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DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

BERNARDO HEIGHTS UNIT NO. 24 CONDOMINIUMS

LOS FLORES CONDOS

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DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of May 14, 1985, by UDC DEVELOPMENT COMPANY, a California corporation (hereinafter called "Declarant") with reference to the following

RECITALS:

A. Declarant is the developer of the real property located in The City of San Diego, County of San Diego, California, more particularly described on Exhibit "A" attached hereto (hereinafter called the "Real Property").

B. Declarant intends to develop and improve the Real Property by constructing thereon in phases detached single-family homes and attached residential condominiums. In the event that the Real Property is developed as planned, it is anticipated that there will be approximately 700 residential dwelling units constructed thereon. There is no guarantee that all of the Real Property will be developed as planned or that the phasing of its development will occur in any particular manner.

C. Declarant has or will hereafter file a Condominium Plan with the Office of the County Recorder of San Diego County, California covering a portion of the Real Property, to wit:

Lot 2 of BERNARDO HEIGHTS UNIT NO. 24 according to Map thereof No. 11156 filed in the Office of the County Recorder of San Diego County, California, on February 27, 1985,

(hereinafter called the "Condominium Property").

D. Declarant has or intends to improve the Condominium Property by establishing thereon nineteen (19) condominium units and intends to establish a condominium project under the provisions of the California Condominium Act providing for separate title to Living Units (as hereinafter defined) appurtenant to which will be an undivided fractional interest in the Common Area (as hereinafter defined).



The development of the Condominium Property is the first phase of a planned eight (8) phase overall condominium project to be located on Lots within BERNARDO HEIGHTS UNIT NO. 24 (Map No. 11156) as follows:

<u>Phase</u>	<u>Lot</u>	<u>Number of Condominiums</u>	<u>Undivided Fractional Interest in Common Area in Phase</u>
I	2	19	1/19th
II	3	25	1/25th
III	4	9	1/9th
IV	5	18	1/18th
V	6	19	1/19th
VI	7	18	1/18th
VII	8	23	1/23rd
VIII	1	19	1/19th

E. There is no guarantee that the phasing of the condominium project will be as set forth above. There is no guarantee that all phases will be constructed or completed. The owners of a condominium in each phase will receive title to a Living Unit plus an undivided fractional interest as tenant in common to the Common Area (as hereinafter defined) located within that phase. In addition, owners of a condominium will receive the exclusive right to use and occupancy of a portion of the Common Area within that phase designated as Entries, Patios and Yards, all as shown on the Condominium Plan (as hereinafter defined) covering that phase. Each owner of a condominium will also receive an easement for ingress, egress and recreational use over portions of the Common Area of each of the other phases. If all phases are completed as planned there will be a total of 150 condominiums in the overall condominium project. Each condominium shall have appurtenant to it a membership in BERNARDO HEIGHTS UNIT NO. 24 ASSOCIATION OF HOMEOWNERS, a California nonprofit mutual benefit corporation ("Corporation"), which will be the management body for the overall condominium project.

F. The development of the Condominium Property and of the overall condominium project, consisting of the eight (8) phases described above in Recital D, are also phases of the overall planned development of the Real Property, of which the eight (8) phases are only a part. The overall planned development of the Real Property will consist of detached and attached single-family homes on separate lots as well as condominiums. Each condominium in the Condominium Property has appurtenant to it a membership in BERNARDO HEIGHTS II RECREATION ASSOCIATION, a California nonprofit mutual benefit corporation ("Association") which is the management body for the overall planned development of the Real Property. It is planned that all phases of the condominium project described in Recital D above shall have appurtenant to it

a membership in the Association. Upon the development of the Real Property, owners of lots and condominiums therein may become members of the Association. There is no guarantee that the remainder of the Real Property will be developed or that all of the owners of lots or condominiums therein will become members of the Association. In the event all of the Real Property is developed as planned, there will be approximately 700 total residential dwellings, each of which may have appurtenant to it a membership in the Association. The Association will own the Recreation Area (as hereinafter defined) and may own certain additional property and interests in property.

G. The Real Property is a part of the planned overall development of the Community of Bernardo Heights. Each condominium subject to this Declaration will be subject to assessment by The Community Association of Bernardo Heights, a California nonprofit mutual benefit corporation, and will be subject to the Declaration of Covenants, Conditions and Restrictions for the Community of Bernardo Heights ("Community Declaration"). The Association is the "Neighborhood Association" for the property owned by the members of the Association as that term is defined in the Community Declaration; the property owned by the members of the Association shall constitute a "Neighborhood" as that term is defined in the Community Declaration.

H. Before selling or conveying any interests in the Condominium Property, Declarant desires to subject the Condominium Property in accordance with a common plan to certain covenants, conditions and restrictions for the benefit of Declarant and any and all present and future owners of the Real Property.

NOW, THEREFORE, Declarant hereby certifies and declares and does hereby establish the following general plan for the protection and benefit of all of the Condominium Property, and has fixed and does hereby fix the following protective covenants, conditions and restrictions upon each and every ownership interest in the Condominium Property, under which said covenants, conditions and restrictions each ownership interest in the Condominium Property shall be hereafter held, used, occupied, leased, sold, encumbered, conveyed and/or transferred. Each and all of said covenants, conditions and restrictions are for the purpose of protecting the value and desirability of and shall inure to the benefit of all of the Real Property and shall run with and be binding upon and pass with the Condominium Property and each and every ownership interest therein and shall inure to the benefit of, apply to and bind the respective successors in title or interest of Declarant.

ARTICLE IDEFINITIONS

Section 1.1. "Articles" shall mean and refer to the Articles of Incorporation of the Corporation as they may from time to time be amended.

Section 1.2. "Association" shall mean and refer to BERNARDO HEIGHTS II RECREATION ASSOCIATION, a California Nonprofit Mutual Benefit Corporation, its successors and assigns.

Section 1.3. "Association Articles" shall mean and refer to the Articles of Incorporation of the Association as they may from time to time be amended.

Section 1.4. "Association Board" shall mean and refer to the Board of Directors of the Association.

Section 1.5. "Association Bylaws" shall mean and refer to the Bylaws of the Association as they may from time to time be amended.

Section 1.6. "Board" shall mean and refer to the Board of Directors of the Corporation.

Section 1.7. "Boundaries" shall mean that in interpreting deeds and plans, the then existing physical boundaries of a Living Unit, whether in its original state or reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or deed and those of the building.

Section 1.8. "Bylaws" shall mean and refer to the Bylaws of the Corporation as they may from time to time be amended.

Section 1.9. "Common Area" shall mean and refer to all portions of the Condominium Property not located within a Living Unit.

Section 1.10. "Common Expenses" shall mean and include the actual and estimated expenses of operating the Condominium Property and any reasonable reserve for such purposes.

Section 1.11. "Community" shall mean and refer to the Community of Bernardo Heights of which the Real Property is a

constituent part, being all of the real property subject to the Community Declaration or annexed thereto.

Section 1.12. "Community Architectural Committee" shall mean and refer to the Community Architectural Committee established pursuant to Article VIII of the Community Declaration.

Section 1.13. "Community Articles" shall mean and refer to the Articles of Incorporation of the Community Association, as they may from time to time be amended.

Section 1.14. "Community Assessments" shall mean and refer to the assessments levied by the Community Association pursuant to the Community Declaration.

Section 1.15. "Community Association" shall mean and refer to The Community Association of Bernardo Heights as defined and established in the Community Declaration.

Section 1.16. "Community Board" shall mean and refer to the Board of Directors of the Community Association.

Section 1.17. "Community Bylaws" shall mean and refer to the Bylaws of the Community Association duly adopted by the Community Board.

Section 1.18. "Community Common Area" shall mean and refer to all real property in which the Community Association owns an interest for the common use and benefit of the Community Members, their lessees, guests, invitees or patrons. The Community Common Area may include interests held by lease or easement as well as estates in fee.

Section 1.19. "Community Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions for the Community of Bernardo Heights recorded on September 30, 1980, Official Records of San Diego County, as File No. 80-319018, and such amendments thereto as shall from time to time be recorded.

Section 1.20. "Community Member" shall mean and refer to any entity holding membership in the Community Association.

Section 1.21. "Community Rules" shall mean the Rules adopted by the Community Board pursuant to Section 3.8 of the Community Declaration.

Section 1.22. "Condominium" shall mean and refer to a fee simple estate in the Condominium Property as defined in Section 783 of the California Civil Code and shall consist of a separate interest in a Living Unit and an undivided fractional interest as

tenant in common in the Common Area, together with any Exclusive Use Area conveyed appurtenant thereto.

Section 1.23. "Condominium Building" shall mean a residential structure containing condominium Living Units.

Section 1.24. "Condominium Plan" shall mean and refer to the Condominium Plan(s) recorded pursuant to California Civil Code Section 1351 covering the Condominium Property or portions thereof, including such amendments thereto as may from time to time be recorded.

Section 1.25. "Condominium Property" shall mean and refer to that real property located in The City of San Diego, County of San Diego, California, described as:

Lot 2 of BERNARDO HEIGHTS UNIT NO. 24 according to Map thereof No. 11156 filed in the Office of the County Recorder of San Diego County, California, on February 27, 1985,

and such additions thereto as may be annexed to the jurisdiction of the Corporation.

Section 1.26. "Corporation" shall mean and refer to BERNARDO HEIGHTS UNIT 24 ASSOCIATION OF HOMEOWNERS, a California Nonprofit Mutual Benefit Corporation, its successors and assigns.

Section 1.27. "Declarant" shall mean and refer to UDC DEVELOPMENT COMPANY, a California corporation, its successors and assigns, if such successors and assigns should acquire five (5) or more Condominiums for purposes of sale to the public or one or more Lots described in Recital D for purposes of development.

Section 1.28. "Declaration" shall mean and refer to this enabling Declaration of Covenants, Conditions and Restrictions as it may from time to time be amended.

Section 1.29. "Eligible Insurer or Guarantor" shall mean and refer to an insurer or governmental guarantor who has requested notice from the Corporation of those matters of which such insurer or guarantor is entitled to notice by reason of the Declaration or the Bylaws.

Section 1.30. "Eligible Mortgage Holder" shall mean and refer to a holder of a first Mortgage on a Condominium who has requested notice from the Corporation of those matters of which such holder is entitled to notice by reason of the Declaration or the Bylaws.

Section 1.31. "Exclusive Use Area" shall mean and refer to those portions of the Common Area to which an exclusive right to use is granted to an Owner as shown and described on the Condominium Plan and shall consist of Entries, Yards and Patios.

Section 1.32. "FHA" shall mean and refer to the Federal Housing Administration.

Section 1.33. "Living Unit" shall mean and refer to those portions of the Condominium Property shown and described as such on the Condominium Plan.

Section 1.34. "Lot" shall mean and refer to any plot of land (other than the Recreation Area) shown upon any recorded Final Map or Parcel Map (as those terms are defined in the California Subdivision Map Act) of the Real Property, the Owner of which is required by Declaration to be a member of the Association; provided, however, that in the event a Condominium Plan is recorded pursuant to California Civil Code Section 1351 covering a Lot, the "Lot" shall mean and refer to each Condominium shown thereon.

Section 1.35. "Member" shall mean and refer to a person entitled to membership in the Corporation as provided herein.

Section 1.36. "Mortgage" shall mean and refer to a deed of trust as well as a mortgage.

Section 1.37. "Mortgagee" shall mean and refer to a beneficiary under or holder of a deed of trust as well as a mortgagee.

Section 1.38. "Mortgagor" shall mean and refer to the trustor of a deed of trust as well as a mortgagor.

Section 1.39. "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of fee simple title to any Condominium which is a part of the Condominium Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.40. "Project" shall mean and refer to the entire Condominium Property, including all structures and improvements erected or to be erected thereon.

Section 1.41. "Real Property" shall mean and refer to that real property located in The City of San Diego, County of San Diego, California, described on Exhibit "A" attached hereto.

Section 1.42. "Recreation Area" shall mean all real property (including improvements thereon and interests therein) owned by the Association. The Recreation Area to be owned by the Associa-

tion at the time of the conveyance of the first Condominium to an Owner includes:

Lots 97, 98, 99, 101 and 102 of BERNARDO HEIGHTS UNIT NO. 11 according to Map thereof No. 9968 filed in the Office of the County Recorder of San Diego County, California, on January 14, 1981; and

Lot 106 of BERNARDO HEIGHTS UNIT NO. 12 according to Map thereof No. 9970 filed in the Office of the County Recorder of San Diego County, California, on January 15, 1981.

Section 1.43. "VA" shall mean and refer to the Veterans Administration.

## ARTICLE II

### PROPERTY RIGHTS IN RECREATION AREA

Section 2.1. Owners' Easements of Enjoyment. Every Owner of a Condominium shall have a right and easement of ingress and egress and of enjoyment in and to the Recreation Area which shall be appurtenant to and shall pass with the title to each Condominium, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Recreation Area.

(b) The right of the Association, after an opportunity for a hearing before the Association Board as provided in the Association Bylaws, to suspend the voting rights and right to use of any recreational facilities by an Owner for nonpayment of any assessment by the Association against his Condominium or he is otherwise in breach of his obligations under this Declaration, the Association Articles or Association Bylaws or the rules and regulations of the Association Board, all as set forth in the Association Bylaws.

(c) The right of the Association to dedicate or transfer all or any part of the Recreation Area to any public agency, authority or utility subject to such conditions as may be agreed to by the Association members. No such dedication or transfer shall be effective except upon the vote or written consent of two-thirds (2/3) of each class of members of the Association. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Recreation Area, and the granting of easements for maintenance purposes, shall be deemed not to be a dedication or transfer requiring the vote or written consent of the Association members.

(d) The right of the Association Board to adopt rules and regulations regarding reasonable use of the Recreation Area.

(e) Any restrictions or limitations on use imposed upon the Association in connection with its ownership of the Recreation Area.

Section 2.2. Delegation of Use. Any Owner may delegate, in accordance with the Association Bylaws, his right of enjoyment to the Recreation Area and facilities to the members of his family, his tenants or contract purchasers who reside in his Condominium; provided, however, that if any Owner delegates such right of enjoyment to tenants or contract purchasers, neither the Owner nor his family shall be entitled to use such facilities by reason of ownership of that Condominium during the period of delegation. Guests of an Owner may use such facilities only in accordance with rules and regulations adopted by the Association Board.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 3.1. Membership in Association. Every Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Condominium. Every Owner shall promptly, fully and faithfully comply with and abide by the Association Articles and Association Bylaws and the rules and regulations adopted from time to time by the Association Board and the officers of the Association.

Section 3.2. Classes of Membership. The Association shall have two (2) classes of voting membership, as set forth in the Association Bylaws.

Section 3.3. Duty of Association. The Association, acting through the Association Board, shall have the sole and exclusive right and duty to manage, operate, control, repair, replace and restore the Recreation Area, together with the improvements, trees, shrubbery, plants and grass thereon, all as more fully set forth in the Association Bylaws and the terms and conditions pursuant to which the Association owns the Recreation Area.

Section 3.4. Non-Liability of Association Board. In discharging their duties and responsibilities, the Association Board acts on behalf of and as the representative of the Association which acts on behalf of and as the representative of the Owners; and no member of the Association Board shall be individually or personally liable for performance or failure of performance of his duties and responsibilities unless he fails to act in good faith.



ARTICLE IVCOVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION

Section 4.1. Creation of Liens. The Declarant, for each Condominium owned, hereby covenants, and each Owner of a Condominium by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (i) regular assessments, and (ii) special assessments, such assessments to be established and collected as provided in the Association Bylaws. The regular and special assessments, together with interest, costs, penalties and reasonable attorney's fees, shall be a charge on the Condominium and shall be a continuing lien upon the Condominium against which each such assessment is made. Each such assessment, together with interest, costs, penalties and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Condominium at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 4.2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of its members and for the improvement and maintenance of the Recreation Area.

Section 4.3. Uniform Rate of Assessments. Except as otherwise provided in the Association Bylaws, both regular and special assessments shall be fixed at a uniform rate for all Condominiums and may be collected on a monthly basis or otherwise as determined by the Association Board.

Section 4.4. Commencement of Assessments. The regular assessments provided for herein shall commence as to all Condominiums in the first phase of development of the Condominium Property on the first day of the month following the first conveyance by Declarant of a Condominium in the first phase to an Owner. Regular assessments for Condominiums in subsequent phases of the development of the Condominium Property shall commence on the first day of the month following the conveyance by Declarant of a Condominium to an Owner in that phase. Written notice of the regular assessment shall be sent to every Owner subject thereto. The amount and due dates of the regular assessment shall be established by the Association Board as provided in the Association Bylaws. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Condominium have been paid.

Section 4.5. Delinquent Assessments. Any assessment made by the Association in accordance with this Declaration shall be a debt of the Owner of a Condominium at the time the assessment is made. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, and in addition thereto or in lieu thereof, may foreclose the lien against the Condominium. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Recreation Area or abandonment of his Condominium.

Any assessment not paid within thirty (30) days after the due date shall be delinquent. The amount of any such delinquent assessment, plus any other charges thereof, as provided for in this Declaration, shall be and become a lien upon the Condominium when the Association causes to be recorded with the County Recorder of San Diego County, a Notice of Delinquent Assessment, which shall state the amount of such delinquent assessment and such other charges thereon as may be authorized by this Declaration, a description of the Condominium against which the same has been assessed and the name of the record owner thereof. Such notice shall be signed by the President or Vice President, and the Secretary or Assistant Secretary of the Association. Upon payment of such delinquent assessment and charges in connection with which such notice has been so recorded, or other satisfaction thereof, the Association 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 hereinafter provided, such lien shall expire and be of no further force and effect one (1) year from the date of recordation of the Notice of Delinquent Assessment. The one (1) year period may be extended by the Association for not to exceed one (1) additional year by recording a written extension thereof.

Such lien may be enforced by sale by the Association, its attorney or other person authorized to make the sale, after failure of the Owner to pay such assessment in accordance with its terms, such sale to be conducted in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the California Civil Code, applicable to the exercise of powers of sale in Mortgages or in any other manner permitted by law. The Association shall have the power to purchase the Condominium at foreclosure sale and to hold, lease, mortgage and convey the same.

Section 4.6. Subordination to First Mortgages. The lien of the assessments provided for herein shall be prior to all other

liens recorded subsequent to the recordation of the Notice of Delinquent Assessment, except that the lien of the assessment, provided for herein, shall be subordinate to (i) the lien of assessment imposed pursuant to the Community Declaration and (ii) the lien of any first Mortgage given for value, and the sale or transfer of any Condominium pursuant to first Mortgage foreclosure shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Condominium from liability for any assessments thereafter becoming due or from the lien thereon.

## ARTICLE V

### COMMUNITY ASSOCIATION

Section 5.1. Easement to Community Association. 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, 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, the Community Rules and the rules and regulations of the Community Architectural Committee.

Section 5.2. Subordination of Assessment Lien. Anything contained in this Declaration to the contrary notwithstanding, 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.

Section 5.3. Community Association Assessments. Declarant, for each Condominium which it owns hereby covenants, and each Owner of a 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 Condominiums pursuant to the Community Declaration. The Community Assessments shall be levied and collected as provided in the Community Declaration.

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. 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.

The Community Association, in its sole and absolute discretion, may elect to administer, levy, collect and enforce the assessments by the Association 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, the Community Rules and the rules and regulations of the Community Architectural Committee.

Section 5.4. Enforcement. 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 XIV 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, or 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 attorney's fees.

Section 5.5. Supremacy of Community Declaration. 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.

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.

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 VI

MEMBERSHIP AND VOTING RIGHTS IN CORPORATION

Section 6.1. Membership in Corporation. Every Owner of a Condominium shall be a Member of the Corporation. Membership shall be appurtenant to and may not be separated from ownership of any Condominium. Each Owner is obligated promptly, fully and faithfully to comply with and conform to the Declaration, Articles and Bylaws and the rules and regulations adopted thereunder from time to time by the Board and officers of the Corporation. Membership in the Corporation shall not be transferred, pledged or alienated in any way, except upon the sale of the Condominium to which it is appurtenant, and then only to the purchaser of the Condominium. The transfer of title to a Condominium or the sale of a Condominium and transfer of possession thereof to the purchaser shall automatically transfer the membership appurtenant to such Condominium to the transferee.

Section 6.2. Voting Rights. The Corporation shall have two classes of voting membership:

Class A. Class A Members shall be all Owners of a Condominium with the exception of Declarant, and shall be entitled to one (1) vote for each Condominium owned. When more than one person holds an interest in any Condominium, all such persons shall be Members. The vote for such Condominium shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Condominium.

Class B. The Class B Member(s) shall be the Declarant and shall be entitled to three (3) votes for each Condominium owned. The Class B membership shall automatically terminate and forever cease to exist and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) Two (2) years following the date of original issuance by the California Department of Real Estate of the most recently issued Final Subdivision Public Report covering a phase of the Condominium Project; or

(c) Four (4) years following the date of original issuance by the California Department of Real Estate of its Final Subdivision Public Report covering the first phase of the Condominium Project.

## ARTICLE VII

### COVENANT FOR MAINTENANCE ASSESSMENTS TO CORPORATION

Section 7.1. Creation of Lien and Personal Obligation of Assessments. The Declarant, for each Condominium owned 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, is deemed to covenant and agree to pay to the Corporation: (i) annual assessments, which shall include an adequate reserve fund for the periodic maintenance, repair and replacement of the Common Area, and (ii) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall (except as otherwise provided in Section 7.4 below) be a charge on the Condominium and shall be a continuing lien upon the Condominium against which each such assessment is made, the lien to become effective upon recordation of a notice of assessment. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Condominium at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

Section 7.2. Purpose of Assessments. The assessments levied by the Corporation shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the Project, and for the improvement and maintenance of the Common Area for the common good of the Project and to reimburse the Corporation for the costs incurred in bringing an Owner into compliance with the Articles, Bylaws, Declaration and rules and regulations adopted by the Board.

Section 7.3. Maximum Annual Assessment. Until January 1st of the year immediately following the conveyance of the first Condominium to an Owner, the maximum annual assessment shall be \$1,200.00 for each Condominium.

(a) From and after January 1st of the year immediately following the conveyance of the first Condominium to an Owner, the maximum annual assessment may be increased each year without the vote of the membership by not more than ten percent (10%) above the maximum assessment for the previous year.

(b) From and after January 1st of the year immediately following the conveyance of the first Condominium to an Owner, the maximum annual assessment may be increased greater than ten percent (10%) by the vote or written assent of fifty-one percent (51%) of each class of Members; provided, however, that following the conversion of the Class B membership to Class A membership, the maximum annual assessment may be increased more than ten percent (10%) above the maximum annual assessment for the previous year only by the vote or written assent of (i) fifty-one percent (51%) of the total voting power of Members of the Corporation, and (ii) at least fifty-one percent (51%) of the total voting power of Members of the Corporation other than Declarant.

(c) The Board may fix the annual assessment at an amount not in excess of the maximum.

Section 7.4. Special Assessments. In addition to the annual assessments authorized above, the Corporation may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of fifty-one percent (51%) of each class of Members; provided, however, that following the conversion of the Class B membership to Class A membership, any such assessment shall have the vote or written assent of (i) fifty-one percent (51%) of the total voting power of Members of the Corporation, and (ii) fifty-one percent (51%) of the total voting power of Members of the Corporation other than Declarant. The Corporation may also impose an assessment against any Member to reimburse the Corporation for costs incurred in bringing a Member and his Condominium into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the Bylaws and the Corporation rules and regulations, which assessment may be imposed upon the vote of the Board after notice and an opportunity for a hearing; provided, however, such special assessment shall not constitute a lien against the Condominium owned by the Member so assessed and no such special assessment shall be effective unless the Member receives fifteen (15) days' prior written notice (given by any method reasonably calculated to give actual notice) of the proposed special assessment and the reasons therefor, and is given an opportunity to be heard, either orally or in writing, before the Board not less than five (5) days before the effective date of the special assessment.

Section 7.5. Notice and Quorum for Any Action Authorized Under Section 7.3 or 7.4. Any action authorized under Section 7.3 or 7.4 above requiring the vote of Members, shall be taken at a meeting called for that purpose, written notice of which shall

be sent to all Members not less than ten (10) nor more than ninety (90) days in advance of the meeting; provided, however, if notice is given by mail and the notice is not mailed by first class, registered or certified mail, then notice shall be given not less than twenty (20) days before the meeting. A quorum for such meeting shall be a majority of the voting power of the Members of the Corporation. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be twenty-five percent (25%) of the voting power of the membership of the Corporation; provided, however, if (i) the meeting so adjourned is an annual meeting, and (ii) the adjourned annual meeting is actually attended in person or by proxy by less than thirty-three and one-third percent (33-1/3%) of the voting power of the membership of the Corporation, then the only matters which may be voted upon at the subject meeting are matters notice of the general nature of which was duly given. If the proposed action is favored by a majority of the votes cast at such meeting but such vote is less than the requisite fifty-one percent (51%) of each class of Members, Members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officer of the Corporation not later than thirty (30) days following the date of such meeting.

