws of Los Rios Owners' Association, Inc. The amendment proposes:

1. To change the board terms to two years.
2. To stagger the terms so that an even number of directors would be elected in even-numbered years, and an odd number of directors would be elected in odd-number years.
3. To take effect at the 1988 Annual Meeting and election, if passed at or before that time, or at the first annual meeting after it is properly adopted.

I certify that the Board issued its consent on the basis of the following action or authority (specify date and nature of Board vote):

Approved by unanimous vote of Board of Directors
at their January 13, 1988 Meeting

Dated: 1/25/88

The Community Association of
Bernardo Heights

By: James M. Dillman

Secretary of the Board

LOS RIOS

General Guidelines for Submittal
of Architectural Change Applications
(Please refer to your Declaration of Restrictions)

It is suggested that the applicant furnish his/her architect and/or landscape architect these guidelines and a copy of the Declaration of Restrictions to assist them in preparing your submission.

A. A completed "Architectural Request Form" must be submitted to the Architectural Control Committee (the "Committee"), together with a processing fee of \$35.00, which is payable to the Los Rios Owners Association, Inc. (the "Association"). Fee does not apply to window covering submittals.

1) Architectural Request Forms must be accompanied by four sets of plans and must be submitted two weeks prior to Committee meetings which are held on the 15th and 1st of every month. Following approval, PCM (the property management firm) will submit the applicant's request to the master Bernardo Heights Architectural Committee for their approval also. Contact your liaison person for timing, and status of your submittal.

2) Plans must include drainage, irrigation, all landscape construction and size, name and quantity of plant materials.

3) Other requests, i.e., a spa, pool, patio cover, must have detailed drawings submitted showing all specifications, an elevation, a plot plan and full description. Plans approved by the Committee will be valid for a period of one year from date of approval. Spas located on decks or balconies will not be approved. Decks have not been designed to carry the load.

4) Material, texture and all colors of all exterior surfaces must be specified.

5) Any deviation from approved plans without prior written approval from the Committee will cause the property to be in noncompliance and subject to remedial legal action by the Association.

6) No shutters, glass coatings, screens, awnings, blinds, curtains, drapes, coverings, objects or appurtenances shall be constructed, permitted or maintained in or on any window or door without the approval of the Committee. No shiny film will be permitted on windows.

7) No improvements such as fences, walls, spas or landscaping or alterations to any existing improvements shall be made

to the yard area without obtaining the prior written consent of the Committee.

8) Wrought iron and glass/plastic wind screen may be inserted and installed in the masonry walls which are the lateral boundaries of the yard area and the wrought iron or frames for the glass/plastic wind screen must be painted Los Rios Green (Frazee, special mix). Prior to installation or painting, owners shall obtain written approval from the Committee.

9) Each owner shall remain responsible for the maintenance, repair and replacement of the improvements located within his yard area.

10) No owner shall cause a deck, atrium, terrace, patio or balcony to be enclosed.

11) No owner shall make any alterations or improvements to the Common Area or move or remove any planting, structure, or furnishing without prior written consent of the Committee.

12) An owner shall be liable to the Association for all damage to, or destruction of, the Common Area, Recreation Area or to any Association property (including, but not limited to, buildings, recreation facilities and landscaping) caused by the owner, guests or any occupant of such owner's unit, or any subcontractor doing work for the owner.

13) No radio or television antenna or radio transmitter tower or facility or flagpole of any kind shall be constructed, erected or otherwise placed in the Common Area, Recreation Area or owner's yard area.

14) No building, fence, wall sign, spa, structure, exterior addition or landscaping shall be commenced, constructed, erected, placed, altered, maintained or permitted to remain on the project until the building or alteration plans, landscaping plans, specifications, location plot or color scheme have been approved by the Committee.

15) Approval of any request by the Committee does not waive the necessity of obtaining the required permits from the City of San Diego. The owner must be in compliance with all building and zoning codes as required by the City of San Diego.