Section 7.6. Rate of Assessments. Both annual and special assessments (other than (i) special assessments imposed by reason of noncompliance with the Condominium documents, or (ii) special assessments to raise funds for the rebuilding or major repair of a portion of the structural Common Area) shall be levied upon each Condominium at a uniform rate, and may be collected on a monthly basis or otherwise as determined by the Board. A special assessment against Members to raise funds for the rebuilding or major repair of a portion of the structural Common Area shall be levied upon the basis of the ratio of the square footage of the floor area of the Living Unit of the Condominium to the total square footage of the aggregate floor area of the Living Units in all Condominiums to be assessed. A special assessment against a Member to reimburse the Corporation for costs incurred in bringing the Member and his Condominium into compliance with the provisions of the Condominium documents shall be assessed only against that Member and his Condominium. Any assessment not paid within thirty (30) days after the due date shall be delinquent and shall bear interest at the rate of ten percent (10%) per annum from the due date until paid in full.

Section 7.7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Condominiums in the first phase of the Project on the first day of the month following the conveyance of the first Condominium to an Owner in the first phase. The annual



assessments shall commence as to all Condominiums in each subsequent phase of the Project on the first day of the month following the conveyance of the first Condominium to an Owner in the subsequent phase. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Condominium at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board.

Section 7.8. Effect of Non-Payment of Assessments; Remedies of the Corporation. Any annual or special assessment made in accordance with this Declaration shall be a debt of the Owner of a Condominium from the time the assessment is due. At any time after any assessments levied by the Corporation affecting any Condominium have become delinquent, the Board may file for recording in the Office of the San Diego County Recorder a notice of delinquency as to such Condominium, which notice shall state all amounts which have become delinquent with respect to such Condominium and the costs (including attorney's fees) and interest which have accrued thereon, the amount of any assessments relating to such Condominium which is due and payable although not delinquent, a description of the Condominium with respect to which the delinquent assessments are owed, and the name of the record or reputed record Owner of such Condominium. Such notice shall be signed by the President or Vice President and Secretary or Assistant Secretary of the Corporation.

Immediately upon recording of any notice of delinquency pursuant to the foregoing provisions of this Section, the amounts delinquent, as set forth in such notice, together with the costs (including attorney's fees) and interest accruing thereon, shall (except as otherwise provided in Section 7.4 above and Section 7.10 below) be and become a lien upon the Condominium described therein, which lien shall also secure all other payments and/or assessments which shall become due and payable with respect to said Condominium following such recording, and all costs (including attorney's fees) and interest accruing thereon. Said lien shall continue for a period of one year unless extended for a period of an additional year by the recording of a written extension by the Corporation. When a notice of assessment has been recorded, such assessment shall constitute a lien on each respective Condominium prior and superior to all other liens, except (i) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (ii) the lien or charge of any first Mortgage of record.

In the event the delinquent assessments and all other assessments which have become due and payable with respect to the

same Condominium, together with all costs (including attorney's fees) and interest which have accrued on such amounts, are fully paid or otherwise satisfied prior to the completion of any sale held to foreclose the lien provided for in this Article, the Board shall record a further notice, similarly signed, stating the satisfaction and releasing of such lien.

Each assessment lien may be foreclosed in the same manner as the foreclosure of a mortgage upon real property under the laws of the State of California, or may be enforced by sale pursuant to Sections 2924, 2924(b), 2924(c) and 1356 of the California Civil Code, and to that end a power of sale is hereby conferred upon the Corporation. The Corporation, acting on behalf of the Owners, shall have the power to bid for the Condominium at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments, rent and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

Section 7.9. Subordination of the Lien to First Deeds of Trust and First Mortgages. The lien of the assessments, interest, penalties, costs and attorney's fees provided for herein shall be subordinate to the lien of any first Mortgage upon any Condominium. Sale or transfer of any Condominium shall not affect the assessment lien. However, the sale or transfer of any Condominium pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Condominium from lien rights for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchaser of a Condominium obtains title to the same as a result of foreclosure, such acquirer of title, his successors and assigns, shall not be liable for the share of the Common Expenses or assessments by the Corporation chargeable to such Condominium which became due prior to the acquisition of title to such Condominium by such acquirer. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all of the Condominiums, including such acquirer, his successors and assigns.

Section 7.10. Treatment of Monetary Penalty. A monetary penalty imposed by the Corporation as a disciplinary measure for failure of a Member to comply with the Declaration or Bylaws or as a means of reimbursing the Corporation for costs incurred by the Corporation in the repair of damage to the Common Area for which the Member was allegedly responsible or in bringing the Member and his Condominium into compliance with the Declaration or Bylaws, shall not be treated as an assessment which may become a lien against the Member's Condominium enforceable as provided

in Section 1356 of the Civil Code. This Section shall not apply to charges imposed against an Owner which are reasonable late payment penalties for delinquent assessments nor charges to reimburse the Corporation for the loss of interest and for costs reasonably incurred (including attorney's fees) in its efforts to collect delinquent assessments.

Section 7.11. Estoppel Certificate. The Corporation shall furnish, upon demand by any person, a certificate signed by an officer of the Corporation setting forth whether the assessments on a specified Condominium have been paid. A properly executed certificate of the Corporation as to the status of assessments on a Condominium is binding upon the Corporation as of the date of its issuance.

Section 7.12. Personal Liability of Owner. No Owner may exempt himself from personal liability for assessments levied by the Corporation, nor release the Condominium owned by him from the liens and charges hereof by waiver of the use or enjoyment of any of the Common Area or by abandonment of his Condominium.

Section 7.13. Taxation of Corporation. In the event that any taxes are assessed against the Common Area or the personal property of the Corporation, rather than against the individual Condominiums, said taxes shall be added to the annual assessments and, if necessary, a special assessment may be levied against the Condominium in an amount equal to said taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

Section 7.14. Capitalization of Corporation. Upon acquisition of record title to a Condominium from Declarant, each Owner shall contribute to the capital of the Corporation an amount equal to one-sixth (1/6) the amount of the then annual assessment for that Condominium as determined by the Board. This amount shall be deposited by the buyer into the purchase and sale escrow and disbursed therefrom to the Corporation. Amounts paid pursuant to this Section 7.14 shall not be considered as advance payments of regular assessments and are in addition to and not in lieu of annual and special assessments of the Corporation.

## ARTICLE VIII

### RESPONSIBILITIES OF MAINTENANCE

Section 8.1. Association Maintenance. The Association shall maintain and provide for the maintenance of the Recreation Area and all improvements thereon in good repair and appearance. The Association shall provide landscaping and gardening to properly maintain and periodically replace when necessary the trees,

plants, grass and other vegetation originally placed in the Recreation Area by Declarant, pursuant to landscape plans submitted to The City of San Diego and approved by said City. Anything contained herein to the contrary notwithstanding, it is contemplated that an easement for maintenance purposes will be granted to the Community Association over those portions of the Recreation Area, including Lots 98 through 102, inclusive, of BERNARDO HEIGHTS UNIT NO. 11 according to Map thereof No. 9968 filed in the Office of the County Recorder of San Diego County, California, and Lot 106 of BERNARDO HEIGHTS UNIT NO. 12 according to Map thereof No. 9970 filed in the Office of the County Recorder of San Diego County, California, on January 15, 1981. Recreation Area over which maintenance easements are granted to the Community Association will become part of the Community Common Area and shall be maintained by the Community Association.

Section 8.2. Maintenance of Condominium Property. Each Owner of a Condominium shall be responsible for the maintenance and repair of the glass doors and windows enclosing his Living Unit, including the metal frames and tracks of glass doors and windows, the interior of his Living Unit and all appliances whether "built-in" or freestanding within the Living Unit and the interior surfaces of the Living Unit, and shall also be responsible for the maintenance and repair of the plumbing, electrical and heating systems servicing his Living Unit and located within the outside perimeter of the exterior walls, floors and ceilings thereof, including television cable equipment and connections, so long as those systems are used exclusively by such Owner and not in common, and all appliances and equipment located within or without said Living Unit. Each Owner shall also be responsible for the maintenance and repair of the Patio, Yard and Entry, if any, which he has the exclusive right to use, including the interior, interior surfaces of any fences and railing and any windows, and shall make repairs in such manner as shall be deemed necessary in the judgment of the Board to preserve the attractive appearance thereof and protect the value thereof. All such repairs and replacements shall be made in accordance with the original construction by Declarant, unless deviations therefrom are approved in writing by the Board.

Section 8.3. Failure of Owner to Maintain. In the event an Owner fails to maintain the areas as set forth above, and the plumbing, electrical and heating systems thereof as provided above or make repairs thereto in such manner as shall be deemed necessary in the judgment of the Board to preserve the attractive appearance thereof and protect the value thereof, the Board shall give written notice to such Owner, stating with particularity the work of maintenance or repair which the Board finds to be required and requesting that the same be carried out within a period of thirty (30) days from the giving of such notice. In

the event the Owner fails to carry out such maintenance or repair within the period specified by the notice, the Board shall cause such work to be done and shall assess the cost thereof to such Owner.

Section 8.4. Owner's Grant of Easements. Each Owner hereby grants easements to other Owners to enter into each Living Unit and to have utility companies enter into Living Units to repair the plumbing, heating and electrical systems located thereon, subject to the following limitations. Entry into a Living Unit for emergency purposes may be immediate; provided, however, such entry shall be made with as little inconvenience as possible to the Owner and any damage caused thereby shall be repaired by the entering party. Entry into a Living Unit for other than emergency repairs shall be made only after three (3) days notice has been given to the Owner and shall be made with as little inconvenience as possible to the Owner and any damage caused thereby shall be repaired by the entering party.

Section 8.5. Corporation Maintenance of Common Area. Except as otherwise provided herein, the Corporation acting through the Board and its officers shall have the sole and exclusive right and duty to manage, operate, control, repair, replace or restore all of the Common Area or any portion thereof, together with the improvements, trees, shrubbery, plants and grass thereon, all as more fully set forth in this Declaration, the Articles and the Bylaws.

Section 8.6. Corporation Right of Entry. For the purpose of performing the maintenance of the Common Area or for any other purpose reasonably related to the performance by the Board of its responsibilities under this Declaration, the Corporation agents and employees shall have the right to enter any Living Unit or upon any portion of the Common Area to effect emergency repairs. For other than emergency repairs, the Corporation agents and employees shall have the right to enter any Living Unit or any Exclusive Use Area portion of the Common Area to effect repairs, improvements, replacements or maintenance which the Corporation, after approval by two-thirds (2/3) vote of the Board, reasonably deems necessary. Such entry shall be made with as little inconvenience to the Owner as possible and any damage caused thereby shall be repaired by the Corporation. Further, such entry for other than emergency repairs shall be made only after no less than three (3) days' notice has been given to the Owner.

Section 8.7. Corporation Right to Adopt Rules. The Board shall have the right to adopt reasonable rules not inconsistent with the provisions contained in this Declaration, and to amend the same from time to time relating to the use of the Common Area and the recreational and other facilities situated thereon by

Owners and by their tenants or guests, and the conduct of such persons with respect to automobile parking, outside storage of boats, trailers, bicycles and other objects, disposal of waste materials, drying of laundry, control of pets and other activities which, if not so regulated, might detract from the appearance of the community or offend or cause inconvenience or danger to persons residing or visiting therein. Such rules may provide that the Owner of a Condominium whose occupant leaves property on the Common Area in violation of the rules may be assessed (on a non-lien basis) to cover the expense incurred by the Corporation in removing such property and storing or disposing thereof, after appropriate notice and an opportunity for a hearing before the Board and a two-thirds (2/3) vote of approval by the Board. The Board may suspend the voting rights and right to use the recreational facilities located on the Common Area of a Member who is in default in the payment of any assessment for any period during which such assessment remains unpaid, and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations, after reasonable written notice and an opportunity for a hearing before the Board as set forth in the Bylaws which satisfies the minimum requirements of Section 7341 of the California Corporations Code.

Section 8.8. Corporation Right to Grant Permits. The Board shall have the right to grant permits, licenses and easements over, under, upon and across the Common Area for utilities, roads and other purposes reasonably necessary or useful for the property maintenance or operation of the Project. The Board shall, upon written request from an Owner, grant permits, licenses and easements over, under and across the Common Area for purposes of permitting the installation and maintenance of solar heating systems to serve the Living Unit owned by such Owner, subject only to reasonable rules adopted by the Board with regard to maintenance, applicable zoning regulations, the Uniform Building Code and associated ordinances, and reasonable architectural standards adopted by the Board or the architectural committee appointed by the Board.

## ARTICLE IX

### ARCHITECTURAL CONTROL

No building, fence, wall or other structure or improvement shall be commenced, erected, placed or altered upon the Common Area until the location and complete plans and specifications showing the nature, kind, shape, height and materials, including the color scheme, have been submitted to and approved in writing as to harmony of external design and location of surrounding structures and topography by the Board, or by an architectural committee appointed by the Board and composed of three (3) or

more, but not to exceed five (5), representatives. In the event the Board or its designated committee fails to approve or disapprove such locations, plans and specifications or other requests within thirty (30) days after the submission thereof to it, then such approval will not be required, provided that any structure or improvement so erected or altered conforms to all of the conditions and restrictions herein contained, and is in harmony with similar structures erected within the Project. The grade, level or drainage characteristics of the Condominium Property or any portion thereof, shall not be altered without the prior written consent of the Board or its designated committee. The provisions of this Article shall not apply to the initial construction by Declarant of Condominiums or other improvements to the Condominium Property, and neither the Board nor any committee appointed by the Board shall have any authority or right to approve or disapprove the initial construction by Declarant of Condominiums or other improvements to the Condominium Property.

#### ARTICLE X

##### SEPARATION OF INTEREST AND PARTITION PROHIBITED

Section 10.1. No Separation of Interests. No Owner may sell, assign, lease or convey his interest in the Common Area separate and apart from his Living Unit nor any portion of his Living Unit apart from the entire Living Unit, nor his interest in any Exclusive Use Area separate and apart from his interest in the Common Area and Living Unit.

Section 10.2. Partition. Each of the Owners of a Condominium, whether such ownership is in fee simple or as a tenant in common, is hereby prohibited from partitioning or in any other way severing or separating such ownership from any of the other ownerships in the Condominium Property, except upon the showing that: (i) more than three (3) years before the filing of the action, the Project was damaged or destroyed so that a material part thereof was unfit for its use and the Project has not been rebuilt or repaired substantially to its state prior to its damage or destruction, or (ii) that three-fourths (3/4) or more of the Project has been destroyed or substantially damaged, and that Owners holding in aggregate more than a fifty percent (50%) interest in the Common Area are opposed to repair or restoration of the Project, or (iii) that the Project has been in existence in excess of fifty (50) years, that it is obsolete and uneconomic, and that Owners holding in aggregate more than a fifty percent (50%) interest in the Common Area are opposed to repair or restoration of the Project; provided, however, that if any Condominium shall be owned by two (2) or more co-tenants as tenants in common or as joint tenants, nothing herein shall be

deemed to prevent a judicial partition as between such co-tenants and no Condominium may be partitioned or subdivided without the prior written approval of the Mortgagee holding the first Mortgage on that Condominium.

Section 10.3. Power of Attorney. The Corporation is hereby granted an irrevocable power of attorney to sell the Condominium Property for the benefit of all the Owners thereof when the partition of the Owners' interests in said Condominium Property may be had pursuant to Section 10.2 above. The power of attorney herein granted may be exercised upon the vote or written consent of Owners holding in the aggregate at least two-thirds (2/3) of the interest in the Common Area by any two (2) Members of the Board who are hereby authorized to record a certificate of exercise in the Office of the County Recorder of San Diego County, which certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith; provided, however, that said power of attorney shall not apply to the Administrator of Veterans Affairs, an officer of the United States of America.

ARTICLE XI

RIGHT OF MORTGAGEES

Provided that the Mortgagee informs the Corporation in writing of its appropriate address and requests in writing to be notified, neither the Corporation nor any Owner shall do any of the following, unless first Mortgagees of Mortgagees encumbering at least sixty-seven percent (67%) of the Condominiums which are encumbered by a Mortgage have given their prior written approval:

(a) Seek, by act or omission, to abandon the Condominium Project or to terminate the Condominium Plan or this Declaration (whether or not because of any destruction of the Project), or change, waive or abandon any scheme of regulation or enforcement thereof pertaining to the architectural design or the exterior appearance or maintenance of Living Units or the Common Area;

(b) Change the prorata interest or obligations of any Condominium for purposes of levying assessments or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the prorata share of the Common Area appurtenant to each Living Unit;

(c) Partition or subdivide any Condominium;

(d) Seek, by act or omission, to abandon, partition, subdivide, encumber, sell or transfer the Common Area; provided, however, that the granting of easements for public utility or



other public purposes consistent with the uses of the Common Area shall not be deemed a transfer within the meaning of this provision;

(e) Use hazard insurance proceeds for losses to any portion of the Condominium Property for other than the repair, replacement or reconstruction of the Condominium Property, except as may be provided by statute upon substantial loss to the Living Unit or Common Area;

(f) Fail to maintain fire and extended coverage insurance on the Common Area and improvements thereto on a current replacement cost basis in an amount less than one hundred percent (100%) of the insurable value, based on current replacement cost.

## ARTICLE XII

### DAMAGE, DESTRUCTION AND CONDEMNATION OF COMMON AREA

Section 12.1. Damage. If any portion of the Common Area is damaged or destroyed by fire or other casualty, then:

(a) If the cost of repairing or rebuilding does not exceed the amount of available insurance proceeds by more than five percent (5%) of the budgeted gross expenses of the Corporation for the fiscal year during which the repairs or rebuilding is necessitated, the Board shall thereupon contract to repair or rebuild the damaged portions of the Common Area substantially in accordance with the original plans and specifications therefor.

(b) If the cost of repairing or rebuilding exceeds the amount of available insurance proceeds by more than five percent (5%) of the budgeted gross expenses of the Corporation for the fiscal year during which the repairs or rebuilding is necessitated, and if the Owners holding in aggregate more than fifty percent (50%) interest in the Common Area agree to the repair or restoration of the Project, then the Board shall contract as provided in (a) above.

(c) If said Owners do not so agree to the repair or rebuilding of the Common Area, then each Owner (and his Mortgagee(s) as their respective interests shall then appear) shall be entitled to receive that portion of insurance proceeds equal to the proportion of the decrease in fair market value of his Condominium as compared to the aggregate decrease in fair market values of all the Condominiums caused by such damage or destruction. For purposes hereof, fair market value shall be determined by a member of the American Institute of Real Estate Appraisers selected by the Board and hired by and at the expense of the Corporation. Should dispute arise as to the distribution of

the same pursuant to new or changed plans and specifications. In the event the Board fails to approve or disapprove such changed plans and specifications within sixty (60) days following receipt thereof, they shall be deemed to have been approved.

Section 12.4. Taking of Living Unit. In the event of any taking of a Living Unit, the Owner (and his Mortgagees as their interests may then appear) of the Living Unit shall be entitled to receive the award for such taking and after acceptance thereof he (and his Mortgagee) shall be divested of any further interests in the Condominium Property if such Owner shall vacate his Living Unit as the result of such taking. In such event, said Owner shall grant his remaining interests in the Common Area appurtenant to the Living Unit so taken, if any, to the other Owners owning a fractional interest in the same Common Area, such grant to be in proportion to the fractional interest in the Common Area then owned by each.

Section 12.5. Insurance. The Corporation shall obtain and continue in effect the following insurance:

(a) A master fire insurance policy with glass coverage and extended coverage endorsement for the full insurable value of all of the improvements within the Project. "Improvements" means and refers to the Common Area together with those appliances and improvements located within the Living Units provided by Declarant to the initial Owners of Condominiums and does not include items not provided by Declarant. The form and content of such policy must be satisfactory to all institutional first trust deed lenders and shall meet the maximum standards of the various institutional first trust deed lenders whose loan(s) encumber any of the Condominiums.

(b) A public liability and property damage insurance policy with cross liability endorsement, if available, insuring the Corporation, any manager, the Declarant and the Owners against liability incident to ownership or use of the Common Area. The limits of such insurance shall not be less than \$1,000,000.00 covering all claims for death, personal injury and property damage arising out of a single occurrence.

(c) If requested by Members of the Corporation who have at least ten percent (10%) of the Corporation's voting power or any first Mortgagee or any insurer or governmental guarantor of any first Mortgage, a fidelity bond covering Members of the Board, officers and employees of the Corporation, and employees of any manager or managing agent, whether or not such persons are compensated for their services, naming the Corporation as obligee and written in an amount equal to at least one hundred fifty per-

cent (150%) of the estimated annual operating expenses of the Corporation, including reserves.

(d) Workers' compensation insurance covering any employees of the Corporation.

Insurance premiums for the insurance policies set forth above shall be a Common Expense to be included in the annual assessments levied by the Corporation. Each Owner shall be responsible to pay any deductible amount for any loss to his Condominium. Each Owner may separately insure the improvements not covered by the master fire insurance policy and personal property within his Living Unit. No Owner shall insure his Condominium in any manner which would cause any diminution in insurance proceeds from the master policy. Should any Owner violate this provision he shall be responsible to the Corporation for any such diminution. Copies of all such insurance policies (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Corporation and open for inspection by Owners at any reasonable time(s). All such insurance policies shall (i) provide that they shall not be cancellable by the insurer without first giving at least ten (10) days' prior notice in writing to the Corporation, and (ii) contain a waiver of subrogation by the insurer(s) against the Corporation, Board and Owners. Anything contained herein to the contrary notwithstanding, the Corporation shall maintain such insurance coverage as may be required by the Federal National Mortgage Association ("FNMA") so long as FNMA holds a mortgage on or owns any Condominium.

Section 12.6. Mortgagee Approval. Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with original plans and specifications, unless other action is approved by Eligible Mortgage Holders of first Mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Mortgage Holders' Mortgages.

### ARTICLE XIII

#### USE OF LIVING UNITS AND COMMON AREA AS DESCRIBED IN CONDOMINIUM PLAN

Section 13.1. Residential Purposes. Each Living Unit shall be improved, used and occupied for private, single-family dwelling purposes only, and no portion thereof nor the Common Area shall be used for any commercial purpose whatsoever; provided, however, Declarant may use any of the Living Units and Exclusive Use Areas owned or leased by Declarant as model homes

and sales offices during that period of time commencing when the Condominiums are first sold or offered for sale to the public and ending when all the Condominiums in the Project are sold and conveyed by Declarant to separate owners thereof or five (5) years after the first escrow closes, whichever first occurs.

Section 13.2. Lease of Condominium. Each Owner shall have the right to lease his Condominium, provided that such lease is in writing and provides that the tenant shall be bound by and obligated to the provisions of this Declaration, the Bylaws and the rules and regulations of the Board, and that the failure to comply with the provisions of these documents shall be a default under the lease. With the exception of a lender in possession of a Condominium following a default under a first Mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure, no Owner shall lease his Condominium for transient or hotel purposes. Any lease which is either for a period of less than thirty (30) days or pursuant to which the lessor provides any services normally associated with a hotel, shall be deemed to be for transient or hotel purposes.

Section 13.3. No Use Causing Loss of Insurance. No Living Unit, Exclusive Use Area or improvements situated therein shall be occupied or used for any purpose or in any manner which shall cause such improvements to be uninsurable against loss by fire or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or cause any such policy or policies representing such insurance to be cancelled or suspended, or the company issuing the same to refuse renewal thereof.

Section 13.4. Pets. Not exceeding a total of two (2) usual and ordinary household pets (exclusive of caged birds or aquarium fish) may be kept in any Living Unit or Exclusive Use Area without the prior written consent of the Board. Pets shall not be allowed on other portions of the Common Area except as may be permitted by rules made by the Board. Except as provided hereinabove, no animals, livestock, birds or poultry shall be brought within the Condominium Property or kept in any Living Unit or on any portion of the Common Area. No pet shall be permitted to be kept within any portion of the Condominium Property if it makes excessive noise or otherwise constitutes an unreasonable annoyance to other Owners.

Section 13.5. Nuisance. No Living Unit or Exclusive Use Area shall be used in such manner as to obstruct or interfere with the enjoyment of occupants of other such areas or annoy them by unreasonable noise or otherwise, nor shall any nuisance be committed or permitted to occur in any Living Unit nor on the Common Area.

Section 13.6. Sign Control. No signs other than one sign of customary and reasonable dimensions advertising a Condominium for sale or lease shall be erected or displayed in any Living Unit so that it is visible from without such Living Unit without the prior written permission of the Board, and all signs must conform with applicable governmental ordinances. No signs shall be erected or displayed on the Common Area except signs placed by authority of the Board. Anything contained in this Declaration to the contrary notwithstanding, Declarant shall have the right to install and maintain during the sales period set forth in Section 13.1 above, such signs, poles and advertisements as it deems appropriate in connection with its sales program for the sale to the public of Condominiums.

Section 13.7. Outside Antennae. There shall be no outside television or radio antennae, masts, poles or flag poles constructed, installed or maintained on the Condominium Property for any purpose whatsoever.

Section 13.8. Owner Not to Alter Common Area. Except as otherwise specifically provided herein, nothing herein contained shall give the Owner the right to paint, decorate, remodel, landscape or adorn any part or parcel of the Common Area without the written consent of the Board.

Section 13.9. No Offensive Activity. No noxious or offensive activity shall be carried on in any Living Unit or on the Common Area, nor shall anything be done therein which may be or become an annoyance or nuisance to the other Owners other than construction or repair of improvements made at the Board's instruction or at Declarant's instruction. Nothing shall be done in any Living Unit or in, on or to the Common Area which will impair the structural integrity of any building, or which would structurally change any building located therein. Except as otherwise provided herein, nothing shall be altered or constructed in or removed from the Common Area except upon the written consent of the Board or an architectural committee appointed by the Board. All equipment, garbage cans, wood piles or storage piles shall be kept screened and concealed from view of neighboring Living Units, streets and Common Area. All rubbish, trash or garbage shall be regularly removed from each Living Unit, and shall not be allowed to accumulate thereon or on the adjacent Common Area. No fences, hedges or walls shall be erected or maintained upon the Condominium Property except such as are installed in accordance with the initial construction of the buildings located on the Condominium Property or as allowed by the Board. No exterior clotheslines shall be erected or maintained, and there shall be no outside drying or laundering of clothes on the Common Area, except in areas which may be approved by the Board.

Section 13.10. Power Equipment. No power equipment, hobby shops or car maintenance (other than emergency work) shall be permitted on the Condominium Property, except with prior written approval of the Board. Approval shall not be unreasonably withheld and in deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections.

Section 13.11. Use of Common Area. Except as otherwise provided herein, the Common Area shall be improved and used only for the following purposes:

(i) affording vehicular passage and pedestrian movement within the Condominium Property, including access to the Living Units;

(ii) recreational use by the Owners and occupants of Living Units in the Condominium Property and their guests, subject to rules established by the Board;

(iii) beautification of the Common Area and providing privacy to the residents of the Condominium Property through landscaping and such other means as the Board shall deem appropriate;

(iv) parking of automotive passenger vehicles in areas provided therefor as may be designated and approved by the Board by such persons, upon such terms and conditions and for such fees as may from time to time be determined by the Board;

(v) as Exclusive Use Areas to be used in the manner hereinafter described. Nothing herein shall be deemed to allow persons other than the Owner of a Living Unit to which an Exclusive Use Area is appurtenant (or his tenants and lessees) to enjoy the use thereof.

No part of the Common Area shall be obstructed so as to interfere with its use for the purposes hereinabove permitted, nor shall any part of the Common Area be used for storage purposes (except as incidental to one of such permitted uses, or for storage of maintenance equipment used exclusively to maintain the Common Area or in storage areas designated by the Board), nor in any manner which shall increase the rate of which insurance against loss by fire, or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or bodily injury, or property damage liability insurance covering the Common Area and improvements situated thereon may be obtained, or cause such premises to be uninsurable against such risks or any policy or

policies representing such insurance to be cancelled or suspended or the company issuing the same to refuse renewal thereof.

Section 13.12. Additional Use. The Board shall have the right to allow one or more Owners to exclusively use portions of the otherwise nonexclusive Common Area, provided that such portions of the Common Area are nominal in area and adjacent to the Owner's Exclusive Use Area(s) or Living Unit, and, provided further, that such use does not unreasonably interfere with any other Owner's use or enjoyment of the Project.

Section 13.13. Owners Liable for Damage. Each Owner shall be legally liable to the Association for all damages to the Common Area or to any improvements thereof or thereto, including, but not limited to, the buildings, recreation facilities and landscaping caused by such Owner, his licensee(s) or any occupant of such Owner's Living Unit as such liability may be determined under California law. Each Owner shall be responsible for compliance with the provisions of the Declaration, Articles, Bylaws and rules of the Board by his guests, lessees and all occupants of his Living Unit, and shall, after written notice and an opportunity for a hearing, pay the fines and penalties assessed pursuant hereto, the Bylaws or Board rules for any violation by his guests, lessees and occupants of his Living Unit.

Section 13.14. Interior Surfaces. Each Owner shall have the right, at his sole cost and expense, to maintain, repair, paint, paper, panel, plaster, tile and finish the interior surfaces of the ceilings, floors, window frames, door frames, trim and perimeter walls of the Living Unit, and the surfaces of the bearing walls and partitions located within the Living Unit. Each Owner shall have the right to substitute new finished surfaces in place of those existing on said ceiling, floors, walls and doors of said Living Unit.

Section 13.15. Exclusive Use Areas Appurtenant. Each Exclusive Use Area shall be (i) appurtenant to the Living Unit with which the Exclusive Use Area is conveyed, and (ii) used only for the purposes set forth in the Declaration. The right to so use an Exclusive Use Area shall be exercisable only by the Owner(s) of the Condominium appurtenant thereto and/or said Owner's tenants and licensee(s). Conveyance of a Condominium shall effect conveyance of Exclusive Use Areas appurtenant thereto and transfer of all rights thereto to the vested Owner of the Condominium. Any license(s) thereto shall be terminated upon such conveyance. No Exclusive Use Area or any rights thereto (other than said revokable licenses) shall be transferred or conveyed apart from conveyance of the Condominium to which they are appurtenant. Each Exclusive Use Area shall be deemed to be Common Area for all

those purposes set forth in this Declaration which are not inconsistent with this Article XIII or Article VIII.

Section 13.16. Use of Exclusive Use Areas. Each Owner shall have the following rights with regard to the Entry, Yard or patio, if any, which he has the exclusive right to use:

(a) To place furniture, barbeque equipment and potted plants upon said area.

(b) If appropriate areas exist therefor, to landscape and plant flowers and shrubs which do not unreasonably interfere with the enjoyment of adjacent Living Units and Exclusive Use Areas.

Except as provided in this Section 13.16, nothing contained herein shall give any Owner the right to paint, decorate, remodel or alter said Exclusive Use Areas or any other part of the Common Area without the prior written consent of the Board.

Section 13.17. Age Restriction. No Living Unit shall be occupied as a permanent residence by any person under the age of nineteen (19) years. As used herein "permanent residence" means occupancy by one (1) person for more than sixty (60) consecutive days or for more than ninety (90) days in the aggregate during any calendar year.

#### ARTICLE XIV

#### ENFORCEMENT

Section 14.1. Association. The Association, Declarant or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by Articles II, III, IV and V of this Declaration.

Section 14.2. Corporation. The Corporation, Declarant or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of Articles of this Declaration other than those set forth in Section 14.1 above.

Section 14.3. No Waiver. Failure by the Association, the Corporation, Declarant or any Owner to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

Section 14.4. Mortgagee Protection. A breach of any of the covenants, conditions, restrictions or other provisions of this



Declaration shall not affect or impair the lien or charge of any bona fide Mortgage made in good faith and for value on any Condominium; provided, however, that any subsequent Owner of the Condominium shall be bound by the provisions of this Declaration, whether such Owner's title was acquired by foreclosure or by a trustee's sale or otherwise.

## ARTICLE XV

### GENERAL PROVISIONS

Section 15.1. Severability. Should any provision in this Declaration be void or become invalid or unenforceable in law or equity by judgment or court order, the remaining provisions hereof shall be and remain in full force and effect.

Section 15.2. Amendment. Except as may otherwise be stated in this Declaration, so long as there is more than one (1) class of members of the Association, Articles II, III, IV and V, Section 14.1 of Article XIV, and Sections 15.2, 15.6 and 15.7 of Article XV of this Declaration may be amended at any time and from time to time by an instrument in writing signed by members of the Association entitled to exercise sixty-six and two-thirds percent (66-2/3%) or more of the voting power of each class of members of the Association. After the conversion of the Class B membership to Class A membership in the Association said provisions may be amended at any time and from time to time by an instrument in writing signed by (i) sixty-six and two-thirds percent (66-2/3%) or more of the total voting power of members of the Association, and (ii) at least sixty-six and two-thirds percent (66-2/3%) of the voting power of the members of the Association other than Declarant. Prior to conversion of the Class B membership in the Corporation to Class A membership, all other provisions of this Declaration may be amended at any time and from time to time by an instrument in writing signed by Members of the Corporation entitled to exercise sixty-six and two-thirds percent (66-2/3%) or more of the voting power of each class of Members of the Corporation. After conversion of the Class B membership in the Corporation to Class A membership, all such other provisions of this Declaration may be amended by an instrument in writing signed by (i) sixty-six and two-thirds percent (66-2/3%) or more of the total voting power\* of Members of the Corporation, and (ii) at least sixty-six and two-thirds percent (66-2/3%) of the voting power of Members of the Corporation other than Declarant. An amendment shall become effective upon the recording thereof with the Office of the County Recorder of San Diego County, California. Anything contained herein to the contrary notwithstanding, no material amendment may be made to this Declaration without the prior written consent of Eligible Mortgage Holders whose Mortgages encumber fifty-one percent (51%)

or more of the Condominiums within the Condominium Property which are subject to Eligible Mortgage Holder Mortgages. "Material amendment" shall mean, for purposes of this Section 15.2, any amendment to provisions of this Declaration governing any of the following subjects:

- (a) The fundamental purpose for which the Project was created (such as a change from residential use to a different use).
- (b) Assessments, assessment liens and subordination thereof.
- (c) The reserve for repair and replacement of the Common Area or Recreation Area.
- (d) Property maintenance and repair obligations.
- (e) Casualty, liability insurance and fidelity bonds.
- (f) Reconstruction in the event of damage or destruction.
- (g) Rights to use the Common Area or Recreation Area.
- (h) Annexation.
- (i) Voting.
- (j) The percentage interest of the Owners in the Common Area.
- (k) Boundaries of any Living Unit.
- (l) The interests in Exclusive Use Areas and other portions of the Common Area.
- (m) Leasing of Condominiums.
- (n) Imposition of any right of first refusal or similar restriction on the right of a Condominium Owner to sell, transfer or otherwise convey his Condominium.
- (o) Any provision which, by its terms, is specifically for the benefit of first Mortgagees, or specifically confers rights on first Mortgagees.

An amendment to the Declaration shall not be considered material if it is for the purpose of correcting technical errors or for clarification. An Eligible Mortgage Holder who receives a written request to approve amendments (including additions) who does not deliver or mail to the requesting party a negative

response within thirty (30) days, shall be deemed to have approved such request.

Anything contained in this Declaration to the contrary notwithstanding, Sections 1.11 through 1.21, inclusive, of Article I and Sections 5.1 through 5.5, inclusive, of Article V of this Declaration may not be amended, modified or rescinded without the prior written consent of the Community Board, and no such amendment, modification or rescission shall be effective without recording the written consent in the Office of the County Recorder of San Diego County, California.

Section 15.3. Term of Restrictions. Each and all of these covenants, conditions and restrictions shall terminate on December 31, 2030, after which date they shall automatically be extended for successive periods of ten (10) years unless the Owners have executed and recorded at any time within six (6) months prior to December 31, 2030, or within six (6) months prior to the end of any such ten (10) year period, in the manner required for a conveyance of real property, a writing in which it is agreed that said restrictions shall terminate on December 31, 2030, or at the end of any such ten (10) year period.

Section 15.4. FHA and VA Approval. So long as there is a Class B membership in the Association, the following shall require prior approval of the FHA and VA: annexation of additional properties to the Project, mergers and consolidations, special assessments and any amendment to this Declaration.

Section 15.5. Annexation to Condominium Property and to Corporation.

(a) The Condominium Property is the first phase of a projected eight (8) phase staged Condominium development as set forth in Recital D of this Declaration. When completed, Declarant contemplates that the entire Condominium Project will consist of approximately 150 Condominiums. Nothing contained herein, however, shall require Declarant to complete the future phases of the planned overall Condominium Project.

(b) If, within three (3) years of the date of the original issuance by the California Department of Real Estate of the most recently issued Final Subdivision Public Report covering a phase of the overall Condominium Project, Declarant should develop additional lands within the property described in Recital D of this Declaration, such additional lands or any portion thereof may be added to and included within the jurisdiction of the Corporation by action of Declarant without the assent of

Members of the Corporation; provided, however, that the development of the additional lands shall be in accord with the plan of development submitted to the Department of Real Estate prior to the time a Final Subdivision Public Report is issued in connection with the first phase and, if applicable, to the VA. Said annexation may be accomplished by the recording of a Declaration of Annexation or by the recording of a separate Declaration of Restrictions which requires Owners of Condominiums therein to be Members of the Corporation. The obligation of Condominium Owners to pay dues to the Corporation and the right of such Condominium Owners to exercise voting rights in the Corporation shall not commence until the first day of the month following close of the first sale of a Condominium by Declarant in that particular phase of development.

(c) Subject to annexation of additional property as set forth above:

(i) Declarant hereby reserves for the benefit of and appurtenant to the Condominiums hereinafter located in Phases 2 through 8 described in Recital D, and their respective Owners, non-exclusive easements to use the Common Area in the Condominium Property (other than any residential building or Exclusive Use Area) pursuant to and in the manner set forth in this Declaration to the same extent and with the same effect as if each of the Owners of a Condominium in said Lots owned an undivided interest in the Common Area in the Condominium Property.

(ii) Declarant hereby grants, for the benefit of and appurtenant to each Condominium in the Condominium Property, and their Owners, the non-exclusive easement to use the Common Area (other than any residential building or Exclusive Use Area) in Phases 2 through 8 described in Recital D, as the case may be, pursuant to the provisions of and in the manner prescribed by this Declaration to the same extent and with the same effect as if each of the Owners of a Condominium in the Condominium Property owned an undivided interest in the Common Area of the property so annexed.

The reciprocal cross-easements set forth herein shall be effective as to Phases 2 through 8, respectively, and as to the Condominium Property only at such time as Phases 2 through 8, respectively, have been annexed by the recording of a Declaration of Annexation or separate Declaration of Restrictions by Declarant and prior to that time the Condominium Property shall not be affected hereby nor shall the Owners of Phases 2 through 8, respectively, have such rights in the Common Area within the Condominium Property.

Section 15.6. Annexation to Association.

(a) The Condominium Property is also an increment of the overall planned development of the Real Property as set forth in Recital E to this Declaration. When completed, Declarant contemplates that the entire planned development of the Real Property will consist of approximately 700 dwelling units. Some dwelling units will be Condominiums and some detached single-family dwellings. Nothing contained herein, however, shall require Declarant to complete the future phases of the overall planned development of the Real Property.

(b) If, within three (3) years of the date of the original issuance by the California Department of Real Estate of the most recently issued Final Subdivision Public Report for a phase of the overall planned development of the Real Property, Declarant should develop additional lands within the Real Property, such additional lands or any portion thereof may be added to and included within the jurisdiction of the Association by action of Declarant without the assent of members of the Association; provided, however, that the development of the additional lands shall be in accord with the plan of development submitted to the Department of Real Estate prior to the time a Final Subdivision Public Report is issued in connection with the Condominium Property. Said annexation may be accomplished by the recording of a Declaration of Restrictions which requires owners of lots described therein to be members of the Association. The obligation of such owners to pay dues to the Association and the right of such owners to exercise voting rights in the Association shall not commence until the first day of the month following close of the first sale of a Lot by Declarant in that particular phase of development.

Section 15.7. Annexation to Recreation Area. As additional land within the Real Property is developed Declarant will convey additional lands to the Association which, upon conveyance to the Association, will become part of the Recreation Area. Said lands may be conveyed to the Association by Declarant without the consent of the Association or its members at any time during which Declarant retains the right to annex additional lands to the jurisdiction of the Association as set forth in Section 15.6 above. Nothing contained herein shall require Declarant to convey any of said land to the Association.

Section 15.8. Amendment to Sections 15.5, 15.6 and 15.7. Sections 15.5, 15.6 and 15.7 shall not be amended without the written approval of Declarant attached to the instrument of amendment.

Section 15.9. Annexation by Owners. In addition to the provisions of Sections 15.5, 15.6 and 15.7 above, additional land may be annexed to the jurisdiction of the Corporation and to the Condominium Property upon the vote or written consent of two-thirds (2/3) of the voting power of each class of Members of the Corporation, and additional land may be annexed to the jurisdiction of the Association and to the Real Property upon the vote or written consent of two-thirds (2/3) of the voting power of members of the Association.

Section 15.10. Litigation. In the event any person or entity shall commence litigation to enforce any of the covenants, conditions or restrictions herein contained, the prevailing party in such litigation shall be entitled to costs of suit and such attorney's fees as the Court may adjudge reasonable and proper. The "prevailing party" shall be the party in whose favor a final judgment is entered.

Section 15.11. Encroachment Easement. The Owner of each Condominium is hereby declared to have an easement over all adjoining Living Units and the Common Area for the purpose of accommodating any encroachments due to engineering errors, errors in original construction, settlement or shifting of any building, or any other cause. There shall be valid 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, settlement or shifting; provided, however, that in no event shall a valid 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 Condominium Property is partially or totally destroyed and then repaired or rebuilt, each Owner agrees that minor encroachments over adjoining Living Units or Common Area shall be valid easements for the maintenance of said encroachments so long as they shall exist.

Section 15.12. Improvements to Recreation Area. In the event that the improvements to be installed by Declarant to the Recreation Area have not been completed prior to the issuance by the California Department of Real Estate of a Final Subdivision Public Report covering the Condominium Property, and in the further event that the Association is the obligee under a bond to secure performance by the Declarant to complete such improvements, then if such improvements have not been completed and a Notice of Completion filed within sixty (60) days after the completion date specified in the Planned Construction Statement appended to the bond, the Association Board shall consider and vote upon the question of whether or not to bring action to enforce the obligations under the bond. If the Association has given an extension in writing for the completion of any such improvement then the

Association Board shall consider and vote on said question if such improvements have not been completed and a Notice of Completion filed within thirty (30) days after the expiration of the extension period. In the event that the Association Board determines not to take action to enforce the obligations secured by the bond, or does not vote on the question as provided, then, in either such event, upon petition signed by members representing five percent (5%) or more of the voting power of the Association (excluding the voting power of Declarant), the Association Board shall call a special meeting of the members of the Association to consider the question of overriding the decision of the Association Board or of requiring the Association Board to take action on the question of enforcing the obligations secured by the bond. Said meeting of members shall be held not less than thirty-five (35) days nor more than forty-five (45) days following receipt of the petition. At said meeting a vote of a majority of the voting power of the members of the Association, excluding the vote of Declarant, to take action to enforce the obligations under the bond shall be deemed to be the decision of the Association, and the Association Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association.

Section 15.13. Improvements to Common Area. In the event that the improvements to be installed by Declarant to the Common Area have not been completed prior to the issuance by the California Department of Real Estate of a Final Subdivision Public Report covering the Condominium Property, and in the further event that the Corporation is the obligee under a bond to secure performance by the Declarant to complete such improvements, then if such improvements have not been completed and a Notice of Completion filed within sixty (60) days after the completion date specified in the Planned Construction Statement appended to the bond, the Board shall consider and vote upon the question of whether or not to bring action to enforce the obligations under the bond. If the Corporation has given an extension in writing for the completion of any such improvement then the Board shall consider and vote on said question if such improvements have not been completed and a Notice of Completion filed within thirty (30) days after the expiration of the extension period. In the event that the Board determines not to take action to enforce the obligations secured by the bond, or does not vote on the question as above provided, then, in either such event, upon petition signed by Members representing five percent (5%) or more of the voting power of the Corporation, (excluding the voting power of Declarant), the Board shall call a special meeting of the Members of the Corporation to consider the question of overriding the decision of the Board or of requiring the Board to take action on the question of enforcing the obligations secured by the bond. Said meeting of Members shall be held

not less than thirty-five (35) days nor more than forty-five (45) days following receipt of the petition. At said meeting a vote of a majority of the voting power of Members of the Corporation, excluding the vote of Declarant, to take action to enforce the obligations under the bond shall be deemed to be the decision of the Corporation, and the Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Corporation.

Section 15.14. Declarant Exemption. Declarant is undertaking the work of construction of residential condominium dwellings and incidental improvements upon the property described in Recital E of this Declaration. The completion of that work, and the sale, rental and other disposal of the condominium dwellings is essential to the establishment and welfare of the Condominium Property as a residential community. In order that said work may be completed and the Condominium Property be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

- (a) Prevent Declarant, its contractors or subcontractors from doing on the Condominium Property or any Living Unit whatever is reasonably necessary or advisable in connection with the completion of said work; or
- (b) Prevent Declarant or its representatives from erecting, constructing and maintaining on any part of parts of the Condominium Property, such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing the Condominium Property as a residential community and disposing of the same by sale, lease or otherwise; or
- (c) Prevent Declarant from conducting on any part of the Condominium Property its business of completing said work, and of establishing a plan of condominium ownership and of disposing of the Condominium Property by sale, lease or otherwise; or
- (d) Prevent Declarant from maintaining such sign or signs on any of the Condominium Property as may be necessary for the sale, lease or disposition thereof.

The rights of Declarant provided in Subparagraphs (a) through (d) above, may be exercised during the period of time commencing when the Condominiums are first sold or offered for sale to the public and ending when all the Condominiums in the Project are sold and conveyed by Declarant to separate owners, or five (5) years following the date of conveyance of the first Condominium



in the Project from Declarant to a retail purchaser, whichever shall first occur. So long as Declarant, its successors and assigns owns one or more of the Condominiums established and described herein, Declarant, its successors and assigns shall be subject to the provisions of this Declaration. Declarant, in executing its rights under this Section 15.14, shall not unreasonably interfere with the use of the Recreation Area or Common Area by any Owner.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has executed this instrument the day and year first hereinabove written.

UDC DEVELOPMENT COMPANY, a  
California corporation

By *Herb Palmtag*  
Herb Palmtag, Vice President

By \_\_\_\_\_

"Declarant"

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SAN DIEGO )

On June 3, 1985, before me, the undersigned, a Notary Public in and for said State, personally appeared Herb Palmtag, known to me to be the Vice President, and \_\_\_\_\_, known to me to be the \_\_\_\_\_ Secretary of the corporation that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of the corporation therein named, 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.



*Nancy P. Glasson*  
NOTARY PUBLIC

## EXHIBIT "A"

## Description of Real Property

Parcel A:

Parcel 3 of Parcel Map No. 8071 filed in the Office of the County Recorder of San Diego County, California, on November 20, 1978;

EXCEPTING THEREFROM that portion thereof contained within Parcel B and Parcel C below.

FURTHER EXCEPTING THEREFROM Lot 100 and Parcel A of BERNARDO HEIGHTS UNIT NO. 11 according to Map thereof No. 9968 filed in the Office of the County Recorder of San Diego County, California, on January 14, 1981.

FURTHER EXCEPTING THEREFROM that portion thereof described as follows:

Beginning at the southeasterly corner of BERNARDO HEIGHTS UNIT NO. 11, according to Map thereof No. 9968 filed in the Office of the County Recorder of San Diego County, January 14, 1981, being also a point on the easterly boundary of Rancho San Bernardo according to Map thereof recorded in Book 2, Page 462 of Patents, Records of San Diego County; thence along said easterly boundary, south 13 03'05" west, 509.41 feet; thence south 89 26'50" west, 330.87 feet; thence south 80 28'00" west, 246.54 feet; thence south 76 58'00" west, 170.13 feet; thence south 85 55'56" west, 42.35 feet; thence north 79 51'54" west, 52.00 feet; thence north 74 12'08" west, 79.27 feet; thence north 81 50'00" west, 60.00 feet to a point on a non-tangent 570.00 foot radius curve concave westerly, the center of which bears north 81 50'00" west; thence northerly along the arc of said curve through a central angle of 16 02'05", 159.52 feet to the beginning of a compound 20.00 foot radius curve concave southwesterly; thence along the arc of said curve through a central angle of 89 12'45", 31.14 feet to a point on a non-tangent 1,167.00 foot radius curve concave northwesterly, the center of which bears north 7 04'50" west; thence along the arc of said curve through a central angle of 18

22'29", 374.26 feet; thence north 64 32'41" east, 481.29 feet to the beginning of a tangent 733.00 foot radius curve concave southeasterly; thence along the arc of said curve through a central angle of 23 45'17", 303.90 feet to the beginning of a compound 20.00 foot radius curve concave southwest-erly; thence along the arc of said curve through a central angle of 79 36'20" to the point of beginning.

Parcel B:

Lots 1 through 99, inclusive, and 101 and 102 of BERNARDO HEIGHTS UNIT NO. 11 according to Map thereof No. 9968 filed in the Office of the County Recorder of San Diego County, California, on January 14, 1981.

Parcel C:

Lots 103 through 118 of BERNARDO HEIGHTS UNIT NO. 12 according to Map thereof No. 9970 filed in the Office of the County Recorder of San Diego County, California, on January 15, 1981.

Parcel D:

Lots 1 through 95, inclusive, of BERNARDO HEIGHTS UNIT NO. 6 according to Map thereof No. 9647 filed in the Office of the County Recorder of San Diego County, California, on May 8, 1980.

Parcel E:

Lot 1 of BERNARDO HEIGHTS UNIT NO. 10 according to Map thereof No. 9857 filed in the Office of the County Recorder of San Diego County, California, on October 30, 1980.

SUBORDINATION AGREEMENT

FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF ARIZONA, a federally chartered association, being the beneficiary under that certain deed of trust recorded March 5, 1985 as File/Page No. 85-072990 with the Office of the County Recorder of San Diego County, California, hereby declares that the lien and charge of said deed of trust is and shall be subordinate and inferior to the Declaration of Covenants, Conditions and Restrictions to which this Subordination Agreement is attached.

FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF ARIZONA

BY John Ahern  
BY John Bridger

STATE OF ARIZONA )  
 ) ss.  
COUNTY OF MARICOPA )

On May 28, 1985, before me, the undersigned, a Notary Public in and for said State, personally appeared John Ahern, known to me to be the VICE President, and John Bridger, known to me to be the VICE PRESIDENT ~~secretary~~ of the association that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of the association therein named, and acknowledged to me that such association executed the within instrument pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.

S. Denise Snoddy  
NOTARY PUBLIC

1275633

**ENDORSED  
FILED**

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

**MAY 16 1985**

**MARCH FONG EU, Secretary of State  
Leslie Glenn  
Deputy**

ARTICLES OF INCORPORATION

FOR

BERNARDO HEIGHTS UNIT NO. 24  
ASSOCIATION OF HOMEOWNERS

ARTICLE I

The name of this corporation (hereinafter called the "Corporation") is BERNARDO HEIGHTS UNIT NO. 24 ASSOCIATION OF HOMEOWNERS.

ARTICLE II

The principal office for the transaction of business of the Corporation is located in San Diego County, State of California.

ARTICLE III

The Corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under such Law. More specifically, the Corporation will provide for management, administration, maintenance, preservation and architectural control of a condominium project within that certain real property located in The City of San Diego, County of San Diego, California, more particularly described as:

Lots 1 through 8, inclusive, of BERNARDO HEIGHTS  
UNIT NO. 24 according to Map thereof No. 11156  
filed in the Office of the County Recorder of  
San Diego County, California, on February 27,  
1985,

and will fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the Declaration (hereafter defined), and will promote the health, safety and welfare of all of its members who shall be owners of Condominiums (as defined in the Declaration) within the above-described property and any additions thereto which may be brought within the jurisdiction of the Corporation for these purposes.

#### ARTICLE IV

In furtherance of said purposes, the Corporation shall have the power to perform all of the duties and obligations of the Corporation set forth in the Declaration of Covenants, Conditions and Restrictions ("Declaration") applicable to the property owners of which are members of the Corporation and recorded or to be recorded in the Office of the County Recorder of San Diego County, California.

Notwithstanding any of the above statements of purposes and powers, the Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary purposes of the Corporation.

ARTICLE V

The name and address in this state of the Corporation's initial agent for service of process is HERB PALMTAG, 438 Camino del Rio South, Suite 112B, San Diego, California 92108.

ARTICLE VI

Every person or entity who is a record owner of a fee or undivided fee interest in any Condominium which is subject by covenants of record to assessment by the Corporation, shall be a member of the Corporation. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Condominium which is subject to assessment by the Corporation.

ARTICLE VII

The Corporation shall have two classes of voting membership:  
Class A. Class A members shall be all owners of a Condominium with the exception of Declarant (as defined in the Declaration) and shall be entitled to one (1) vote for each Condominium owned. When more than one person holds an interest in any Condominium, all such persons shall be members. The vote for such Condominium shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Condominium.

Class B. The Class B member shall be the Declarant and shall be entitled to three (3) votes for each Condominium owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) two (2) years following the date of original issuance by the California Department of Real Estate of the most recently issued Final Subdivision Public Report covering any portion of the property described in Article III above; or

(c) four (4) years following the date of original issuance by the California Department of Real Estate of the Final Subdivision Public Report for the first phase of development of the property described in Article III above.

#### ARTICLE VIII

The affairs of the Corporation shall be managed by a Board of five (5) directors. At the first annual meeting of members, three (3) directors shall be elected for a term of one year and two (2) directors shall be elected for a term of two (2) years. Thereafter, directors shall be elected at each annual meeting of members to fill the vacancies of those directors whose term then



expires, and the term of each such director so elected shall be two (2) years.

#### ARTICLE IX

Upon dissolution of the Corporation, other than incident to a merger or consolidation, the net assets of the Corporation shall be distributed to the members of the Corporation as their interests may appear.

#### ARTICLE X

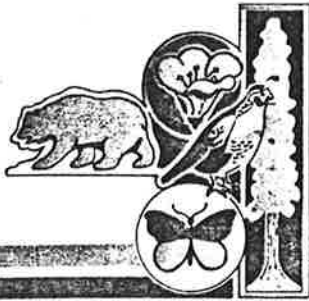
Amendment to these Articles of Incorporation shall require (a) the assent (by vote or written consent) of members representing seventy-five percent (75%) or more of the voting power of each class of members of the Corporation, together with (b) a resolution to amend adopted by at least a bare majority of the Board of Directors; provided, however, that after conversion of the Class B membership to Class A membership, amendment to these Articles of Incorporation shall require (i) the assent (by vote or written consent) of (1) seventy-five percent (75%) or more of the total voting power of members of the Corporation, and (2) seventy-five percent or more of the voting power of members of the Corporation other than Declarant (as defined in the

Declaration), and (ii) a resolution to amend adopted by at least a bare majority of the Board of Directors.

DATED: May 15, 1985 /s/ Alex C. McDonald  
ALEX C. McDONALD, Incorporator

I declare that I am the person who executed the above Articles of Incorporation and that this instrument is my act and deed.

/s/ Alex C. McDonald  
ALEX C. McDONALD



# 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

MAY 16 1985



*March Fong Eu*

Secretary of State

ALEX C. McDONALD\*  
A. JOHN HECHT\*  
DARRYL O. SOLBERG\*  
JEROLD H. GOLDBERG  
PAUL E. ROBINSON  
THOMAS C. NELSON  
ROBERTA S. ROBINSON  
KATHERINE M. SO  
DAVID W. BAGLEY, II

**McDONALD, HECHT & SOLBERG**  
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS  
ATTORNEYS AT LAW  
1100 FINANCIAL SQUARE  
600 "B" STREET  
SAN DIEGO, CALIFORNIA 92101

TELEPHONE  
AREA CODE 619  
239-3444

\* DENOTES A PROFESSIONAL CORPORATION

September 9, 1985

Mr. Herb Palmtag  
UDC Homes Limited Partnership  
438 Camino del Rio South,  
Suite 112-B  
San Diego, California 92108

Re: Bernardo Heights Unit No. 24 Association of Homeowners

Dear Herb:

Enclosed are copies of the corporate documents for the above homeowners association, including:

1. Articles of Incorporation
2. Bylaws
3. Certificate of Adoption of Bylaws
4. Certificate of Adoption of Corporate Seal
5. Written Consent of Incorporator
6. Waiver of Notice of First Meeting of Directors
7. Minutes of First Meeting of Directors

We will make the necessary application for exempt status with the Franchise Tax Board and will provide you with a copy of the application when we do so.

If you have any questions, please call.

Very truly yours,

McDONALD, HECHT & SOLBERG



Alex C. McDonald

ACM/dm  
Enclosures

MINUTE BOOK  
OF  
BERNARDO HEIGHTS UNIT NO. 24  
ASSOCIATION OF HOMEOWNERS

BYLAWS

OF

BERNARDO HEIGHTS UNIT NO. 24  
ASSOCIATION OF HOMEOWNERS

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BYLAWS

OF

BERNARDO HEIGHTS UNIT NO. 24  
ASSOCIATION OF HOMEOWNERS

ARTICLE I

OFFICE

The office of this corporation shall be located in the County of San Diego, State of California.

ARTICLE II

DEFINITIONS

Section 2.1 "Articles" shall mean and refer to the Articles of Incorporation of the Corporation as they may from time to time be amended.

Section 2.2. "Board" or "Board of Directors" shall mean and refer to the governing body of said Corporation.

Section 2.3. "Boundaries" shall mean that in interpreting deeds and plans, the then existing physical boundaries of a Living Unit, whether in its original state or reconstructed in substantial accordance with the original plans therefor, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or Condominium Plan, regardless of settling or lateral movement of the building structure of which the Living Unit is a part and regardless of minor variance between boundaries shown on the Condominium Plan or deed and those of the building.

Section 2.4. "Common Area" shall mean and refer to all portions of the Condominium Property not located within a Living Unit.

Section 2.5. "Common Expenses" means and includes the actual and estimated expenses of operating the Condominium Property and any reasonable reserve for such purposes.

Section 2.6. "Condominium" shall mean and refer to a fee simple estate in the Condominium Property as defined in Section

783 of the California Civil Code and shall consist of a separate interest in a Living Unit and an undivided fractional interest as tenant in common in the Common Area.

Section 2.7. "Condominium Plan" shall mean and refer to the Condominium Plan or Plans recorded pursuant to California Civil Code Section 1351 covering any portion of the Condominium Property, including such amendments thereto as may from time to time be recorded.

Section 2.8. "Condominium Property" shall mean and refer to that certain real property located in The City of San Diego, County of San Diego, State of California, more particularly described as:

Lot 2 of BERNARDO HEIGHTS UNIT NO. 24 according to Map thereof No. 11156 filed in the Office of the County Recorder of San Diego County, California, on February 27, 1985,

and such additions as may be annexed thereto as provided in the Declaration.

Section 2.9. "Corporation" shall mean and refer to BERNARDO HEIGHTS UNIT NO. 24 ASSOCIATION OF HOMEOWNERS, a California Nonprofit Mutual Benefit Corporation, its successors and assigns.

Section 2.10. "Declarant" shall mean and refer to UDC DEVELOPMENT COMPANY, a California corporation, its successors and assigns, if such successors or assigns should acquire one (1) or more undeveloped lots in the Condominium Property (or property which may be annexed thereto as provided in the Declaration) from Declarant for the purpose of development.

Section 2.11. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions recorded with the Office of the County Recorder of San Diego County, California, covering the Condominium Property, including such amendments thereto as may from time to time be recorded.

Section 2.12. "Eligible Insurer<sup>or</sup> or Guarantor" shall mean and refer to an insurer or governmental guarantor who has requested notice from the Corporation of those matters which such insurer or guarantor is entitled to notice of by reason of these Bylaws or the Declaration.

Section 2.13. "Eligible Mortgage Holder" shall mean and refer to the holder of a first Mortgage on a Condominium who has requested notice from the Corporation of those matters which such

holder is entitled to notice of by reason of these Bylaws or the Declaration.

Section 2.14. "Exclusive Use Area" shall mean and refer to those portions of the Common Area to which an exclusive right to use is granted to an Owner as shown and described on the Condominium Plan and shall consist of Entries and Yards.

Section 2.15. "FHA" shall mean and refer to the Federal Housing Administration.

Section 2.16. "Living Unit" shall mean and refer to those portions of the Condominium Property shown and described as such on the Condominium Plan; provided, however, that the following are not part of any Living Unit: Bearing walls, columns, floors, roofs, foundations, central heating, central refrigeration and central air conditioning equipment, reservoir tanks, pumps and other central services, pipes, ducts, flues, chutes, conduits, wires and other utility installations, wherever located, except the outlets thereof when located in the Living Unit.

Section 2.17. "Member" shall mean and refer to an Owner as defined in Section 2.20, Article II herein.

Section 2.18. "Mortgage" shall mean and refer to a deed of trust as well as a mortgage encumbering a Condominium.

Section 2.19. "Mortgagee" shall mean and refer to a beneficiary under or holder of a deed of trust as well as a mortgagee.

Section 2.20. "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of fee simple title to any Condominium which is part of the Condominium Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 2.21. "Project" shall mean and refer to the Condominium Property, including all structures and improvements erected or to be erected thereon, and such additions as may hereafter be brought within the jurisdiction of the Association.

Section 2.22. "VA" shall mean and refer to the Veterans Administration.

### ARTICLE III

#### VOTING RIGHTS IN CORPORATION

The Corporation shall have two (2) classes of voting membership as set forth in the Articles and the Declaration.

## ARTICLE IV

### MEMBERSHIP ASSESSMENTS AND LIEN RIGHTS

Section 4.1. Annual Assessments. The Board shall fix and determine from time to time annual assessments to be paid by each Owner for the purpose of operating, maintaining and repairing the Common Area and paying the necessary expenditures of the Corporation as provided in these Bylaws and the Declaration. The annual assessments shall include an adequate reserve fund for the periodic maintenance, repair and replacement of the Common Area as set forth in the Declaration.

Section 4.2. Special Assessments. In addition to the annual assessments authorized above, the Board may levy special assessments for the purpose of defraying, in whole or in part, the cost of any capital improvement to the Common Area, including the cost of major repair or rebuilding to reimburse the Corporation for costs and expenses incurred in enforcing compliance by an Owner or his Condominium with the provisions of the Declaration, these Bylaws and the rules and regulations adopted by the Board, or for such other purpose as set forth in the Declaration.

Section 4.3. Lien Rights. As provided in the Declaration, the Corporation shall have a lien against the interest of each Owner in the Condominium Property to secure the full and prompt payment of all annual and special assessments levied by the Corporation in compliance with these Bylaws, and in the event of default by any Owner, said interest of such Owner may be foreclosed by the Corporation in the same manner as a realty mortgage or may be enforced by sale pursuant to Sections 2924, 2924(b), 2924(c) and 1356 of the California Civil Code, and to that end a power of sale is hereby conferred upon the Corporation. Assessments imposed to reimburse the Corporation for costs incurred in bringing a Member or his Condominium into compliance with the provisions of the Declaration, these Bylaws, any amendments thereto (other than costs incurred in collecting assessments), the Articles or Corporation rules or regulations, shall not be liens.

Any assessments which are not paid within thirty (30) days after the due date shall be delinquent and shall bear interest at the rate of ten percent (10%) per annum from the due date until paid in full. The Corporation may bring an action at law against the Member personally obligated to pay the same and, in addition thereto or in lieu thereof, may foreclose the lien above provided, and interest, late charges, costs and reasonable attorney's fees incurred in any such action shall be added to the amount of such assessments. No Member may waive or otherwise

escape liability for the assessments provided for hereby by nonuse of the Common Area or abandonment of his Living Unit.

Section 4.4. Payment of Assessments by Declarant. The Declarant shall pay all assessments levied by the Corporation against any Condominium owned by it at the same time, in the same manner and in the same amounts as any other Owner.

Section 4.5. Commencement of Annual Assessments. The annual assessments shall commence as to all Condominiums in each phase of the Project as set forth in the Declaration.

## ARTICLE V

### MEMBERSHIP RIGHTS, PRIVILEGES AND PENALTIES

Section 5.1. Rights and Privileges. No Member shall have the right without the prior approval of the Board to exercise any of the powers or to perform any of the acts of these Bylaws delegated to the Board in Article VII of these Bylaws. Unless otherwise provided in the Declaration and subject to the rules and regulations adopted by the Board, each Member of the Corporation, his immediate family, guests and tenants shall have the right to use and enjoy the Common Area other than those portions thereof the exclusive right to use of which has been granted to others. If a Condominium has been leased, the tenant and not the Member shall have those rights to use and enjoy the Common Area which is appurtenant to the Condominium.

Section 5.2. Suspensions and Penalties. The membership rights and privileges, together with the voting rights of any Member, may be suspended by the Board for any period of time during which the assessment on his Condominium remains unpaid, and for a period not to exceed thirty (30) days for any infraction of the Corporation's published rules and regulations, after reasonable written notice and an opportunity for a hearing before the Board. The Board may adopt rules and regulations imposing reasonable monetary penalties for such breach or noncompliance. Should the Board believe grounds may exist for any such suspension or imposition of monetary penalties, the Board shall give to the Member believed to be in violation at least fifteen (15) days' prior written notice of the intended suspension or proposed monetary penalty and the reasons therefor. The Member shall be given an opportunity to be heard before the Board either orally or in writing not less than five (5) days before the effective date of suspension. The notice required hereby may be given by any method reasonably calculated to provide actual notice. Any notice given by mail must be given by first class or registered mail sent to the last address of the Member shown on the Corporation's records. No suspension shall affect the rights of such

Member to access to his Living Unit nor his right to use of any Exclusive Use Area appurtenant to his Living Unit. No such monetary penalty, other than a penalty for non-payment of assessments, shall constitute a lien against the Member's Condominium.

## ARTICLE VI

### MEETINGS OF MEMBERS

Section 6.1. Place of Meeting. All meetings of Members shall be held at the Condominium Property or at such other location in San Diego County, California, in reasonable proximity to the Condominium Property, as may be designated in the notice of meeting.

Section 6.2. Annual Meetings of Members. The first annual meeting of Members shall be held within forty-five (45) days after close of escrow for the sale by Declarant of fifty-one percent (51%) of the Condominiums in the first phase of the Project, but in no event shall the meeting be held later than six (6) months after the close of sale of the first Condominium. Subsequent annual meetings of Members shall be held on the annual anniversary of the first annual meeting of Members. Should any annual meeting day fall upon a legal holiday, then such annual meeting of Members shall be held at the same time and place on the next day thereafter ensuing which is not a legal holiday. An election of directors shall be held at the first annual meeting of Members and all positions of director shall be filled at that election.

Written notice of each such annual meeting shall be given to each Member and, upon written request therefor, to all first Mortgagees, either personally or by sending a copy of the notice through the mail, first class, registered or certified, or by telegraph, charges prepaid, to his address appearing on the books of the Corporation or supplied by him to the Corporation for the purpose of notice. If no address is supplied, notice shall be deemed to have been given him if mailed to the address of the Condominium owned by such Member or encumbered by the first Mortgagee, or published at least once in some newspaper of general circulation in the county of said principal office. All such notices shall be sent not less than ten (10) days and not more than ninety (90) days before each annual meeting; provided, however, if notice is given by mail and the notice is not mailed by first class, registered or certified mail, then the notice shall be given not less than twenty (20) days before the annual meeting. The notice shall specify the place, day and hour of such meeting, and those matters which the Board at the time of mailing the notice intends to present for action by the Members.

Section 6.3. Special Meeting. Special meetings of Members, for any purpose or purposes whatsoever, may be called at any time by the president or by a majority of a quorum of the Board, and shall be called by the Board upon receipt of a written request for a special meeting signed by Members representing at least five percent (5%) or more of the total voting power of the Members. Except in special cases where other express provision is made by statute, notice of such special meetings shall be given in the same manner as for annual meetings of Members. Notices of any special meeting shall specify in addition to the place, day and hour of such meeting, the general nature of the business to be transacted. If the notice of the special meeting is not given within twenty (20) days after receipt of the request for the special meeting, the persons entitled to call the meeting may give the notice or the Superior Court of San Diego County shall summarily order the giving of the notice, after notice to the Corporation giving it an opportunity to be heard.

Section 6.4. Adjourned Meetings and Notice Thereof. Any membership meeting, annual or special, whether or not a quorum is present, may be adjourned from time to time by the vote of a majority of the voting power present in person or represented by proxy, but in the absence of a quorum no other business may be transacted at any such meeting.

When any membership 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 to the meeting which is adjourned. A meeting adjourned for lack of a quorum by those in attendance shall be set to a date not less than five (5) days nor more than thirty (30) days from the original meeting date. If a time and place for the adjourned meeting is not chosen by those Members at the original meeting or for any reason a new date is fixed for the adjourned meeting after adjournment or the adjournment is for more than forty-five (45) 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 Corporation may transact any business, except for the election of the Board of Directors, which might have been transacted at the original meeting.

Section 6.5. Mortgagee Representation. First Mortgagees shall have the right to attend all membership meetings through a representative designated in writing and delivered to the Board.

Section 6.6. Voting. Voting of the Members may be viva voce or by ballot. All elections for directors shall be by secret written ballot. No Member shall be entitled to cumulate votes for a candidate or candidates unless such 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 at any election for directors, subject to the foregoing, shall have the right to cumulate votes and give one (1) 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 to distribute his votes on the same principle among as many candidates as he shall think fit. The candidates receiving the highest number of votes up to the number of directors to be elected shall be elected. Unless the entire Board is removed from office by the vote of the Members, an individual director shall not be removed prior to the expiration of his term of office if the number of votes cast against his removal or not consenting in writing to his removal would be sufficient to elect the 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 most recent election of directors were then being elected. Any director elected to office solely by the votes of Members other than Declarant, as provided below, may be removed from office prior to the expiration of his term only upon the vote of a simple majority of the voting power of Members other than Declarant. Anything contained herein to the contrary notwithstanding, at the first election of directors by Members and thereafter for so long as a majority of the voting power of Members is held by Declarant, or so long as there are two (2) outstanding classes of membership, not fewer than twenty percent (20%) of the directors may be elected solely by the voting power of Members other than Declarant. The election of directors may be held at any meeting of Members and each Member shall have the right to nominate from the floor candidates for the office of director.

Section 6.7. Quorum. The presence in person or by proxy of a majority of the voting power entitled to vote at any meeting shall constitute a quorum for the transaction of business. The 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 voting power to leave less than a quorum. In the event any meeting of Members cannot be held because a quorum is not present, the Members present, either in person or by proxy, may adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the time of the original meeting date, at which meeting the quorum requirement shall be twenty-five percent (25%) of the voting power of the membership of the Corporation; provided, however, if after adjournment a new date is fixed for the adjourned meeting, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed for regular meetings; provided further, that in the event the quorum require-

ment becomes twenty-five percent (25%) of the voting power of the membership, then the only matters that may be voted upon at any meeting actually attended in person or by proxy by one-third (1/3) or less of the voting power are matters notice of the general nature of which was given in the notice of meeting.

Section 6.8. Consent of Absentees. The transactions of any meeting of Members, either annual or special, however called and noticed, shall be as valid as though had at a meeting duly held after regular call and notice if a quorum be present either in person or by proxy and if, either before or after the meeting, each of the Members entitled to vote, not present in person or by proxy, signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 6.9. Action Without Meeting. Any action which may be taken at a meeting of the Members, except the election of directors where cumulative voting is a requirement, may be taken without a meeting if done in compliance with the provisions of Section 7513 of the California Corporations Code.

Section 6.10. Proxies. Every person entitled to vote or execute consents shall have the right to do so either in person or by a written proxy executed by such person and filed with the secretary of the Corporation. All proxies shall be revocable and shall automatically terminate upon transfer of title of a Condominium by the Owner.

## ARTICLE VII

### DIRECTORS

Section 7.1. Powers and Duties. The directors shall have the powers and duties set forth in the Declaration and these Bylaws.

Section 7.2. Number and Qualifications of Directors. The Board shall consist of five (5) directors until changed by amendment to this Section of the Bylaws. Directors need not be Members of the Corporation.

Section 7.3. Election and Term of Office. At the first annual meeting of Members, three (3) directors shall be elected for a term of one (1) year and two (2) directors shall be elected for a term of two (2) years. Thereafter, all directors shall be elected at each annual meeting of Members to fill the vacancies of those directors whose term then expires and the term of each such director so elected shall be two (2) years. If any annual

meeting is not held or the directors are not elected thereat, the directors may be elected at any special meeting of Members held for that purpose. All directors shall hold office until their successors are elected.

Section 7.4. Vacancies. Vacancies in the Board created by death or resignation may be filled by a majority of the remaining directors, though less than a quorum, and each director so elected shall hold office until his successor is elected at an annual meeting of Members or at a special meeting called for that purpose.

Vacancies created by the removal of any director may be filled only by the vote of the membership.

The Members may at any time elect directors to fill any vacancy not filled by the directors, and may elect the additional directors at the meeting at which an amendment of the Bylaws is voted, authorizing an increase in the number of directors.

If any director tenders his resignation to the Board, the Board shall have the power to elect a successor to take office at such time as the resignation shall become effective. No reduction of the number of directors shall have the effect of removing any director prior to the expiration of his term of office.

Section 7.5. Place of Meeting. All meetings of the Board shall be held within the Condominium Property, unless sufficient space is unavailable, in which event, the meeting shall be held as close to the Condominium Property as is reasonably practicable where sufficient space is available.

Section 7.6. Organization Meeting. Immediately following each annual meeting of Members, the Board shall hold a regular meeting for the purpose of organization, election of officers and the transaction of other business. Notice of such meeting is hereby dispensed with.

Section 7.7. Other Regular Meetings. Other regular meetings of the Board shall be held without call monthly at such time as the Board shall determine. Notice of all regular meetings shall be posted in a prominent place in the Common Area and communicated to the directors not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to the holding of the meeting.

Section 7.8. Special Meetings. Special meetings of the Board for any purpose or purposes shall be called at any time by the president, or by any two (2) directors other than the president.

Written notice of the time and place of special meetings and the nature of any special business to be considered shall be posted in the manner prescribed for notice of regular meetings and shall be sent to all directors by first class mail not less than four (4) days prior to the scheduled time of the meeting, or such notice shall be delivered personally or by telephone or telegraph not less than seventy-two (72) hours prior to the scheduled time of the meeting; provided, however, notice of the meeting need not be given to any director who has signed a waiver of notice or a written consent to the holding of the meeting.