16) Obtaining a city permit does not waive the need for Committee approval prior to construction.

B. Applicant should be familiar with the Declaration of Restrictions. The Declaration of Restrictions will take priority where any conflict exists.

C. Work will not commence until the approval has been obtained in writing. Properties where work has started prior to written approval will be in noncompliance and subject to remedial action by the Association.

D. Applications shall include all plans, elevations, specifications, fees in full, application forms completed and signed by the owner, contractor, etc.

LANDSCAPE INFORMATION FOR REAR/SIDE YARDS AND ATRIUMS

Plans are now being submitted to the Committee for review and approval of proposed landscaping for rear/side yards and atriums. In order to avoid any future misunderstandings, or confusion, we have outlined important landscape information.

Your lot has been graded to provide adequate drainage of water away from the home. Both surface drainage and a storm drain system have been provided to assist in the proper flow of water away from the home. The storm drain is connected to the adjoining lots and caution must be taken when installing the landscaping to avoid disrupting the system incorporated into your lot. You could be held responsible for problems which arise involving either of these systems.

Brehm Communities is not responsible for damage which occurs because the grade of the lot has been changed or altered. Adequate drainage provisions are imperative. When landscaping, you must avoid disrupting flow patterns which were created when the property was originally graded. The water flow must be directed away from the foundation allowing water to flow to the street or to an approved drain.

When pouring patios, it is important to remember that the patio be poured not less than four inches below the finished floor of the adjoining living area of the home. If the contractor that you employ does not comply, Brehm Communities will not be responsible for any leakage into the home, or any additional damage which may occur.

It is important that adequate drainage be included at the base of the perimeter stucco wall. Any discoloration caused by water exposure will be the responsibility of the owner to correct. This includes any planter boxes constructed by the owner.

E. No plants or vines, screens, walls or trellis may be attached to the wall of the adjacent house. Any structure shall be removable for routine maintenance of the adjoining house and its surfaces.

F. Atrium Plans must be submitted to the Committee for approval. Drainage must not be disrupted and exterior seepage outlets must not be blocked. Care must be taken to not allow soil height or plant material to block seepage outlets. Owner must comply with City of San Diego Municipal Code regarding screed line. (Leave 6" of exposed footing.)

G. Any walls constructed must have 1" air space between wall and dwelling unit.

H. No flex pipe shall be used. Any drain lines shall be installed with smooth wall rigid drain pipe.

I. Where raised planters are added, special care must be taken to provide complete, thorough and adequate waterproofing. Owner shall repair and replace all affected walls if discoloration or deterioration occurs.

We do hope that this information is helpful when planning the landscaping of your yard.

PATIO COVER - GENERAL NOTES

Standard Plans are available at PCM.

All exposed wood shall be stained or painted according to one of the following:

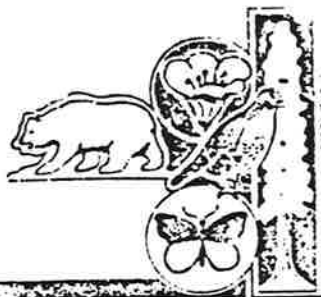
- a. White wash to match recreation area patio cover. (Frazee Madera semi-transparent wood stain tinted white.)
- b. Paint white to match Model #1 entry patio cover.
- c. Stain to match garage door. (Frazee semi-transparent stain #M600.)

No part of patio cover shall extend beyond fence lines or lot or into easements.

Because of the variations in size of private space provided to each unit and variations in distances from patio slab to fence line or lot line, the model patio cover plans distributed to owners may not be applicable to all units. Adjustments to these plans may be necessary due to individual field conditions, setbacks from any easements or lot lines, variations in building structure or grades. These patio cover plans are engineered specifically for the models and are intended for use only as a design standard for other buildings. The owner is responsible for engineering the patio cover to fit the structural requirements of his particular site.

Owner shall be responsible for obtaining any required permits from the City of San Diego.