Section 7.9. Compensation and Fees. Neither the directors nor the officers of the Corporation shall receive any monetary compensation for their services performed in the conduct of the business of the Corporation, except upon the vote or written consent of a majority of the voting power of each class of Members of the Corporation, or after conversion of the Class B membership to Class A membership, except upon the vote or written assent of (i) fifty-one percent (51%) of the total voting power of Members of the Corporation, and (ii) at least fifty-one percent (51%) of the total voting power of Members of the Corporation other than Declarant. Nothing herein contained shall be construed or preclude any director or officer from serving the Corporation in any other capacity as an agent, employee or otherwise and receiving compensation therefor. Directors and officers of the Corporation may be reimbursed for expenses incurred in carrying on the business of the Corporation; provided, however, that no such expenses in excess of \$50.00 during any fiscal year of the Corporation shall be reimbursed by the Corporation to any person without the approval of the Board.

Section 7.10. Attendance at Meetings and Executive Sessions. Regular and special meetings of the Board shall be open to all Members of the Corporation; provided, however, that Members who are not on the Board may not participate in any deliberation or discussion unless expressly so authorized by the vote of a majority of a quorum of the Board. The Board may, upon the vote of a majority of a quorum, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Corporation is or may become involved and other matters of business of a similar nature. Only Members of the Board shall be entitled to attend executive sessions. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 7.11. Quorum. A majority of the directors shall be necessary to constitute a quorum for the transaction of business, except to adjourn as hereinafter provided. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board.

Section 7.12. Adjournment. A quorum of the directors may adjourn any directors' meeting to meet again at a stated time and hour; provided, however, that in the absence of a quorum, a majority of directors present at the directors' meeting, either regular or special, may adjourn from time to time until the time fixed for the next regular meeting of the Board.

Section 7.13. Waiver of Notice. The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though had at a meeting to be held after regular call and notice if a quorum be present, and if, either before or after the meeting, each of the directors not present signs a written waiver of notice or a consent to holding such meeting or an approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Nothing contained herein shall remove the obligation to post the notice of all directors' meetings on the Common Area.

Section 7.14. Entry of Notice. Whenever any director has been absent from any special meeting of the Board, an entry in the minutes to the effect that notice has been duly given shall constitute a rebuttable presumption that due notice of such special meeting was given to such director as required by law and these Bylaws.

Section 7.15. Notice of Adjournment. Notice of any adjournment of any directors' meeting, either regular or special, to another time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

Section 7.16. Action Without Meeting. Any action required or permitted to be taken by the Board may be taken without a meeting, if all members of the Board, individually or collectively, consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. An explanation of the action to be taken or actually taken by the Board shall be given to the Members of the Corporation within three (3) days after all written consents have been obtained. Said explanation shall be given in the same manner as provided in Section 7.7 of this Article VII for the giving of notice of regular meetings of the Board. Failure to give such notice shall not render the action to be taken or actually taken invalid.

## ARTICLE VIII

### OFFICERS

Section 8.1. Officers. The officers of the Corporation shall be a president, a vice president, a secretary and a chief financial officer. The Corporation may also have, at the discretion of the Board, one (1) or more assistant secretaries, one (1) or more assistant chief financial officers and such other officers as may be appointed in accordance with the provisions of Section 8.3 of this Article. Officers other than the president need not be directors. One (1) person may hold two (2) or more offices.

Section 8.2. Election. The officers of the Corporation except such officers as may be appointed in accordance with the provisions of Section 8.3 or Section 8.5 of this Article VIII, shall be chosen annually by the Board, and each shall hold his office until he shall resign, or shall be removed or otherwise disqualified to serve, or his successor shall be elected and qualified.

Section 8.3. Subordinate Officers. The Board may appoint such other officers as the business of the Corporation 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 may from time to time determine.

Section 8.4. Removal and Resignation. Any officer may be removed, either with or without cause, by a majority of the directors in office at the time, at any regular or special meeting of the Board or, except in case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board.

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

Section 8.5. Vacancies. 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.

Section 8.6. President. The president shall be the chief executive officer of the Corporation and shall, subject to the control of the Board, have general supervision, direction and

control of the business and officers of the Corporation. He shall preside at all meetings of the Members and at all meetings of the Board. He shall be ex-officio a member of all standing committees, including the executive committee, if any, 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 or by the Bylaws. The president shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes of the Corporation.

Section 8.7. Vice President. In the absence or disability of the president, the vice president shall perform all the duties of the president, and when so acting shall have all powers of and be subject to all the restrictions upon the president. The vice president shall have such other powers and perform such other duties as from time to time may be prescribed for him by the Board or by the Bylaws.

Section 8.8. Secretary. The secretary shall keep, or cause to be kept, a book of minutes at the principal office or such other place as the Board may order of all meetings of directors and Members, with the time and place of holding, whether regular or special and if special how authorized, the notice thereof given, the names of those present at the directors' meetings, the number of memberships present or represented at Members' meetings and the proceedings thereof.

The secretary shall give, or cause to be given, notice of all the meetings of the Members and of the Board required by the Bylaws or by law to be given, and he shall keep other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

Section 8.9. Chief Financial Officer. 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 Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital and surplus. The books of account shall at all times be open to inspection by any director.

The chief financial officer shall sign all checks and promissory notes of the Corporation and shall deposit all moneys and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board. He shall disburse the funds of the Corporation as may be ordered by the Board, shall render to the president and directors, whenever they request it, an account of all of his transactions as chief financial officer and of the financial condition of the Corpora-

tion, and shall have such other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

## ARTICLE IX

### POWERS AND DUTIES OF CORPORATION

Subject to the Declaration, the Articles and the California Nonprofit Corporation Law applicable to mutual benefit corporations, the Board shall have the following powers and duties:

Section 9.1. Selection of Officers. To select and remove all officers, agents and employees of the Corporation, prescribe such powers and duties for them as may not be inconsistent with law, the Declaration, the Articles or these Bylaws, and, subject to the provisions of Section 7.9, Article VII of these Bylaws, to fix their compensation.

Section 9.2. Management of Business. To conduct, manage and control the affairs and business of the Corporation, and to make such rules and regulations therefor not inconsistent with law, the Declaration, the Articles or these Bylaws as they deem best, including rules and regulations for the operation of the Common Area and the facilities owned or controlled by the Corporation.

Section 9.3. Borrowing of Money. To borrow money and incur indebtedness for the purposes of the Corporation, and to cause to be executed and delivered therefor, in the corporate name, promissory notes or other evidences of debt and, with the vote or written assent of two-thirds (2/3) of the voting power of each class of Members of the Corporation, to (a) hypothecate, mortgage, pledge or deed in trust any or all of the real or personal property owned by the Corporation as real security for money borrowed or debts incurred, and (b) sell any real or personal property owned by the Corporation. After conversion of the Class B membership to Class A membership, the action herein requiring membership approval shall require the vote or written consent of (i) two-thirds (2/3) of the voting power of Members of the Corporation, and (ii) two-thirds (2/3) or more of the voting power of Members of the Corporation, other than Declarant.

Section 9.4. Insurance. To contract and pay for fire, casualty, liability, fidelity and other insurance adequately insuring the Corporation and Owners with respect to the Common Area and the affairs of the Corporation, which shall include bonding of the members of any management body. Notwithstanding any provisions to the contrary herein, so long as the Federal National Mortgage Association ("FNMA") holds a Mortgage on a Condominium in the Project or owns a Condominium, the Corporation



shall continuously maintain in effect such casualty and liability insurance and fidelity bond, meeting all requirements and containing such coverage and endorsements as may be required from time to time by FNMA.

Such casualty insurance shall include, but not be limited to, a condominium master or blanket policy (as required by the Declaration) with full replacement cost coverage and an agreed value endorsement. If requested by Members of the Corporation who have at least ten percent (10%) of the Corporation's voting power or any first Mortgagee or any insurer or governmental guarantor of any first Mortgage, the Corporation shall obtain fidelity insurance which shall be in the form of a bond in an amount equal to one hundred fifty percent (150%) of the Corporation's annual assessment plus reserves, which names the Corporation as obligee and protects against misuse and misappropriation of Corporation property by Members of the Board, officers and employees of the Corporation, and any management agent and his employees whether or not any such persons are compensated for their services.

Section 9.5. Payment of Utilities. To pay all charges for water, electricity, gas, CATV and other utility services for the Common Area and, to the extent not separately metered or charged, for each Living Unit.

Section 9.6. Management of Common Area. To manage, operate, maintain and repair the Common Area and Recreation Area and all improvements located thereon, including the parking and drainage facilities and the restoration and replacement of any or all of the buildings, structures and improvements which are part of the Common Area at any time and from time to time as the Board may determine desirable or necessary; and to make capital expenditures for and on behalf of the Corporation with the vote or written assent of a majority of the voting power of each class of Members of the Corporation; provided, however, that after conversion of the Class B membership to Class A membership, capital expenditures shall require the vote or written assent of (i) fifty-one percent (51%) of the total voting power of Members of the Corporation, and (ii) at least fifty-one percent (51%) of the total voting power of Members of the Corporation other than Declarant.

Section 9.7. Right to Enter. To enter onto any Living Unit and Exclusive Use Area subject to the limitations set forth in the Declaration.

Section 9.8. Right to Enforce. To enforce the provisions of the Declaration, the Articles and Bylaws of the Corporation, the

rules and regulations adopted by the Board and the provisions of any agreement to which the Corporation is a party.

Section 9.9. Right to Contract. To contract and pay for goods and services relating to the Common Area, and to employ personnel necessary for the operation and maintenance of the same, including legal and accounting services. Anything herein to the contrary notwithstanding:

(a) The term of any contract with a third person for supplying goods or services to the Common Area or for the Corporation shall not exceed a term of one (1) year unless a longer term is approved by a majority of the voting power of each class of Members of the Corporation, or after conversion of the Class B membership to Class A membership, unless such longer term is approved by (i) fifty-one percent of the total voting power of Members of the Corporation, and (ii) at least fifty-one percent (51%) of the total voting power of Members of the Corporation other than Declarant, with the following exceptions:

(1) A contract with the public utility company for materials or services the rates for which are regulated by the Public Utilities Commission may exceed a term of one (1) year so long as it does not exceed the shortest term for which the public utility will contract at the regulated rate;

(2) A contract for prepaid casualty and/or liability insurance policies may be for a term of not to exceed three (3) years, provided that the policy permits short rate cancellation by the Corporation;

(3) A management contract the terms of which have been approved by the VA and FHA, may exceed a term of one (1) year; and

(4) Lease agreements for laundry room fixtures and equipment of not to exceed five (5) years' duration, provided that the lessor under the agreement is not an entity in which the subdivider has a direct or indirect ownership interest of ten percent (10%) or more.

(b) Any agreement for management of the Condominium Property and any other contract providing for services by Declarant shall be terminable for cause upon thirty (30) days' written notice, and without cause or payment of a termination fee upon not more than ninety (90) days' written notice. Such agreements shall be renewable with the consent of the Board and the management agent.

(c) The Board shall not terminate professional management of the Condominium Property and assume self-management without the prior written approval of Mortgagees holding seventy-five percent (75%) or more of the first Mortgages on Condominiums.

(d) No contract with the Corporation negotiated by Declarant shall exceed a term of one (1) year except as may otherwise be provided in this Section 9.9.

Section 9.10. Payment of Taxes on Common Area. To pay any taxes and governmental special assessments which are or could become a lien on the Common Area or any portion of thereof.

Section 9.11. Adoption of Rules. To adopt reasonable rules not inconsistent with the provisions contained in the Declaration, and to amend the same from time to time relating to the use of the Common Area and the facilities located thereon.

Section 9.12. Right of Discipline. To suspend the voting rights and right to use the recreational facilities located on the Common Area of a Member who is in default in the payment of any assessment, as provided in Article V of these Bylaws.

Section 9.13. Preparation of Budgets and Financial Statements. To prepare budgets and financial statements for the Corporation as provided in these Bylaws.

Section 9.14. Notification to Mortgagee. Upon written request to the Corporation, identifying the name and address of the holder, insurer or guarantor and the Condominium number or address, any Eligible Mortgage Holder or Eligible Insurer or Guarantor will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Condominium on which there is a first Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, as applicable.

(b) Any delinquency in the payment of assessments or charges owed by an Owner of a Condominium subject to a first Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, which remains uncured for a period of sixty (60) days.

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Corporation.





(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as required in these Bylaws or in the Declaration.

Section 9.15. Notice to Federal Home Loan Mortgage Corporation. To give notice in writing to the Federal Home Loan Mortgage Corporation ("FHLMC"), in care of the servicers of FHLMC loans on Condominiums, provided such servicers have informed the Corporation in writing of their addresses, of any loss to or taking of the Common Area if such loss or taking exceeds \$10,000.00, and of any damage to a Living Unit if such damage exceeds \$1,000.00.

Section 9.16. Right to Litigate. To prosecute or defend, in the name of the Corporation, any action affecting or relating to the Common Area or the property owned by the Corporation, and any action in which all or substantially all of the Owners have an interest.

Section 9.17. Right to Delegate. To delegate any of its powers hereunder to others, including committees, officers and employees.

Section 9.18. Right to Sell. As permitted in the Declaration, to sell the Condominium Property for the benefit of all of the Owners and their Mortgagees (excepting the Administrator of the VA), as their interests may then appear, at such price and upon such terms as the Board may determine reasonable.

Section 9.19. Availability of Documentation. To make available to any prospective purchaser of a Condominium, any Owner of a Condominium, any first Mortgagee, and the holders, insurers and guarantors of a first Mortgage on any Condominium, current copies of the Declaration, the Articles, the Bylaws, rules governing the Project and all other books, records and financial statements of the Corporation.

Section 9.20. Right to Permit Use of Common Area. To permit utility suppliers to use portions of the Common Area reasonably necessary to the on-going development or operation of the Project.

Section 9.21. Authorization to Contract. To authorize any officer or officers or agent or agents to enter into any contract or execute any instrument in the name and on behalf of the Corporation. Such authority may be general or confined to specific instances, and unless so authorized by the Board, no officer, agent or employee shall have any power or authority to bind the

Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 9.22. Duty to Make Records Available for Inspection. To keep in its principal office for the transaction of business or at such place within the Condominium Property as the Board shall prescribe, the original or a copy of the Bylaws as amended or otherwise altered to date, certified by the secretary, a membership register, books of accounts and copies of minutes of all membership, board and committee meetings, all of which shall be made available for inspection and copying by any Member of the Corporation, or by any Member's duly appointed representative and by all first Mortgagees, at any reasonable time and for a purpose reasonably related to his interest as a Member or Mortgagee. The Board shall establish reasonable rules with respect to:

(a) Notice to be given to the custodian of the records by the Member or Mortgagee desiring to make the inspection;

(b) Hours and days of the week when such an inspection may be made; and

(c) Payment of the costs of reproducing copies of documents requested.

Every director of the Corporation and every director of The Community Association of Bernardo Heights, a California nonprofit mutual benefit corporation, shall have the absolute right at any reasonable time to inspect all books, records and documents of the Corporation and the physical properties, if any, owned by the Corporation. The right of inspection by a director shall include the right at his expense to make extracts and copies of documents.

Section 9.23. Financial Statement. To cause:

(a) a financial statement (including a balance sheet and income and expense statement) of the affairs of the Corporation to be made as of the last day of the month closest in time to the date six (6) months following close of escrow for the sale of the first Condominium by Declarant to an Owner. Said financial statement shall reflect the financial condition of the Corporation as of said date and shall summarize the financial transactions in which the Corporation was involved during the period between the close of the first sale and the date of the financial statement. The financial statement shall include a schedule of assessments received or receivable itemized by Condominium and shall include the name of the person or entity assessed. A copy of said financial statement shall be distributed personally or by mail to each of the Members of the Corporation and, upon written request, to all first Mortgagees, within sixty (60) days after the date of such financial statement.





(b) an annual report consisting of the following to be distributed within one hundred twenty (120) days after close of the Corporation's fiscal year:

(1) a balance sheet as of the end of the fiscal year;

(2) an operating (income) statement for the fiscal year;

(3) a statement of changes in financial position for the fiscal year;

(4) any information required to be reported under Section 8322 of the California Corporations Code;

(5) for any fiscal year in which the gross income to the Corporation exceeds \$75,000.00, a copy of a review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy.

The annual report referred to in this Subsection (b) shall be prepared by a licensee of the California State Board of Accountancy for each fiscal year.

(c) a statement of the Corporation's policies and practices in enforcing its remedies against Members for default in the payment of annual and special assessments, including the recording and foreclosing of liens against Member's interest in the Condominium Property, to be distributed to Members within sixty (60) days prior to the beginning of each fiscal year.

Section 9.24. Budget. To cause to be prepared a proforma operating statement (budget) for the Corporation to be prepared for the second and each succeeding fiscal year of the Corporation, a copy of which shall be distributed personally or by mail to each of the Members of the Corporation not fewer than forty-five (45) days prior to the beginning of the fiscal year to which the budget relates. The budget shall include the following information:

(a) The estimated revenue and expenses of the Corporation on an accrual basis for the next fiscal year.

(b) The amount of the total cash reserves of the Corporation currently available for the replacement or major repair of the Common Area 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 Area for which the Corporation is responsible.

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

Section 9.25. Fiscal Year. The fiscal year of the Corporation shall begin on the first day of January and end on the thirty-first (31st) day of December of each year, except that the first fiscal year shall begin on the date of incorporation of the Corporation. However, the fiscal year of the Corporation is subject to change from time to time as the Board shall determine.

Section 9.26. Checks. To cause to be issued checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, in the name of or payable to the Corporation, which shall be signed or endorsed by the president and chief financial officer of the Corporation.

Section 9.27. Audited Financial Statement. If the Project contains fifty (50) or more Condominiums, any holder, insurer or governmental guarantor of a first Mortgage shall be entitled, upon written request, to an audited financial statement for the immediately preceding fiscal year, free of charge to the party so requesting it. If the Project contains less than fifty (50) Condominiums, the holders of fifty-one (51%) or more of the first Mortgagees shall be entitled to have such audited financial statement prepared at their expense if one is not otherwise available. The financial statements required hereby shall be furnished within a reasonable time following request.

## ARTICLE X

### AMENDMENT

During the period of time prior to conversion of the Class B membership in the Corporation to Class A membership, new Bylaws may be adopted or these Bylaws may be amended or repealed by the vote of the Members entitled to exercise a majority or more of the voting power of each class of Members of the Corporation or by the written assent of such Members. After conversion of the Class B membership to Class A membership, these Bylaws may be amended or repealed by the vote of (i) Members entitled to exercise a majority of the voting power of the Corporation, and (ii) at least a majority of the voting power of Members of the

Corporation other than Declarant. Anything herein stated to the contrary notwithstanding, no material amendment to the Bylaws shall be made without the prior written approval of Eligible Mortgage Holders whose Mortgages encumber fifty-one percent (51%) or more of the Condominiums. "Material amendment" shall mean, for purposes of this Article X, any amendments to provisions of these Bylaws governing any of the following subjects:

(a) The fundamental purpose for which the Project was created (such as a change from residential use to a different use).

(b) Assessments, assessment liens and subordination thereof.

(c) The reserve for maintenance, repair and replacement of the Common Area.

(d) Property maintenance and repair obligations.

(e) Casualty, liability insurance and fidelity bonds.

(f) Reconstruction in the event of damage or destruction.

(g) Rights to use the Common Area.

(h) Annexation.

(i) Voting.

(j) The percentage interest of the Owners in the Common Area.

(k) Boundaries of any Living Unit.

(l) The interests in Exclusive Use Areas and other portions of the Common Area.

(m) Leasing of Condominiums.

(n) Imposition of any right of first refusal or similar restriction on the right of a Condominium Owner to sell, transfer or otherwise convey his Condominium.

(o) Any provision which, by its terms, is specifically for the benefit of first Mortgagees, or specifically confers rights on first Mortgagees.

An Eligible Mortgage Holder who receives a written request to approve amendments (including additions) who does not deliver or

mail to the requesting party a negative response within thirty (30) days, shall be deemed to have approved such request.

Anything herein to the contrary notwithstanding, so long as there remains a Class B membership in the Corporation, the VA and/or the FHA, respectively, shall have the right to veto any amendments to the Bylaws.

Anything contained in these Bylaws to the contrary notwithstanding, the rights of each director of The Community Association of Bernardo Heights set forth in Section 9.22 above may not be amended, modified or rescinded at any time without the prior written consent of the Board of Directors of The Community Association of Bernardo Heights.

I, the undersigned, do hereby certify:

1. That I am the duly elected and acting Secretary of BERNARDO HEIGHTS UNIT NO. 24 ASSOCIATION OF HOMEOWNERS, a California nonprofit mutual benefit corporation; and,

2. That the foregoing Bylaws, comprising twenty-four (24) pages, constitute the Bylaws of said corporation duly adopted by Written Consent of the Incorporator dated August 16, 1985.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said corporation this 21 day of August, 1985.

  
JOHN C. FEATHERS, Secretary

CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify:

1. That I am the duly elected and acting Secretary of BERNARDO HEIGHTS UNIT NO. 24 ASSOCIATION OF HOMEOWNERS, a California nonprofit mutual benefit corporation; and,

2. That the following is a true and correct imprint of the corporate seal of said corporation as duly adopted at the first meeting of the Board of Directors thereof, duly held on August 19, 1985:

  
\_\_\_\_\_  
JOHN C. FEATHERS, Secretary

RESOLUTION ADOPTED BY  
WRITTEN CONSENT OF INCORPORATOR  
OF  
BERNARDO HEIGHTS UNIT NO. 24 ASSOCIATION OF HOMEOWNERS,  
a California nonprofit mutual benefit corporation

August 16, 1985

---

The undersigned, as the incorporator of BERNARDO HEIGHTS UNIT NO. 24 ASSOCIATION OF HOMEOWNERS, a corporation organized under the Nonprofit Mutual Benefit Corporation Law of the State of California, being the sole incorporator of said corporation, does by this writing consent to take the following actions and adopt the following resolutions:

WHEREAS, the original Articles of Incorporation of this corporation were filed in the Office of the California Secretary of State on May 16, 1985;

WHEREAS, a certified copy of said Articles of Incorporation showing the filing as stated has been inserted in the minute book of this corporation; and,

WHEREAS, neither the members nor the directors of this corporation have adopted Bylaws for the regulation of its affairs; and,

WHEREAS, there have been considered by the incorporator Bylaws for the regulation of the affairs of this corporation; and,

WHEREAS, it is deemed to be in the best interests of this corporation and its members that said Bylaws be adopted by the incorporator as and for the Bylaws of this corporation; and,

WHEREAS, a Board of Directors should be appointed by the incorporator to take over the management of this corporation;

NOW, THEREFORE, BE IT RESOLVED, that the Bylaws considered by the incorporator be and the same hereby are adopted as and for the Bylaws of this corporation;

RESOLVED, FURTHER, that the incorporator shall execute a certificate of the adoption of said Bylaws and the Secretary of this corporation is hereby instructed and directed to insert said Bylaws as so certified in the minute book of this corporation and to see that a copy of said Bylaws, similarly

certified, is kept at the principal office for the transaction of business of this corporation in accordance with Section 7160 of the California Corporations Code;

RESOLVED, FURTHER, that the incorporator hereby resigns effective immediately and the following persons are duly appointed and elected the first directors of the corporation, said election to be effective immediately for the term prescribed by the Bylaws of the corporation:

Thomas T. Parsons  
Herb Palmtag  
John C. Feathers  
Nancy P. Glasson  
Richard Kraemer

I direct that this consent be filed with the minutes of the proceedings of the Board of Directors of this corporation.

This consent is executed pursuant to Section 7134 of the Corporations Code of the State of California which authorizes the incorporator to take any action necessary or proper to perfect the organization of the corporation.

Dated: August 16, 1985.

  
\_\_\_\_\_  
Alex C. McDonald, Incorporator



WAIVER OF NOTICE AND CONSENT TO  
HOLDING OF FIRST MEETING OF  
BOARD OF DIRECTORS OF  
BERNARDO HEIGHTS UNIT NO. 24 ASSOCIATION OF HOMEOWNERS,  
a California nonprofit mutual benefit corporation

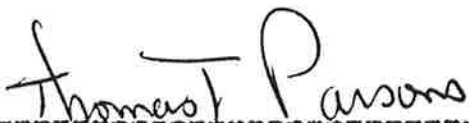
August 19, 1985

We, the undersigned, being all of the directors elected by Written Consent of Incorporator of BERNARDO HEIGHTS UNIT NO. 24 ASSOCIATION OF HOMEOWNERS, dated August 16, 1985, and desiring to hold the first meeting of the Board of Directors of said corporation for the purpose of completing the organization of its affairs, do hereby waive notice of said meeting and consent to the holding thereof at 438 Camino del Rio South, Suite B-112, San Diego, California, on the 19th day of August, 1985, at 10:00 a.m., for the purpose of:

1. Electing officers;
2. Adopting a form of corporate seal; and,
3. Transacting such other business as may be brought before said meeting.

We further agree that any business transacted at said meeting shall be as valid and legal and of the same force and effect as though said meeting were held after notice duly given.

WITNESS our signatures this 15th day of August, 1985.



THOMAS T. PARSONS



HERB PALMTAG



JOHN C. FEATHERS



NANCY P. GLASSON



RICHARD KRAEMER

Community Association of Bernardo Heights

16150 Bernardo Heights Parkway

San Diego, California 92128

Telephone (858) 451-3580 Fax (858) 451-6509

October 1, 2004

Bernardo Heights Unit 24 Association of Homeowners  
Attn: NN Jaeschke Management Company  
9610 Waples Street  
San Diego, CA 92121

Dear Board of Directors and Manager;

On behalf of the Board of Directors of the Community Association of Bernardo Heights, this correspondence is to notify you that your request to Amend Article XIII, Section 13.2, Lease of Condominium, of the BH24 HOA's CC&R's was approved at the September 23, 2004 General Board meeting.

Thank you for submitting your request to the Board of Directors. Please contact me at 858-451-3580 if you have further question or concerns.

Sincerely,

At the Direction of the Board of Directors



Deborah Baker, CCAM®  
General Manager

Cc: Board of Directors

BH24 Correspondence File



BERNARDO HEIGHTS UNIT 24 ASSOCIATION OF HOMEOWNERS

9610 Waples Street  
San Diego, CA 92121

(619) 550-7900  
(800) 448-7601

August 30, 2004

TO: BOARD OF DIRECTORS  
Community Association of Bernardo Heights (CABH)

FROM: BOARD OF DIRECTORS  
BERNARDO HEIGHTS UNIT #24 ASSOCIATION OF HOMEOWNERS  
(BH24HOA)

RE: Proposal to Amend Article XIII, Section 13.2 of the BH24HOA Covenants,  
Conditions and Restrictions (CC&R's)

In accordance with Article 6,1 of the First Amendment to the CABH CC&R's, we ask the written consent of CABH to the following Amendment of Section 13.2 of the BH24HOA's CC&R'S:

(change is shown by underline)

Section 13.2 Lease of Condominium. Subject to the restrictions set forth herein and also to such rules as the Board may adopt in regards to leasing, each Owner shall have the right to lease his Condominium, provided that such lease is in writing and provides that the tenant shall be bound by and obligated to the provisions of this Declaration, the Bylaws and the rules and regulations of the Board, and that the failure to comply with the provisions of these documents shall be a default under the lease. No Owner shall enter into a lease, rental agreement, or other similar conveyance of use of a Condominium during the first twelve (12) months of ownership of that Condominium. With the exception of a lender in possession of a Condominium following a default under a first Mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure, no Owner shall lease his Condominium for transient or hotel purposes. Any lease which is either for a period of less than thirty (30) days or pursuant to which the lessor provides any services normally associated with a hotel, shall be deemed to be for transient or hotel purposes.

Bernardo Heights Unit #24 Association of Homeowners

By:

  
Linda Campbell  
President

**NEWLAND**

Newland California  
9404 Genesee Avenue  
Suite 340  
La Jolla, California 92037  
Telephone 619-455-1230

---

July 15, 1987

Cal Scroggins  
Subdivision Title Officer  
First American Title  
411 Ivy Street  
P.O. Box 808  
San Diego, Ca 92101

JUL 17 1987

LFC

Subject: ACCOMMODATION RECORDING  
Declaration of Annexation - UDC Homes  
Bernardo Heights Unit 24, Lots 1 and 8

Dear Cal:

As requested by UDC Homes, I am enclosing an Original Declaration of Annexation for Lots 1 and 8 of Unit 24 for recording purposes.

Please direct billing for recording to my attention. We also would appreciate return of the Original or conformed copy.

Should you have any questions on this accommodation, please let me know.

Sincerely,

NEWLAND CALIFORNIA

*Dee Valle*

Dee Valle  
Sales Administrator

DAV:pek  
Enclosures

cc: Debbie D'Andria, UDC Homes  
G. Cathcart  
A. Judson, Mercury Property Management  
J. Delhamer

Recording Requested By: )  
 )  
 Declarant )  
 )  
 When Recorded Mail To: )  
 )  
 Genstar Development Inc. )  
 La Jolla Eastgate Bldg. )  
 Suite 340 )  
 9404 Genesee Avenue )  
 La Jolla, California 92037 )  
 Attention: Dee Valle ) 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"), and UDC-Universal Development L.P., a Delaware Limited Partnership doing business in the State of California as UDC Homes Limited Partnership ("UDC"), make this Declaration of Annexation and Supplemental Restrictions for the Community of Bernardo Heights on the terms and conditions stated herein with reference to the facts set forth in Article 1.

ARTICLE 1 - Recitals

1.1 UDC owns the real property described in Exhibit A ("the Annexation Property").

1.2 Declarant caused to be filed for record on September 30, 1980, File/Page No. 80-319018, Official Records of San Diego County, California, that certain "Declaration of Covenants, Conditions and Restrictions for the Community of Bernardo Heights" dated September 29, 1980 ("the Community Declaration"); the Community Declaration was amended by a "First Amendment to Declaration of Covenants, Conditions and Restrictions" recorded July 31, 1981, File/Page No. 81-243645, Official Records of San Diego County, California.

1.3 The Annexation Property was included in Exhibit B to the Community Declaration as property subject to annexation by Declarant into the Community of Bernardo Heights ("the Community") even though at the time the Community Declaration was filed for record, the Annexation Property was owned by UDC Development Company, a California corporation ("UDC").

1.4 Pursuant to an "Instrument of Imposition and Declaration of Annexation for the Community of Bernardo Heights," filed for record June 15, 1981, File/Page No. 81-186275, Official Records of San Diego County, California, UDC and Declarant imposed the Community Declaration upon the Annexation Property to the same extent as if Declarant had owned the Annexation Property as of the date the Community Declaration was filed for record; the execution and recordation of the Instrument of Imposition did not constitute the annexation of the Annexation Property.

1.5 Declarant and UDC intend to annex the Annexation Property to the Community of Bernardo Heights pursuant to the provisions of the Community Declaration. By such annexation procedure, it is the intention of Declarant and UDC that the covenants, conditions and restrictions of the Community Declaration apply to the Annexation Property in the same manner as if the Annexation Property were originally covered by the Community Declaration as a part of the Community. None of the provisions of this Declaration of Annexation will in any event be construed as revoking, modifying or adding to the limitations, restrictions and covenants established by the Community Declaration, nor will it discriminate between owners of the Annexation Property and other owners of any other property within the Community, except as otherwise expressly provided in the Community Declaration. No amendment, addition, change or deletion in this Declaration of Annexation will be deemed to alter or change the general common plan or scheme created by the Community Declaration or affect the provisions thereof as covenants running with the land or as equitable servitudes to be uniformly applicable to all portions of the Community, including those portions added thereto by annexation.

## ARTICLE 2 - Annexation of Annexation Property

2.1 Declarant and UDC hereby declare the following:

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

2.1.2 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 Declaration, shall be in full force and effect.

ARTICLE 3 - Application of Community Declaration

3.1 The terms and provisions of the covenants, conditions and restrictions of the Community Declaration will apply to the Annexation Property as if it were originally covered by the Community Declaration as a part of the Community.

3.2 After this annexation, the Community Assessments established in Paragraph 4.2 et seq. of the Community Declaration will be reassessed with the Annexation Property being assessed for a proportionate share of the total Community expenses on the same basis of assessment as other property in the Community.

3.3 In accordance with Paragraph 4.6 of the Community Declaration, Regular Community Assessments will commence as to all the Annexation Property upon the first day of the calendar month next following the closing of the sale of the first lot or unit in the Annexation Property to an owner other than Declarant or a Merchant Builder.

3.4 Upon annexation, the Bernardo Heights II Recreation Association, a California nonprofit mutual benefit corporation, will be the Neighborhood Association (as defined in the Community Declaration) for the Annexation Property.

ARTICLE 4 - General Provisions

4.1 Words, terms and phrases used herein and in the Community Declaration shall have the meaning ascribed thereto in the Community Declaration.

4.2 All exhibits referred to in this Declaration of Annexation are attached to, and a part of, this Declaration of Annexation.

IN WITNESS WHEREOF, this Declaration of Annexation has been executed at San Diego, California, as of the dates set forth adjacent to each party's signature.

GENSTAR DEVELOPMENT INC., a  
New York corporation (Genstar  
Southwest Development)

By M. R. Scott  
M. R. Scott  
Assistant Vice President

By LaDonna K. Monsees  
LaDonna K. Monsees  
Assistant Secretary

July 1, 1987

UDC-UNIVERSAL DEVELOPMENT L.P.,  
a Delaware Limited Partnership  
doing business in California  
as UDC Homes, Limited Partnership

By: UDC Corporation, a Delaware  
corporation, General Partner

7/10/87, 1987

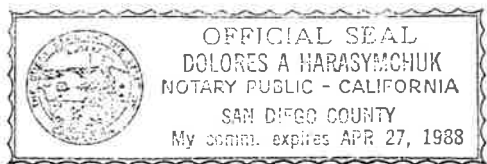
By [Signature] U.P.  
President

By Thomas Sansons  
ASST Secretary

STATE OF CALIFORNIA )  
                          ) SS  
COUNTY OF SAN DIEGO )

On July 1, 1987, before me, the undersigned, a Notary Public in and for said County and State, personally appeared M.R. SCOTT, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Assistant Vice President, and LADONNA K. MONSEES, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Assistant Secretary of GENSTAR DEVELOPMENT, INC., a New York corporation, and acknowledged to me that they are the persons who executed the within instrument as Assistant Vice President and Assistant Secretary 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.



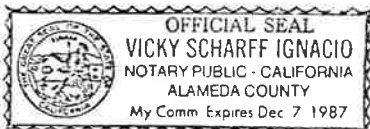
[Signature]  
Notary Public in and for said  
County and State



STATE OF CALIFORNIA )  
 ) SS  
COUNTY OF SAN DIEGO )

On July 10, 1987, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Herb Palmtag, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Vice president, and Thomas T. Parsons, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Assistant secretary of UDC Homes Corporation, a Delaware corporation, and acknowledged to me that they are the persons who executed the within instrument as Vice president and Assistant secretary 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.



*Vicky Scharff Ignacio*  
Notary Public in and for said  
County and State

EXHIBIT A

Lots 1 and 8 of Bernardo Heights Unit 24 in the City of San Diego, State of California, according to Map thereof No. 11156 filed in the Office of the County Recorder of San Diego County on February 27, 1985

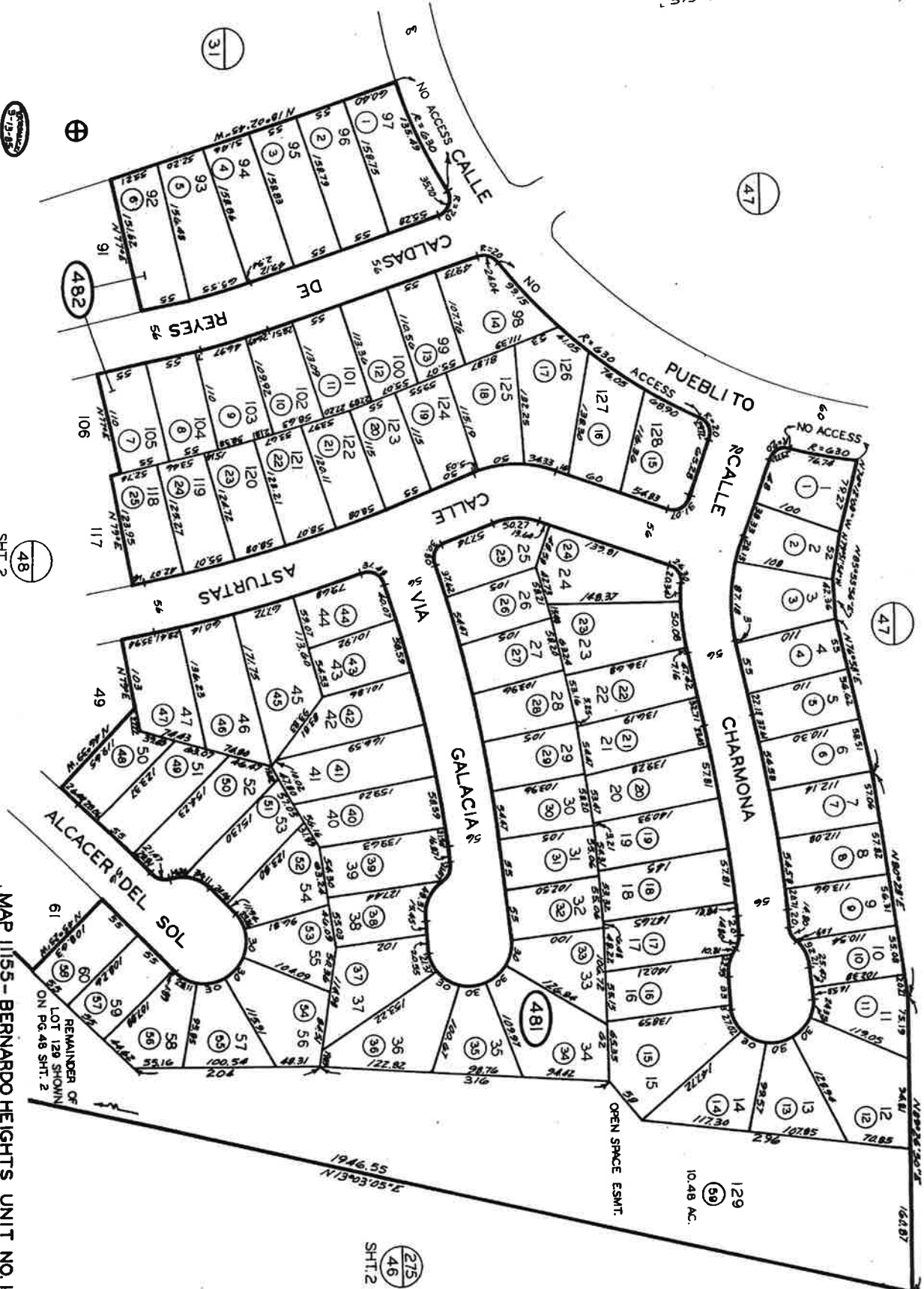
EXHIBIT A

LAST FLORES Homes

313-48  
SHT. 1 OF 2

1" = 100'  
N

1-8-86 RJA  
BLK OLD NEW/CUT  
CHANGES  
ADP 1-59/05/2012  
AJZ 1-251

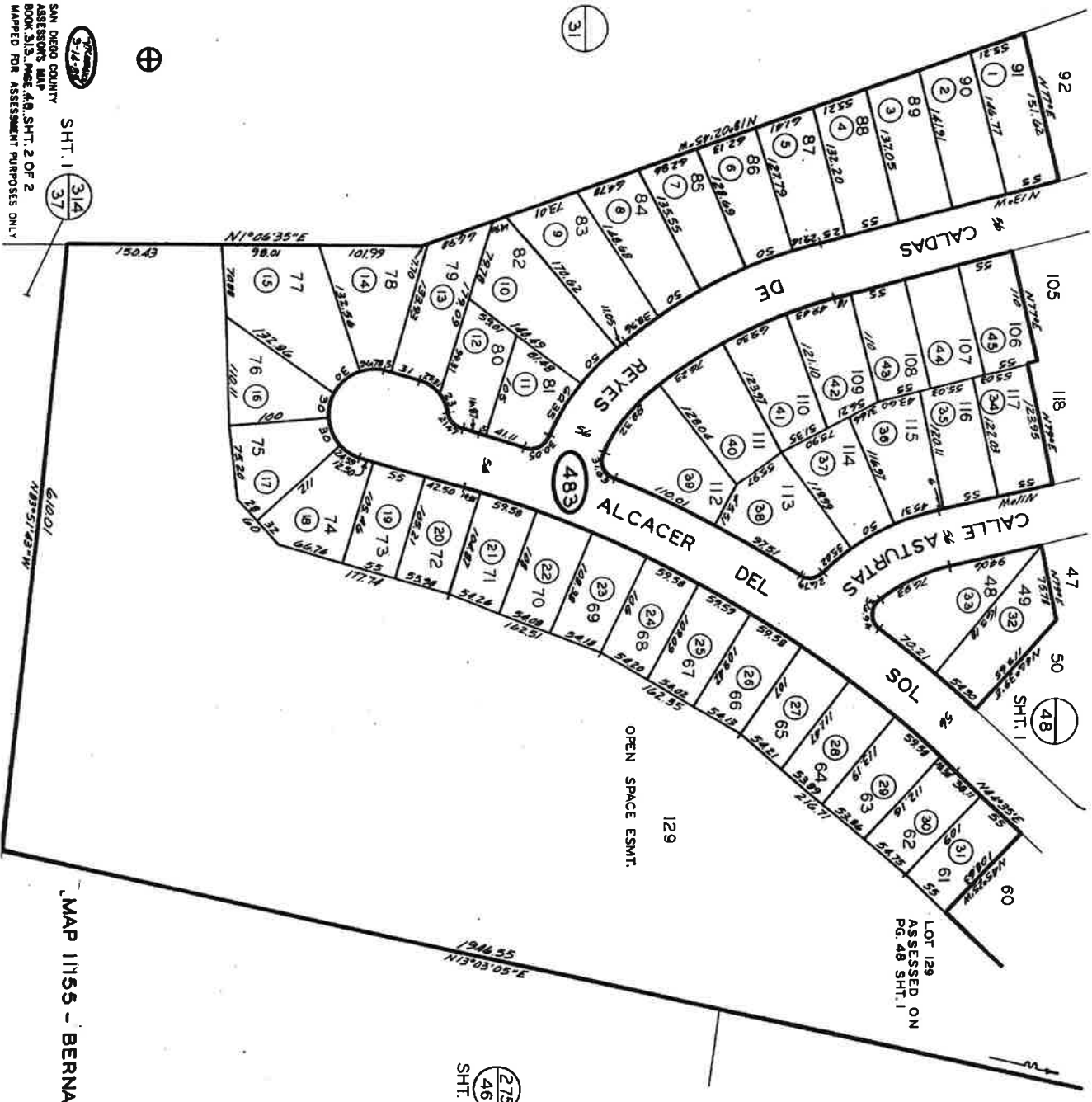
48  
SHT. 2

MAP 1155 - BERNARDO HEIGHTS UNIT NO. 14

SAN DIEGO COUNTY  
ASSESSOR'S MAP 48, SHT. 1 OF 2  
BOOK 1, PAGE 2, 4  
MAPPED FOR ASSESSMENT PURPOSES ONLY

3/3-3/2

3




  
 SHT. 1 314 37

MAP 1155 - BERNARDO HEIGHTS UNIT NO.14


275 46 SHT.1

275 46 SHT.2

1-8-86 KIA

**CHANGES**

BLK OLD	NEW	IN	OUT
483	1-45,85	282	

313-48  
 SHT. 2 OF 2  

  
 1" = 100'



COPY

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## THE COMMUNITY ASSOCIATION OF BERNARDO HEIGHTS

September 3, 2008

Charles Hopper, Claims Representative  
City of San Diego  
1200 Third Avenue Suite 1000  
San Diego, CA 92101-4107

RE: City File# LX08-0560-2385  
Claimant: Anne Lynch

Dear Mr. Hopper,

This is to inform you that the area of sidewalk where the trip and fall occurred is **not** under the care or control of the Community Association of Bernardo Heights (CABH). The area is maintained by Las Flores Condos/BH14. Their contact information is NN Jaeschke 9610 Waples St. San Diego, CA 92121.

Sincerely,

Becky Groenewold, CCAM, CMCA, AMS  
General Manager

C CABH Board  
Alliant Insurance Services  
BH 14 Board

Ann Lynch claim

**Becky Groenewold**

**From:** Rebecca Kimmel [RKimmel@alliantinsurance.com]  
**Sent:** Monday, August 25, 2008 9:01 AM  
**To:** Becky Groenewold  
**Cc:** Jim Young  
**Subject:** Ann Lynch claim

*Send wife*

The adjuster will be contacting you this morning.

His name is Ted Luevano, phone number 800 846 9484 ext. 2539  
Claim #344512

Thanks.

Becky Kimmel, AAI, AIS, CISR, ACS  
Account Manager  
Select Business Solutions Dept.  
Alliant Insurance Services, Inc.  
570 Rancheros Drive Suite #100  
San Marcos, CA 92069  
(760) 304-7124 direct  
(619) 699-2151 fax  
License #OC36861  
rkimmel@alliantinsurance.com

This e-mail and all attachments to it are for the sole use of the intended recipients and may contain proprietary information and trade secrets of Alliant Insurance Services, Inc. and its subsidiaries. This e-mail may also contain information which is confidential or which is protected from disclosure by privilege. Any unauthorized use, disclosure or distribution of this e-mail and its attachments is prohibited. If you are not the intended recipient, let us know by reply e-mail and then erase and destroy all electronic or other copies of this message.

*LFC-  
BH 24*

*Called  
Ted  
Let him know  
it is not  
out -*

**Philadelphia Insurance Companies**

2901 Douglas Blvd., Suite 150

Roseville, CA 95661

**Ph: (800) 846-9484, Ext#2539 Fx: (866) 728-7839**

August 22, 2008

Community Association of Bernardo Heights

c/o PCM

23726 Birtcher Drive

Lake Forest, CA 92630

RECEIVED  
AUG 25 2008  
PCM

RE: Our Insured: Community Assoc of Bernardo Heights  
Our Claim #: 344512  
Claimant: Anne Lynch  
Date of Loss: 04/05/2008

Dear Community Association:

This will serve to acknowledge receipt of a claim that has been submitted under the General Liability Policy with Philadelphia Indemnity Insurance Companies. Please be advised that the claim has been assigned to me for handling and I would like the opportunity to discuss the specific facts of the incident with you in further detail. If we have already been in contact, please disregard this correspondence.

Please contact me at our toll free number provided below between the hours of 8:30am and 5:00pm, Monday through Friday and note that our office is located on the West Coast. Please be sure to reference the Claim Number when calling me back. If I am unavailable at the time of your call, please be sure to provide a daytime telephone number where you can best be reached.

Thank you in advance for your courtesy and cooperation and I look forward to hearing from you.

Sincerely,

*Ted Luevano*

Ted Luevano

Senior Claims Examiner

Philadelphia Insurance Companies

(800) 846-9484 Ext. 2539

tluevano@phlyins.com



**CLAIM AGAINST THE CITY OF SAN DIEGO**  
(FOR DAMAGES TO PERSONS OR PERSONAL PROPERTY)

2008 JUN 12 PM 1:22  
R.M.S.D.

Received by BS via  
 U.S. Mail   
 Inter-Office Mail   
 Over the Counter

TIME STAMP

FILE NO. \_\_\_\_\_

A claim must be presented to the **Risk Management Department** of the City of San Diego not later than six (6) months after the date of the incident or event. Where space is insufficient, please use additional paper and identify information by paragraph number. Completed claims must be presented to: *City of San Diego, Risk Management Dept., 1200 Third Ave., Suite 1000, San Diego, CA 92101.*

TO THE HONORABLE MAYOR AND CITY COUNCIL, The City of San Diego, California

The undersigned respectfully submits the following claim and information relative to damage to persons and/or personal property:

1. **NAME OF CLAIMANT:** Anne W. Lynch

a. **ADDRESS OF CLAIMANT** 12628 Calle Charmena  
San Diego Ca. 92128  
 (CITY) (STATE) (ZIP)

b. **PHONE NO.** Home 858-674-1524 Business \_\_\_\_\_ c. **DATE OF BIRTH** ~~XXXXXXXXXX~~

d. **SOCIAL SECURITY NO.\*** ~~XXXXXXXXXX~~ e. **DRIVER'S LIC. NO.** ~~XXXXXXXXXX~~

\*Providing this information at the time the claim is made is voluntary. However, claimant's Social Security Number or Attorney's Tax Identification Number will be required should there be a payment on the claim.

2. Name, telephone and post office address to which claimant desires notices to be sent if other than above:

\_\_\_\_\_

3. Occurrence or event from which the claim arises:

a. **DATE:** April 5, 2008 b. **TIME:** 9:30 A.M. Sat. c. **PLACE** (exact and specific location):

Right side of Peblito, coming from Cl. Charmena, near 3rd tree.

d. Specify the circumstances of the occurrence, event, act or omission which you claim caused the injury, damage or loss. (use additional paper if necessary):

I (Anne Lynch) tripped and fell forward on knees and hands on above date. The side walk is uneven-raised on one side, as my shoe hit the walk, it caused the fall. There was bleeding on both knees, with long slacks on. Right leg has bruising from knee to ankle, all the way down the skin. There is still discoloration.

e. State how or in what manner the City of San Diego or its employees were at fault:

Had the walk been repaired and maintained, this injury would not have occurred, as I am not at fault here in.



4. Give a description of the injury, property damage or loss incurred so far as is known at the time of this claim. If there were no injuries, state "no injuries". (If your claim involves a vehicle, include license, year, make and model.)

Torn Meniscus with intense pain, swelling - right knee.

Dr. Bried drained the knee w/cortizone shot. Did not help at all. Suggests surgery, but I am in hope, if given a chance, it might heal.

5. Give the name(s) of the City employee(s) causing the injury, damage or loss, if known: because I am fearful of surgery in spite of the pain.

6. Name and address of any other person injured: \_\_\_\_\_

7. Name and address of the owner of any damaged property: \_\_\_\_\_

8. Damages claimed:

a. Amount claimed as of this date: \$ 1589.16 = see copy enclosed.  
b. Estimated amount of any future costs: \$ 4 visits = compiled bill - copies etc  
c. Total amount claimed: \$ Pr. James Bried

a. Basis for computation of amounts claimed (include copies of all bills, invoices, estimates, etc.)  
To pay the Medical fees pertaining to accidental fall - See copies and explanation.