Any changes to the exterior of the building must be submitted to and approved by the Committee and must be in compliance with the Declaration of Restrictions.



State
of
California

OFFICE OF THE SECRETARY OF STATE

I, *MARCH FONG EU*, Secretary of State of the State of California, hereby certify:

That the annexed transcript has been compared with the record on file in this office, of which it purports to be a copy, and that same is full, true and correct.

IN WITNESS WHEREOF, I execute
this certificate and affix the Great
Seal of the State of California this

AUG 2 1984



March Fong Eu

Secretary of State

ENDORSED
FILED

In the office of the Secretary of State
of the State of California

AUG 2 1984

MARCH FONG EU, Secretary of State
Leslie Glenn
Deputy

ARTICLES OF INCORPORATION
OF
LOS RIOS
OWNERS' ASSOCIATION, INC.

ARTICLE 1

The name of this corporation is LOS RIOS OWNERS' ASSOCIATION, INC. (hereinafter referred to as the "Association").

ARTICLE 2

A. This corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under such law.

B. The specific and primary purpose of the Association is to act as the "management body" for the preservation, maintenance, improvement and architectural control of the common area and the recreation area which comprises the Los Rios Condominium Project (hereinafter referred to as the "Project") in San Diego County, California. The Association shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific and primary purpose of the Association.

ARTICLE 3

The name and address in the State of California of the corporation's initial agent for service of process are: Forrest W. Brehm, 2835 Camino del Rio South, Suite 220, San Diego, California, 92108.

ARTICLE 4

The names and addresses of the persons who are appointed to act as the first directors of the Association are:

<u>Name</u>	<u>Address</u>
Forrest W. Brehm	2835 Camino del Rio South, Suite 220 San Diego, CA 92108
Alice J. Cummings	2835 Camino del Rio South, Suite 220 San Diego, CA 92108
Barbara Lee Blase	2835 Camino del Rio South, Suite 220 San Diego, CA 92108

ARTICLE 5

As used in these Articles of Incorporation, "Declarant" shall mean the subdivider of the Project and any successor in interest of the subdivider. The members of the Association shall consist of Declarant prior to the first conveyance of a condominium within the Project and, thereafter, shall consist of those persons who hold record title to any condominium, including Declarant for as long as Declarant holds title to a condominium. Membership shall be appurtenant to and may not be separated from ownership of a condominium.

ARTICLE 6

The Association shall have one class of members only, and the property and other rights, interests and privileges of each member in good standing shall be equal. Notwithstanding the foregoing, the members shall be divided into two classes for the purpose of voting, Class A and Class B. Class A member(s) shall be all owners of condominiums except Declarant and said Class A members(s) shall be entitled to one vote for each condominium owned. The lone Class B member shall be Declarant, who shall be entitled to three votes for each condominium owned. Declarant's Class B voting status shall cease and convert to Class A voting status on the earlier occurrence of one of the following: (i) when the total votes outstanding in Class A equal the total votes outstanding in Class B or (ii) on that certain date which is two years after the original issuance by the California Department of Real Estate of the most recent Final Subdivision Public Report for a phase of development of the Project or (iii) on that certain date which is four years after the original issuance by the California Department of Real Estate of a Final Subdivision Public Report with respect to the first phase of development of the Project. If record title to a condominium is held in the name of more than one person, such persons shall collectively constitute a single member of the Association and there shall be

only one vote attributable to such member (unless such member is Declarant, in which case, such member shall have the number of votes attributable to Declarant as set forth above). Each of such persons collectively constituting a single member shall otherwise be individually entitled to the benefits of membership in the Association. In addition to satisfying the requirements of Article 8 of these Articles of Incorporation, any amendment to this Article 6 of these Articles of Incorporation must be approved by 51 percent (based upon one vote for each first mortgage or first deed of trust owned) of all holders (hereinafter referred to collectively as "Eligible Mortgage Holders"), of a first mortgage or first deed of trust encumbering an estate in the Project as of the time such amendment is adopted who, in written document delivered to the Association, have requested that the Association notify such holders of any proposed action that, by the terms of these Articles of Incorporation, requires the consent of a specified percentage of Eligible Mortgage Holders.