9. Names and addresses of all witnesses, hospitals, doctors, etc.

a. Dr. James Bried 15525 Pomerado Rd. #A, Poway, Ca. 92064-2425  
b. Poway Imaging Center 12620 Monte Vista Rd, Poway, Ca 92064  
c. \_\_\_\_\_  
d. \_\_\_\_\_

10. Any additional information that might be helpful in considering claim:

I am presently wearing an elastic knee brace, using a cane to help relieve pressure on the injury. Still icing & keeping leg raised. Your co-operation in this matter is appreciated.

**WARNING: IT IS A CRIMINAL OFFENSE TO FILE A FALSE CLAIM! (Penal Code § 72; Insurance Code § 556.1)**

I have read the matters and statements made in the above claim and I know the same to be true of my own knowledge, except as to those matters stated upon information or belief and as to such matters I believe the same to be true. I certify under penalty of perjury that the foregoing is TRUE and CORRECT.

Signed this 10 day of June, 2008 at 2:45 P.M.

Anne W. Lynch  
CLAIMANT'S SIGNATURE

**CLAIM AGAINST THE CITY OF SAN DIEGO**  
(FOR DAMAGES TO PERSONS OR PERSONAL PROPERTY)



Received by BS via  U.S. Mail  
 Inter-Office Mail  
 Over the Counter

TIME STAMP

2008 JUN 12 PM 1:22  
R.M.S.D.

FILE NO.

A claim must be presented to the Risk Management Department of the City of San Diego not later than six (6) months after the date of the incident or event. Where space is insufficient, please use additional paper and identify information by paragraph number. Completed claims must be presented to: City of San Diego, Risk Management Dept., 1200 Third Ave., Suite 1000, San Diego, CA 92101.

TO THE HONORABLE MAYOR AND CITY COUNCIL, The City of San Diego, California

The undersigned respectfully submits the following claim and information relative to damage to persons and/or personal property:

1. NAME OF CLAIMANT: Anne W. Lynch

a. ADDRESS OF CLAIMANT 12628 Calle Charmena

(CITY) San Diego  
(STATE) Ca.  
(ZIP) 92128

b. PHONE NO. Home 858-674-1507 Business \_\_\_\_\_

d. SOCIAL SECURITY NO. \* [REDACTED]

e. DRIVERS LIC. NO. [REDACTED]

2. Name, telephone and post office address to which claimant desires notices to be sent if other than above:

3. Occurrence or event from which the claim arises:

a. DATE: April 5, 2008 b. TIME: 9:30 AM Sat. c. PLACE (exact and specific location): Right side of Reblite, coming from C. Charmena, near 9th & tree.  
d. Specify the circumstances of the occurrence, event, act or omission which you claim caused the injury, damage or loss. (use additional paper if necessary):  
I (Anne Lynch) tripped and fell forward on knees and hands, on above date. The sidewalk is uneven - raised on one side, as my shoe hit the walk, it caused the fall. There was bleeding on both knees, with long streaks on right leg has bruising from knee to ankle, all the way down the leg. There is still a discoloration. Had the walk been repaired and maintained, this injury would not have occurred, as I am not at fault here in.

e. State how or in what manner the City of San Diego or its employees were at fault:



1.4 Pursuant to an "Instrument of Imposition and Declaration of Annexation for the Community of Bernardo Heights," filed for record June 15, 1981, File/Page No. 81-186275, Official Records of San Diego County, California, UDC and Declarant imposed the Community Declaration upon the Annexation Property to the same extent as if Declarant had owned the Annexation Property as of the date the Community Declaration was filed for record; the execution and recordation of the Instrument of Imposition did not constitute the annexation of the Annexation Property.

1.5 Declarant and UDC intend to annex the Annexation Property to the Community of Bernardo Heights pursuant to the provisions of the Community Declaration. By such annexation procedure, it is the intention of Declarant and UDC that the covenants, conditions and restrictions of the Community Declaration apply to the Annexation Property in the same manner as if the Annexation Property were originally covered by the Community Declaration as a part of the Community. None of the provisions of this Declaration of Annexation will in any event be construed as revoking, modifying or adding to the limitations, restrictions and covenants established by the Community Declaration, nor will it discriminate between owners of the Annexation Property and other owners of any other property within the Community, except as otherwise expressly provided in the Community Declaration. No amendment, addition, change or deletion in this Declaration of Annexation will be deemed to alter or change the general common plan or scheme created by the Community Declaration or affect the provisions thereof as covenants running with the land or as equitable servitudes to be uniformly applicable to all portions of the Community, including those portions added thereto by annexation.

#### ARTICLE 2 - Annexation of Annexation Property

2.1 Declarant and UDC hereby declare the following:

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

2.1.2 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 Declaration, shall be in full force and effect.

ARTICLE 3 - Application of Community Declaration

3.1 The terms and provisions of the covenants, conditions and restrictions of the Community Declaration will apply to the Annexation Property as if it were originally covered by the Community Declaration as a part of the Community.

3.2 After this annexation, the Community Assessments established in Paragraph 4.2 et seq. of the Community Declaration will be reassessed with the Annexation Property being assessed for a proportionate share of the total Community expenses on the same basis of assessment as other property in the Community.

3.3 In accordance with Paragraph 4.6 of the Community Declaration, Regular Community Assessments will commence as to all the Annexation Property upon the first day of the calendar month next following the closing of the sale of the first lot or unit in the Annexation Property to an owner other than Declarant or a Merchant Builder.

3.4 Upon annexation, the Bernardo Heights II Recreation Association, a California nonprofit mutual benefit corporation, will be the Neighborhood Association (as defined in the Community Declaration) for the Annexation Property.

ARTICLE 4 - General Provisions

4.1 Words, terms and phrases used herein and in the Community Declaration shall have the meaning ascribed thereto in the Community Declaration.

4.2 All exhibits referred to in this Declaration of Annexation are attached to, and a part of, this Declaration of Annexation.

IN WITNESS WHEREOF, this Declaration of Annexation has been executed at San Diego, California, as of the dates set forth adjacent to each party's signature.

GENSTAR DEVELOPMENT INC., a  
New York corporation (Genstar  
Southwest Development)

By M. R. Scott  
M. R. Scott  
Assistant Vice President

By LaDonna K. Monsees  
LaDonna K. Monsees  
Assistant Secretary

7/23/ 1986

UDC-UNIVERSAL DEVELOPMENT L.P.,  
a Delaware Limited Partnership  
doing business in California  
as UDC Homes, Limited Partnership

By: UDC Corporation, a Delaware  
corporation, General Partner

July 21, \_\_\_\_\_, 1986

By *Deel Polity* Vice President  
By *Thomas J. Amos* Asst Secretary

STATE OF CALIFORNIA )  
                              ) SS  
COUNTY OF SAN DIEGO )

On July 23, 1986, before me, the undersigned, a Notary Public in and for said County and State, personally appeared M.R. Scott, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Assistant Vice President, and LADONNA K. MONSEES, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Assistant Secretary of GENSTAR DEVELOPMENT, INC., a New York corporation, and acknowledged to me that they are the persons who executed the within instrument as Assistant Vice President and Assistant Secretary 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.

*Dolores A. Harasymchuk*  
Notary Public in and for said  
County and State



1143

STATE OF CALIFORNIA )  
 ) SS  
COUNTY OF SAN DIEGO )

On July 21, 1986, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Herb Palmtag, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Vice president, and Thomas T. Parsons, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Asstn. secretary of UDC Homes Corporation, a Delaware corporation, and acknowledged to me that they are the persons who executed the within instrument as Vice president and Asstn. secretary 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.



Vicky Scharff Ignacio  
Notary Public in and for said  
County and State

1144

EXHIBIT A

LOTS 48 through 65, LOTS 70 through 87 and LOTS 109 through 112, inclusive, of BERNARDO HEIGHTS UNIT NO. 14, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 11155 filed in the Office of the County Recorder of San Diego County on February 27, 1985.

LOTS 4 and 5 of BERNARDO HEIGHTS UNIT NO. 24, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 11156 filed in the Office of the County Recorder of San Diego County on February 27, 1985.





# The Inesco/Dico Group



STATE OF CALIFORNIA  
DEPARTMENT OF  
REAL ESTATE

BOND NO: 913184S

INITIAL PREMIUM: \$81.00  
SUBJECT TO RENEWAL.

## MAINTENANCE ASSESSMENT BOND

KNOW ALL MEN BY THESE PRESENTS,

UDC - UNIVERSAL DEVELOPMENT L.P., A DELAWARE LIMITED PARTNERSHIP  
That we, ~~DOING BUSINESS IN CALIFORNIA AS UDC HOMES LIMITED PARTNERSHIP~~ as Principal,  
and DEVELOPERS INSURANCE COMPANY, a corporation organized and doing business under and by virtue of the laws of the State  
of California and duly licensed to conduct a general surety business in the State of California as Surety, are held and firmly bound unto  
THE COMMUNITY ASSOCIATION OF BERNARDO HEIGHTS

as Oblige, in the sum of \*FOUR THOUSAND TWENTY SIX AND NO/100THS\*  
( \$ 4,026.00 ) Dollars, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and  
successors, jointly and severally firmly by these presents.

WHEREAS, the above named Principal is the owner and developer of a project, in the County of SAN DIEGO

State of California, known as BERNARDO HEIGHTS UNIT NO. 24, PHASE 1

Tract No. \_\_\_\_\_

WHEREAS, said Principal, in order to comply with Section 2792.9 of Regulations of the California Real Estate Commissioner may  
furnish a corporate bond, as hereinafter conditioned.

NOW THEREFORE, the condition of this obligation is such, that the security shall remain in the custody of Escrow Depository known  
TICOR TITLE INSURANCE COMPANY OF CALIFORNIA

located at 220 "A" STREET, SAN DIEGO, CA 92101

until the subdivider has given written notice to Escrow that it has conveyed title to 80% of the units comprising the subdivision; and  
Escrow has received a certified copy of the resolution of a board of Directors of Homeowners Association adopted not more than 30  
days prior to its receipt, stating that subdivider is not delinquent in the payment of assessments for which it is obligated. In the event of a  
dispute between subdivider and aforesaid Association, with respect to the question of satisfaction of the conditions for exoneration or  
release of the security, the issue(s) 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 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.

IN WITNESS WHEREOF, the seal and signature of said Principal is hereto affixed and the corporate seal and the name of the said

Surety is hereto affixed and attested by its duly authorized Attorney-in-Fact at SAN DIEGO

California, this 26TH day of JULY, 19 85

UDC HOMES LIMITED PARTNERSHIP

DEVELOPERS INSURANCE COMPANY

BY: JEROME L. HREN, Attorney-in-Fact

333 Wilshire Ave.  
Anaheim, CA 92801  
(714) 999-1471



333 Wilshire  
Anaheim, California 92801  
(714) 999-1471  
(213) 402-7877

BOND NO: 911459s  
ADDITIONAL PREMIUM: #24.00  
Annually

**INCREASE OR DECREASE PENALTY RIDER**

AGGREGATE BOND AMOUNT: \$5,464.00

AGGREGATE PREMIUM: \$109.00

KNOW ALL MEN BY THESE PRESENTS:

That we, Developers Insurance Company, a corporation organized and doing business under and by virtue of the laws of the State of California and duly licensed to conduct a general surety business in the State of California as Surety, are held and firmly bound unto

Bernardo Heights Community Association

as Oblige, upon the bond of UDC - Universal Development L.P., a Delaware limited partnership doing business in California as UDC Homes Limited Partnership

dated the 2nd day of July, 19 85, in the penalty of Four thousand two hundred thirty seven and 20/100 ths Dollars (\$ 4,237.20).

At the request of said Oblige Developers Insurance company does hereby decrease increase the penalty of said bond to the sum of Five thousand four hundred sixty four and no/100 Dollars (\$ 5,464.00), to be effective as of the

13th day of November, 19 85, and does hereby agree that the continuity of protection under said bond, subject to changes in penalty, shall not be impaired hereby, provided that the aggregate liability of Developers Insurance Company shall not exceed the larger of the above-mentioned items.

IN WITNESS WHEREOF, the seal and signature of said Surety is hereto affixed and attested by its duly authorized Attorney-in-Fact at San Diego, California.

this 13th day of November, 19 85

DEVELOPERS INSURANCE COMPANY

BY: Jerome L. Hren Attorney-in-Fact

Acknowledged By:

Oblige

RIDER

TO BE ATTACHED TO AND FORM PART OF BOND NO. 911459S

ON BEHALF OF UDC DEVELOPMENT COMPANY

IT IS AGREED THAT:

NAME OF PRINCIPAL IS HEREBY AMENDED TO READ:

UDC - UNIVERSAL DEVELOPMENT L.P., A DELAWARE LIMITED PARTNERSHIP  
DOING BUSINESS IN CALIFORNIA AS UDC HOMES LIMITED PARTNERSHIP

AGREED AND CONSENTED TO THIS 25TH DAY OF JULY 1985.

THIS RIDER IS EFFECTIVE AS OF NOON ON JULY 25, 1985, STANDARD TIME

AS SPECIFIED IN THE ATTACHED BOND.

DEVELOPERS INSURANCE COMPANY

BY: Jerome L. Hren  
JEROME L. HREN, ATTORNEY-IN-FACT

**DICO**

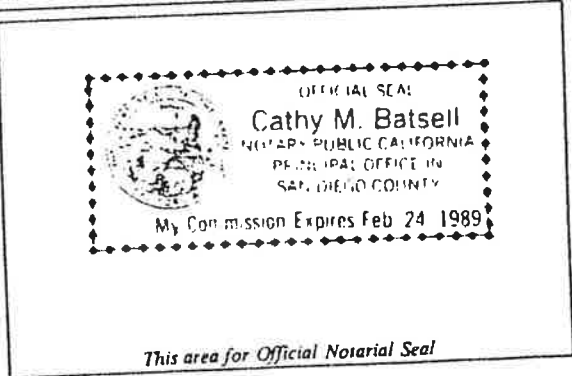
CORPORATION

STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO } ss.  
On JULY 25, 1985

before me, the undersigned, a Notary Public in and for said State.

personally appeared JEROME L. HREN  
personally known to me (or proved to me on the basis of satisfactory  
evidence) to be the person who executed the within instrument as Power of  
Attorney on behalf of Developers Insurance Company, the corporation  
therein named, and acknowledged to me that the corporation executed it.  
WITNESS my hand and official seal.

Signature Cathy M. Batsell



STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

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

RE FORM 643 (Rev. 9/30/80)

Subdivider has transmitted herewith to TICOR TITLE INSURANCE COMPANY  
OF CALIFORNIA  
(escrow depository) as trustee, a  surety bond  cash deposit in  
the amount of \$ 1,677.24.

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 24  
("Las Floras") PHASE 3,  
(Name and/or Tract No.)  
DRE File No. 058980LA FOO, County of San Diego,  
to pay regular and special assessments allocable to lots and/or units in  
the aforesaid subdivision to THE COMMUNITY ASSOCIATION OF BERNARDO HEIGHTS.

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 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.

-UNIVERSAL DEVELOPMENT L.P., a Delaware limited partnership, doing business in California as HOMES LIMITED PARTNERSHIP

UDC CORPORATION, A Delaware corporation

By: [Signature]

(Title)

458 Camino del Rio South, Suite B-112  
(Address)

San Diego, California 92108  
(City and State)

Dated: 2/2/86

THE COMMUNITY ASSOCIATION OF BERNARDO HEIGHTS (Owner's Association)

By: [Signature]  
PRESIDENT

(Title)

16066 Bernardo Heights Parkway  
(Address)

San Diego, California 92128  
(City and State)

Dated: \_\_\_\_\_

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

TICOR TITLE INSURANCE COMPANY OF CALIFORNIA, a California corporation  
(Escrow Depository)

By: \_\_\_\_\_

(Title)

925 "B" Street  
(Address)

San Diego, California 92101  
(City and State)

Dated: \_\_\_\_\_

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

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

RE FORM 643 (Rev. 9/30/80)

TICOR TITLE INSURANCE COMPANY  
OF CALIFORNIA

Subdivider has transmitted herewith to TICOR TITLE INSURANCE COMPANY OF CALIFORNIA  
(escrow depository) as trustee, a  surety bond  cash deposit in  
the amount of \$ 3,354.48.

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 24  
("Las Floras") PHASE 4,  
(Name and/or Tract No.)

DRE File No. 058981LA F00, County of San Diego,  
to pay regular and special assessments allocable to lots and/or units in  
the aforesaid subdivision to THE COMMUNITY ASSOCIATION OF BERNARDO HEIGHTS

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 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.

UDC-UNIVERSAL DEVELOPMENT L.P., a Delaware limited partnership, doing business in California as UDC HOMES LIMITED PARTNERSHIP

BY: [Signature]  
UDC CORPORATION, A Delaware corporation

By: [Signature]  
(Title)

438 Camino del Rio South, Suite B-112  
(Address)

San Diego, California 92108  
(City and State)

Dated: 5/20/86

THE COMMUNITY ASSOCIATION OF BERNARDO HEIGHTS  
(Owner's Association)

By: [Signature]  
PRESIDENT  
(Title)

150 16066 Bernardo Heights Parkway  
(Address)

San Diego, California 92128  
(City and State)

Dated: \_\_\_\_\_

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

TICOR TITLE INSURANCE COMPANY OF CALIFORNIA,  
a California corporation  
(Escrow Depository)

By: \_\_\_\_\_  
(Title)

925 "B" Street  
(Address)

San Diego, California 92101  
(City and State)

Dated: \_\_\_\_\_



438 Camino del Rio South  
Suite 112B  
San Diego, California 92108  
(619) 298-8070

**UDC Homes**  
*Limited Partnership*

**HAND DELIVERED**

August 19, 1986

Ms. Lisa Lambert  
Bernardo Heights  
Community Association  
16150 Bernardo Heights Pkwy.  
San Diego, CA 92128

Re: BH #24 DRE Bond

Dear Lisa:

Once again I must request a signature from the Community Association in applying for a surety bond for the Department of Real Estate.

I would appreciate your handling this in a timely manner. Thank you for your assistance.

Cordially,

A handwritten signature in blue ink that reads "Deborah J. D'Andria".

Deborah J. D'Andria  
Administrative Assistant

/djd  
Attachments



STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

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

RE FORM 643 (Rev. 9/30/80)

Subdivider has transmitted herewith to TICOR TITLE INSURANCE COMPANY OF CALIFORNIA  
(escrow depository) as trustee, a  surety bond  cash deposit in  
the amount of \$ 3,354.48.

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. 24  
"Las Floras" PHASE 5,  
(Name and/or Tract No.)

DRE File No. 059342LA FOO, County of San Diego,  
to pay regular and special assessments allocable to lots and/or units in  
the aforesaid subdivision to THE COMMUNITY ASSOCIATION OF BERNARDO HEIGHTS.

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 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.

UDC-UNIVERSAL DEVELOPMENT L.P., a Delaware limited partnership, doing business in California as UDC HOMES LIMITED PARTNERSHIP

UDC CORPORATION, a Delaware corporation

By: Thomas Parsons

Asst Sec.  
(Title)

438 Camino del Rio South, Suite B-112  
(Address)

San Diego, California 92108  
(City and State)

Dated: \_\_\_\_\_

THE COMMUNITY ASSOCIATION OF BERNARDO HEIGHTS  
(Owner's Association)

By: George [Signature]

PRES.  
(Title)

16150 Bernardo Heights Parkway  
(Address)

San Diego, California 92128  
(City and State)

Dated: 8/21/80

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

TICOR TITLE INSURANCE COMPANY OF CALIFORNIA  
(Escrow Depository)

By: \_\_\_\_\_

(Title)

925 "B" Street  
(Address)

San Diego, California 92101  
(City and State)

Dated: \_\_\_\_\_

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

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

RE FORM 643 (Rev. 9/30/80)

Subdivider has transmitted herewith to TICOR TITLE INSURANCE COMPANY OF CALIFORNIA (escrow depository) as trustee, a  surety bond  cash deposit in the amount of \$ 4,026.00.

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. 24, Phase 1 (Name and/or Tract No.)

DRE File No. 057160LA A01, County of San Diego, to pay regular and special assessments allocable to lots and/or units in the aforesaid subdivision to THE COMMUNITY ASSOCIATION OF BERNARDO HEIGHTS

~~XXXXXXXXXX~~

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 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.

UDC UNIVERSAL L.P., a Delaware limited partnership, doing business in the State of California as UDC HOMES LIMITED PARTNERSHIP.

UDC CORPORATION, a Delaware corporation, doing business in the State of California as UDC HOMES CORPORATION

By: [Signature]  
its \_\_\_\_\_

By: \_\_\_\_\_  
its \_\_\_\_\_

38 Camino del Rio South, Suite B-112  
San Diego, California 92108

Dated: 7/19/85

THE COMMUNITY ASSOCIATION OF BERNARDO HEIGHTS  
(Owner's Association)

By: [Signature]  
(Title)

(Address)

(City and State)

Dated: \_\_\_\_\_

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

TICOR TITLE INSURANCE COMPANY OF CALIFORNIA  
(Escrow Depository)

By: \_\_\_\_\_  
(Title)

220 "A" Street  
(Address)

San Diego, California 92101  
(City and State)

Dated: \_\_\_\_\_

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

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

RE FORM 643 (Rev. 9/30/80)

Subdivider has transmitted herewith to TICOR TITLE INSURANCE COMPANY OF CALIFORNIA (escrow depository) as trustee, a  surety bond  cash deposit in the amount of \$ 4,026.00.

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. 24, Phase, 1 (Name and/or Tract No.)

DRE File No. 057160LA A01, County of San Diego, to pay regular and special assessments allocable to lots and/or units in the aforesaid subdivision to THE COMMUNITY ASSOCIATION OF BERNARDO HEIGHTS  
~~XXXXXXXXXXXX~~.

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 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.

UDC UNIVERSAL L.P., a Delaware limited partnership, doing business in the State of California as UDC HOMES LIMITED PARTNERSHIP.

BY: UDC CORPORATION, a Delaware corporation, doing business in the State of California as UDC HOMES CORPORATION

By: Albert M. Kelly  
its U.P.

By: \_\_\_\_\_  
its \_\_\_\_\_

438 Camino del Rio South, Suite B-112  
San Diego, California 92108

Dated: 7/19/85

THE COMMUNITY ASSOCIATION OF BERNARDO HEIGHTS

(Owner's Association)

By: Michael

(Title) President

(Address) \_\_\_\_\_

(City and State) \_\_\_\_\_

Dated: \_\_\_\_\_

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

TICOR TITLE INSURANCE COMPANY OF CALIFORNIA  
(Escrow Depository)

By: \_\_\_\_\_

(Title) \_\_\_\_\_

220 "A" Street  
(Address) \_\_\_\_\_

San Diego, California 92101  
(City and State) \_\_\_\_\_

Dated: \_\_\_\_\_

**NEWLAND**

Newland California  
9404 Genesee Avenue  
Suite 340  
La Jolla, California 92037  
Telephone 619-455-1230

---

July 15, 1987

Cal Scroggins  
Subdivision Title Officer  
First American Title  
411 Ivy Street  
P.O. Box 808  
San Diego, Ca 92101

LFC

Subject: ACCOMMODATION RECORDING  
Declaration of Annexation - UDC Homes  
Bernardo Heights Unit 24, Lots 1 and 8

Dear Cal:

As requested by UDC Homes, I am enclosing an Original Declaration of Annexation for Lots 1 and 8 of Unit 24 for recording purposes.

Please direct billing for recording to my attention. We also would appreciate return of the Original or conformed copy.

Should you have any questions on this accommodation, please let me know.

Sincerely,

**NEWLAND CALIFORNIA**

*Dee Valle*

Dee Valle  
Sales Administrator

DAV:pek  
Enclosures

cc: Debbie D'Andria, UDC Homes  
G. Cathcart  
A. Judson, Mercury Property Management  
J. Delhamer

Recording Requested By: )  
 )  
 Declarant )  
 )  
 When Recorded Mail To: )  
 )  
 Genstar Development Inc. )  
 La Jolla Eastgate Bldg. )  
 Suite 340 )  
 9404 Genesee Avenue )  
 La Jolla, California 92037 )  
 Attention: Dee Valle ) 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"), and UDC-Universal Development L.P., a Delaware Limited Partnership doing business in the State of California as UDC Homes Limited Partnership ("UDC"), make this Declaration of Annexation and Supplemental Restrictions for the Community of Bernardo Heights on the terms and conditions stated herein with reference to the facts set forth in Article 1.

ARTICLE 1 - Recitals

1.1 UDC owns the real property described in Exhibit A ("the Annexation Property").

1.2 Declarant caused to be filed for record on September 30, 1980, File/Page No. 80-319018, Official Records of San Diego County, California, that certain "Declaration of Covenants, Conditions and Restrictions for the Community of Bernardo Heights" dated September 29, 1980 ("the Community Declaration"); the Community Declaration was amended by a "First Amendment to Declaration of Covenants, Conditions and Restrictions" recorded July 31, 1981, File/Page No. 81-243645, Official Records of San Diego County, California.