ARTICLE 7

On the dissolution or winding up of the Association, the assets of the Association remaining after payment, or provision for payment, of all debts and liabilities of the Association, shall be distributed so that each member of the Association shall receive one equal share of such assets for each condominium in the Project owned by such member.

ARTICLE 8

Except as otherwise specifically provided in Article 6 of amendments to these Articles of Incorporation, amendments to these Articles of Incorporation may only be adopted by a vote of a majority of the directors of the Association and (i) by a vote or written ballot of members of the Association entitled to exercise a majority of the voting power in each of the two voting classes of the Association or (ii) upon cessation of one of the two voting classes as a separate and distinct voting class, by a vote or written ballot of members entitled to exercise a majority of the voting power in the remaining voting class including the vote(s) of Declarant as a member of such remaining voting class, provided that said vote or written ballot shall include the votes of not less than a majority of the members other than Declarant. Amendments shall be reflected in the book containing the original Articles of Incorporation.

IN WITNESS WHEREOF, the undersigned, constituting the incorporator(s) of the Association, and being the persons named herein above as the first directors of the Association, have executed

these Articles of Incorporation this 26 day of July, 1984.

Forrest W. Brehm
Forrest W. Brehm

Alice J. Cummings
Alice J. Cummings

Barbara Lee Blase
Barbara Lee Blase

I hereby declare that I am the person who executed the foregoing Articles of Incorporation of Los Rios Owners' Association, Inc., which execution is my act and deed.

Executed on this 26 day of July, 1984, at San Diego, California.

Forrest W. Brehm
Forrest W. Brehm

I hereby declare that I am the person who executed the foregoing Articles of Incorporation of Los Rios Owners' Association, Inc., which execution is my act and deed.

Executed on this 26 day of July, 1984, at San Diego, California.

Alice J. Cummings
Alice J. Cummings

I hereby declare that I am the person who executed the foregoing Articles of Incorporation of Los Rios Owners' Association, Inc., which execution is my act and deed.

Executed on this 26 day of July, 1984, at San Diego, California.

Barbara Lee Blase
Barbara Lee Blase

LOS RIOS
OWNERS' ASSOCIATION, INC.

Unanimous Written Consent of Directors

The undersigned, being all of the directors of LOS RIOS OWNERS' ASSOCIATION, INC., a California nonprofit mutual benefit corporation (the "Association"), do hereby adopt the following resolutions:

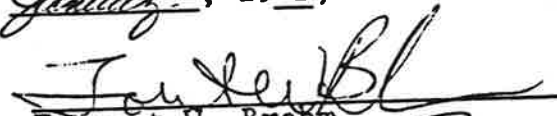
RESOLVED that the following persons are hereby appointed to hold the office(s) set forth opposite their respective names and to serve in such office(s) at the pleasure of the directors.

<u>Name</u>	<u>Office</u>
Forrest W. Brehm	President
Alice J. Cummings	Vice President/Chief Financial Officer
Barbara Lee Blase	Secretary

RESOLVED that the president individually or the secretary and vice president jointly may act in the name of and on behalf of the Association and, by their respective signature(s), execute and deliver on behalf of the Association all agreements, contracts, notes, conveyances, deeds, leases, mortgages and other documents requiring the signature of the Association.

RESOLVED, further, that the chief financial officer shall co-sign all checks and promissory notes of the Association.

IN WITNESS WHEREOF, the undersigned have executed this Unanimous Written Consent of Directors pursuant to Section 7211(b) of the California Corporations Code and the Bylaws of the Association as of the 22 day of January, 1985, at San Diego, California.


Forrest W. Brehm


Alice J. Cummings


Barbara Lee Blase

[Corp Code §7211(b)]