1.3 The Annexation Property was included in Exhibit B to the Community Declaration as property subject to annexation by Declarant into the Community of Bernardo Heights ("the Community") even though at the time the Community Declaration was filed for record, the Annexation Property was owned by UDC Development Company, a California corporation ("UDC").



1.4 Pursuant to an "Instrument of Imposition and Declaration of Annexation for the Community of Bernardo Heights," filed for record June 15, 1981, File/Page No. 81-186275, Official Records of San Diego County, California, UDC and Declarant imposed the Community Declaration upon the Annexation Property to the same extent as if Declarant had owned the Annexation Property as of the date the Community Declaration was filed for record; the execution and recordation of the Instrument of Imposition did not constitute the annexation of the Annexation Property.

1.5 Declarant and UDC intend to annex the Annexation Property to the Community of Bernardo Heights pursuant to the provisions of the Community Declaration. By such annexation procedure, it is the intention of Declarant and UDC that the covenants, conditions and restrictions of the Community Declaration apply to the Annexation Property in the same manner as if the Annexation Property were originally covered by the Community Declaration as a part of the Community. None of the provisions of this Declaration of Annexation will in any event be construed as revoking, modifying or adding to the limitations, restrictions and covenants established by the Community Declaration, nor will it discriminate between owners of the Annexation Property and other owners of any other property within the Community, except as otherwise expressly provided in the Community Declaration. No amendment, addition, change or deletion in this Declaration of Annexation will be deemed to alter or change the general common plan or scheme created by the Community Declaration or affect the provisions thereof as covenants running with the land or as equitable servitudes to be uniformly applicable to all portions of the Community, including those portions added thereto by annexation.

## ARTICLE 2 - Annexation of Annexation Property

2.1 Declarant and UDC hereby declare the following:

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

2.1.2 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 Declaration, shall be in full force and effect.

ARTICLE 3 - Application of Community Declaration

3.1 The terms and provisions of the covenants, conditions and restrictions of the Community Declaration will apply to the Annexation Property as if it were originally covered by the Community Declaration as a part of the Community.

3.2 After this annexation, the Community Assessments established in Paragraph 4.2 et seq. of the Community Declaration will be reassessed with the Annexation Property being assessed for a proportionate share of the total Community expenses on the same basis of assessment as other property in the Community.

3.3 In accordance with Paragraph 4.6 of the Community Declaration, Regular Community Assessments will commence as to all the Annexation Property upon the first day of the calendar month next following the closing of the sale of the first lot or unit in the Annexation Property to an owner other than Declarant or a Merchant Builder.

3.4 Upon annexation, the Bernardo Heights II Recreation Association, a California nonprofit mutual benefit corporation, will be the Neighborhood Association (as defined in the Community Declaration) for the Annexation Property.

ARTICLE 4 - General Provisions

4.1 Words, terms and phrases used herein and in the Community Declaration shall have the meaning ascribed thereto in the Community Declaration.

4.2 All exhibits referred to in this Declaration of Annexation are attached to, and a part of, this Declaration of Annexation.

IN WITNESS WHEREOF, this Declaration of Annexation has been executed at San Diego, California, as of the dates set forth adjacent to each party's signature.

GENSTAR DEVELOPMENT INC., a  
New York corporation (Genstar  
Southwest Development)

July 1, 1987

By M. R. Scott  
M. R. Scott  
Assistant Vice President

By LaDonna K. Monsees  
LaDonna K. Monsees  
Assistant Secretary

UDC-UNIVERSAL DEVELOPMENT L.P.,  
a Delaware Limited Partnership  
doing business in California  
as UDC Homes, Limited Partnership

By: UDC Corporation, a Delaware  
corporation, General Partner

7/10/87, 1987

By [Signature] U.P.  
President

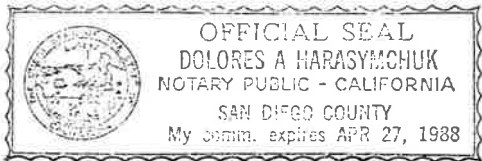
By Thomas Parsons  
ASST Secretary

STATE OF CALIFORNIA )  
                          ) SS  
COUNTY OF SAN DIEGO )

On July 1, 1987, before me, the undersigned, a Notary Public in and for said County and State, personally appeared M.R. SCOTT, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Assistant Vice President, and LADONNA K. MONSEES, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Assistant Secretary of GENSTAR DEVELOPMENT, INC., a New York corporation, and acknowledged to me that they are the persons who executed the within instrument as Assistant Vice President and Assistant Secretary 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.

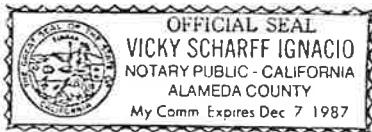
[Signature]  
Notary Public in and for said  
County and State



STATE OF CALIFORNIA )  
 ) SS  
COUNTY OF SAN DIEGO )

On July 10, 1987, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Herb Palmtag, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Vice president, and Thomas T. Parsons, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Assistant Secretary of UDC Homes Corporation, a Delaware corporation, and acknowledged to me that they are the persons who executed the within instrument as Vice president and Assistant secretary 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.



*Vicky Scharff Ignacio*  
Notary Public in and for said  
County and State

EXHIBIT A

Lots 1 and 8 of Bernardo Heights Unit 24 in the City of San Diego, State of California, according to Map thereof No. 11156 filed in the Office of the County Recorder of San Diego County on February 27, 1985

EXHIBIT A

Signed + returned 2/19/87

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

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

(Basis of computation: 23 lots for  
6 months @ \$31.06 per lot)

RE FORM 643 (Rev. 9/30/80)

Subdivider has transmitted herewith to TICOR TITLE INSURANCE COMPANY  
OF CALIFORNIA  
(escrow depository) as trustee, a  surety bond  cash deposit in  
the amount of \$ 4,286.28.

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. 24  
"Las Floras" PHASE 7.  
(Name and/or Tract No.)

DRE File No. 060619LA-F00, County of San Diego,  
to pay regular and special assessments allocable to lots and/or units in  
the aforesaid subdivision to THE COMMUNITY ASSOCIATION OF BERNARDO HEIGHTS.  
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 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.

UDC-UNIVERSAL DEVELOPMENT L.P., a Delaware limited partnership, doing business in California as UDC HOMES LIMITED PARTNERSHIP

BY: UDC CORPORATION, a Delaware corporation

By: Thomas Parsons

Asst Sec.  
(Title)

438 Camino del Rio South, Suite B-112  
(Address)

San Diego, California 92108  
(City and State)

Dated: \_\_\_\_\_

THE COMMUNITY ASSOCIATION OF BERNARDO HEIGHTS

(Owner's Association) 16150 Bernardo Hts. Pkw  
San Diego, CA 92128

By: George Cathcart

(Title) President

438 Camino del Rio South, Suite B-112  
(Address)

San Diego, California 92108  
(City and State)

Dated: \_\_\_\_\_

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

TICOR TITLE INSURANCE COMPANY OF CALIFORNIA  
(Escrow Depository)

By: \_\_\_\_\_

(Title)

925 "B" Street  
(Address)

San Diego, California 92101  
(City and State)

Dated: \_\_\_\_\_

sent  
4/23/87

State of California

Department of Real Estate  
Subdivisions

# INSTRUCTIONS TO ESCROW DEPOSITORY (Regulation 2792.9)

BASIS OF COMPUTATION:  
\$ 31.06 per unit per month for 19 units for 6 months

RE 643 (Rev. 12/86)

Subdivider has transmitted herewith to TICOR TITLE INSURANCE COMPANY OF CALIFORNIA (escrow depository)

as trustee, a  surety bond  cash deposit in the amount of \$ 3,540.84

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. 24 "Las Floras" Phase 8  
(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 THE COMMUNITY ASSOCIATION OF BERNARDO ASSOCIATION HEIGHTS.

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:

N/A  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

N/A  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);

ND 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 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.

UDC-UNIVERSAL DEVELOPMENT L.P., a Delaware limited partnership  
doing business in California as UDC HOMES LIMITED PARTNERSHIP

## Name of Subdivider

BY: UDC CORPORATION, a Delaware corporation,  
as General Partner

## Signature of Subdivider

➤ By: Thomas T. Parsons

## Title

Assistant Secretary

## Date

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

438 Camino del Rio South, Suite B-112, San Diego, California 92108

## Name of Owners Association

THE COMMUNITY ASSOCIATION OF BERNARDO HEIGHTS

## Signature

➤   
George Cathcart

## Title

PRESIDENT

## Date

4/20/87

## 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

TICOR TITLE INSURANCE COMPANY OF CALIFORNIA, a California corporation

## Signature

➤ BY: Sharon Hawk

## Title

Assistant Vice President

## Date

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

925 "B" Street, San Diego, California 92101

Signed + returned 2/19/87

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

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

(Basis of computation: 18 lots for  
6 months @ \$31.06)

RE FORM 643 (Rev. 9/30/80)

Subdivider has transmitted herewith to TICOR TITLE INSURANCE COMPANY  
OF CALIFORNIA  
(escrow depository) as trustee, a  surety bond  cash deposit in  
the amount of \$ 3,354.48.

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. 24  
"Las Floras" PHASE 6,  
(Name and/or Tract No.)

DRE File No. 0603101A-F00, County of San Diego,  
to pay regular and special assessments allocable to lots and/or units in  
the aforesaid subdivision to THE COMMUNITY ASSOCIATION OF BERNARDO HEIGHTS.  
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 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.

C-UNIVERSAL DEVELOPMENT L.P., a Delaware limited partnership, doing business in California as C HOMES LIMITED PARTNERSHIP

By: W. M. M. Parsons  
Ant Sec

(Title)

438 Camino del Rio South, Suite B-112  
(Address)

San Diego, California 92108  
(City and State)

Dated: \_\_\_\_\_

THE COMMUNITY ASSOCIATION OF BERNARDO HEIGHTS  
(Owner's Association) 16150 Bernardo Hts.Pkwy  
San Diego, CA 92128

By: George Cathcart

(Title) President

438 Camino del Rio South, Suite B-112  
(Address)

San Diego, California 92108  
(City and State)

Dated: \_\_\_\_\_

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

TICOR TITLE INSURANCE COMPANY OF CALIFORNIA  
(Escrow Depository)

By: \_\_\_\_\_

(Title)

925 "B" Street  
(Address)

San Diego, California 92101  
(City and State)

Dated: \_\_\_\_\_

Signed + returned 2/19/87

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

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

(Basis of computation: 23 lots for  
6 months @ \$31.06 per lot)

RE FORM 643 (Rev. 9/30/80)

Subdivider has transmitted herewith to TICOR TITLE INSURANCE COMPANY  
OF CALIFORNIA  
(escrow depository) as trustee, a  surety bond  cash deposit in  
the amount of \$ 4,286.28.

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. 24  
"Las Floras" PHASE 7,  
(Name and/or Tract No.)

DRE File No. 060619LA-F00, County of San Diego,  
to pay regular and special assessments allocable to lots and/or units in  
the aforesaid subdivision to THE COMMUNITY ASSOCIATION OF BERNARDO HEIGHTS.  
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 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.

UDC-UNIVERSAL DEVELOPMENT L.P., a Delaware limited partnership, doing business in California as UDC HOMES LIMITED PARTNERSHIP

BY: UDC CORPORATION, a Delaware corporation  
 By: Thomas Parsons  
Asst Sec.  
 (Title)  
438 Camino del Rio South, Suite B-112  
 (Address)  
San Diego, California 92108  
 (City and State)

Dated: \_\_\_\_\_

THE COMMUNITY ASSOCIATION OF BERNARDO HEIGHTS  
 (Owner's Association) 16150 Bernardo Hts. Pkwy  
 San Diego, CA 92128

By: George Cathcart  
 (Title) President  
438 Camino del Rio South, Suite B-112  
 (Address)  
San Diego, California 92108  
 (City and State)

Dated: \_\_\_\_\_

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

TICOR TITLE INSURANCE COMPANY OF CALIFORNIA  
 (Escrow Depository)

By: \_\_\_\_\_  
 (Title)  
925 "B" Street  
 (Address)  
San Diego, California 92101  
 (City and State)

Dated: \_\_\_\_\_

# INSURANCE COMPANY OF THE WEST

HOME OFFICE • SAN DIEGO

Bond No. 304658

Premium \$ 55.00 ANNUALLY

BOND TO SECURE MAINTENANCE CHARGE

KNOW ALL MEN BY THESE PRESENTS: That we UDC-UNIVERSAL DEVELOPMENT L.P., A DELAWARE LIMITED PARTNERSHIP, DOING BUSINESS IN CALIFORNIA AS UDC HOMES LIMITED PARTNERSHIP

as Principal, and INSURANCE COMPANY OF THE WEST, a Corporation existing and organized under the laws of the State of California and authorized to transact surety business in the State of CALIFORNIA, as Surety, are held and firmly bound unto THE COMMUNITY ASSOCIATION OF BERNARDO HEIGHTS, as Obligee, in the penal sum of THREE THOUSAND THREE HUNDRED FIFTY FOUR AND 48/100THS 3,354.48 DOLLARS, lawful money of the United States, for payment whereof well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

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 convenients conditions and restrictions for the subdivision known as BERNARDO HEIGHTS UNIT NO. 24 LAS FLORAS PHASE 6 Map/DRE # 060310LA-FOO, County of SAN DIEGO, to pay regular and special assessments allocable to lots and/or units in the aforesaid subdivision to THE COMMUNITY ASSOCIATION OF BERNARDO HEIGHTS. The security shall remain in the custody of Escrow Depository until (1) subdivider has given 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 Owner's Association adopted not more than thirty (30) days prior to its receipt, stating that subdivider is not delinquent in 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.

SIGNED, SEALED AND DATED this 17TH day of FEBRUARY, 19 87.

UDC-UNIVERSAL DEVELOPMENT L.P., A DELAWARE LIMITED PARTNERSHIP, DOING BUSINESS IN CALIFORNIA AS UDC HOMES LIMITED PARTNERSHIP

Principal/Address

INSURANCE COMPANY OF THE WEST

By:

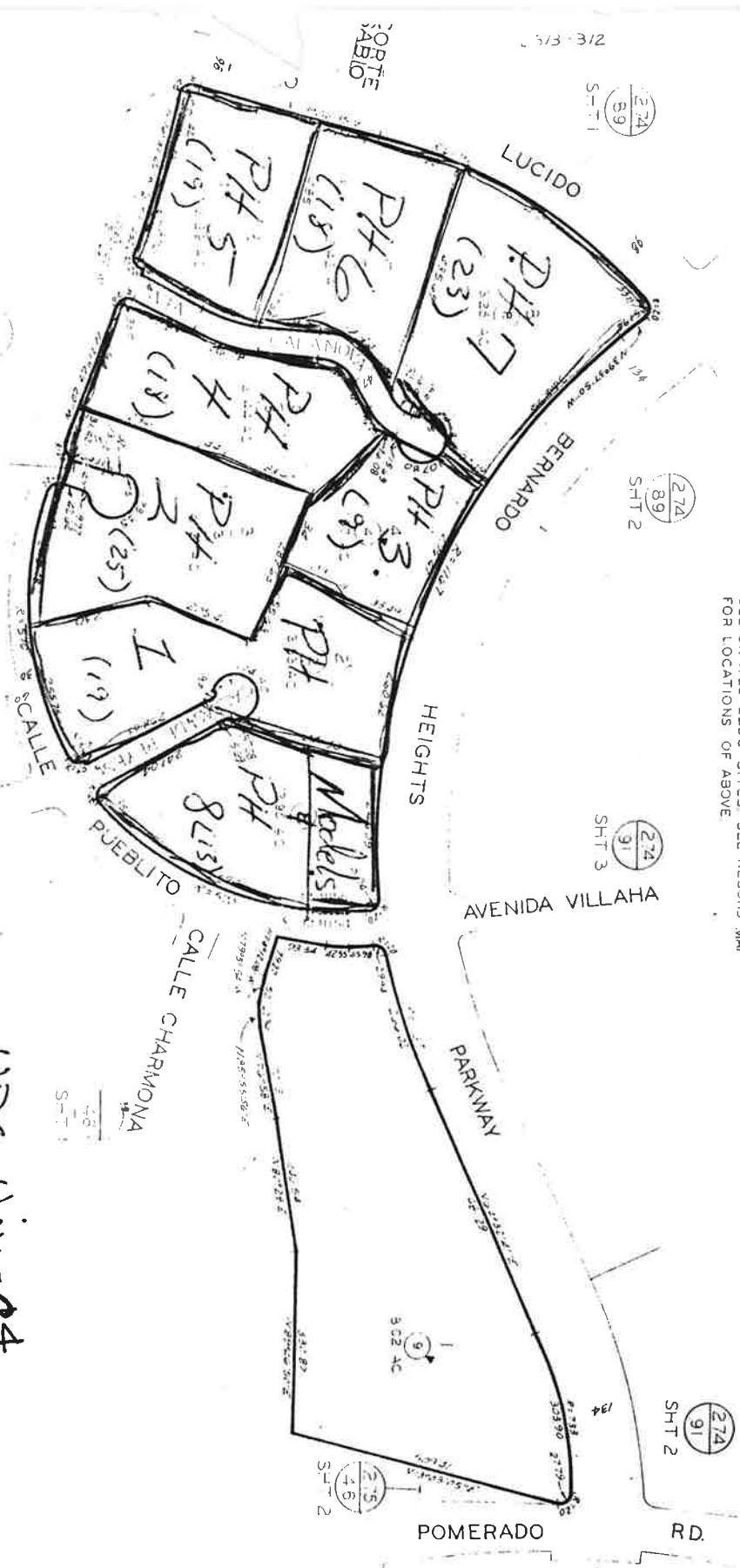
CATHY M. BATSELL ATTORNEY-IN-FACT

P. O. Box 85563, San Diego, CA 92138-5563

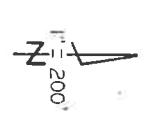
CLIENT'S COPY

BH #14  
24

OPEN SPACE EXCEPT THOSE PORTIONS DESIGNATED BLDG SITES. SEE RECORD MAP FOR LOCATIONS OF ABOVE.



313-47



CHANGES	
BLK/OLD	NEW/YRCUT
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3-21	100

UDC UNIT 24  
PASSING MAP  
1/15/20

MAP 11156 - BERNARDO HEIGHTS UNIT NO. 24 (CONDOM)  
MAP 11154 - BERNARDO HEIGHTS UNIT NO. 13

SAN DIEGO COUNTY  
ASSESSOR'S MAP  
BOOK 3, PAGE 47  
MAP 11156 - BERNARDO HEIGHTS UNIT NO. 24

x4

0. 452

Las Flores  
85-482169

RECORDED IN  
OFFICIAL RECORDS  
OF SAN DIEGO COUNTY

RECEIVED PCM  
MAY - 6 1986

1985 DEC 20 PM 1:20

VERA L. LYLE  
COUNTY RECORDER

Recording Requested By:  
Declarant  
When Recorded Mail To:  
Genstar Development Inc.  
La Jolla Eastgate Bldg.  
Suite 340  
9404 Genesee Ave.  
La Jolla, California 92037  
Attention: Ms. Nancy Douglas

File  
UDC

RF	7
AR	5
TLR	
MG	1

) Space Above For Recorder's Use

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

GENSTAR DEVELOPMENT INC., a New York corporation ("Declarant"), and UDC-UNIVERSAL DEVELOPMENT L.P., a Delaware limited partnership ("UDC"), make this Amendment of Community Declaration, Declaration of Annexation and Supplemental Restrictions for the Community of Bernardo Heights on the terms and conditions stated herein with reference to the facts set forth in Article 1.

ARTICLE 1 - Recitals

1.1 UDC owns the real property described in Exhibit A ("the Annexation Property").

1.2 Declarant caused to be filed for record on September 30, 1980, File/Page No. 80-319018, Official Records of San Diego County, California, that certain "Declaration of Covenants, Conditions and Restrictions for the Community of Bernardo Heights" dated September 29, 1980 ("the Community Declaration"); the Community Declaration was amended by a "First Amendment to Declaration of Covenants, Conditions and Restrictions" recorded July 31, 1981, File/Page No. 81-243645, Official Records of San Diego County, California.

1.3 The Annexation Property was included in Exhibit B to the Community Declaration as property subject to annexation by Declarant into the Community of Bernardo Heights ("the Community") even though at the time the Community Declaration was filed for record, the Annexation Property was owned by UDC Development Company, a California corporation.

1.4 Pursuant to an "Instrument of Imposition and Declaration of Annexation for the Community of Bernardo Heights," filed for record June 15, 1981, File/Page No. 81-186275, Official Records of San Diego County, California, UDC DEVELOPMENT COMPANY and Declarant imposed the Community Declaration upon the Annexation Property to the same extent as if Declarant had owned the Annexation Property as of the date the Community Declaration was filed for record; the execution and recordation of the Instrument of Imposition did not constitute the annexation of the Annexation Property.

1.5 Declarant and UDC intend to annex the Annexation Property to the Community of Bernardo Heights pursuant to the provisions of the Community Declaration. By such annexation procedure, it is the intention of Declarant and UDC that the covenants, conditions and restrictions of the Community

Lots 91-97, Unit 11  
Lots 103, Unit 12  
Lots 25-44, Unit 14  
Lots 2, Unit 24



453

Declaration apply to the Annexation Property in the same manner as if the Annexation Property were originally covered by the Community Declaration as a part of the Community. None of the provisions of this Declaration of Annexation will in any event be construed as revoking, modifying or adding to the limitations, restrictions and covenants established by the Community Declaration, nor will it discriminate between owners of the Annexation Property and other owners of any other property within the Community, except as otherwise expressly provided in the Community Declaration. No amendment, addition, change or deletion in this Declaration of Annexation will be deemed to alter or change the general common plan or scheme created by the Community Declaration or affect the provisions thereof as covenants running with the land or as equitable servitudes to be uniformly applicable to all portions of the Community, including those portions added thereto by annexation.

#### ARTICLE 2 - Annexation of Annexation Property

2.1 Declarant and UDC hereby declare the following:

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

2.1.2 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 Declaration, shall be in full force and effect.

#### ARTICLE 3 - Application of Community Declaration

3.1 The terms and provisions of the covenants, conditions and restrictions of the Community Declaration will apply to the Annexation Property as if it were originally covered by the Community Declaration as a part of the Community.

3.2 After this annexation, the Community Assessments established in Paragraph 4.2 et seq. of the Community Declaration will be reassessed with the Annexation Property being assessed for a proportionate share of the total Community expenses on the same basis of assessment as other property in the Community.

3.3 In accordance with Paragraph 4.6 of the Community Declaration, Regular Community Assessments will commence as to all the Annexation Property upon the first day of the calendar month next following the closing of the sale of the first lot or unit in the Annexation Property to an owner other than Declarant or a Merchant Builder.

3.4 Upon annexation, the Bernardo Heights II Recreation Association, a California nonprofit mutual benefit corporation, will be the Neighborhood Association (as defined in the Community Declaration) for the Annexation Property.

#### ARTICLE 4 - General Provisions

4.1 Words, terms and phrases used herein and in the Community Declaration shall have the meaning ascribed thereto in the Community Declaration.

4.2 All exhibits referred to in this Declaration of Annexation are attached to, and a part of, this Declaration of Annexation.

IN WITNESS WHEREOF, this Declaration of Annexation has been executed at San Diego, California, as of the dates set forth adjacent to each party's signature.

GENSTAR DEVELOPMENT INC., a New York corporation (Genstar Southwest Development)

November 21, 1985

By [Signature]  
Robert B. McLeod  
Vice President

By [Signature]  
LaDonna K. Monsees  
Assistant Secretary

UDC-UNIVERSAL DEVELOPMENT L.P., a Delaware limited partnership

By UDC CORPORATION, a Delaware corporation, general partner

November 21, 1985

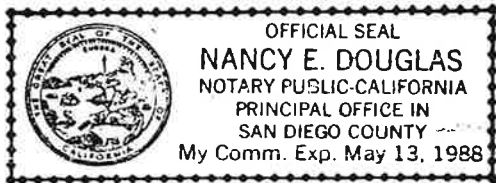
By [Signature]  
President

By [Signature]  
Asst Secretary

STATE OF CALIFORNIA )  
                              ) SS  
COUNTY OF SAN DIEGO )

On November 21, 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 LaDONNA K. MONSEES, personally known to me (or proved to me on the basis of satisfactory evidence) to be the assistant secretary 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 assistant secretary 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

STATE OF CALIFORNIA )  
 ) SS  
COUNTY OF SAN DIEGO )

On November 21, 1985, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Herb PalmTag, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Vice president, and Thomas T. Parsons, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Asst. secretary of UDC CORPORATION, a Delaware corporation, and acknowledged to me to be one of the general partners of UDC-UNIVERSAL DEVELOPMENT L.P., the limited partnership that executed the within instrument, and further acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its Board of Directors, and that such partnership executed the same.

WITNESS my hand and official seal.

Nancy P. Glasson  
Notary Public in and for said  
County and State



PARCEL 1:

Lots 91 through 97, inclusive, of BERNARDO HEIGHTS UNIT NO. 11, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 9968 filed in the Office of the County Recorder of San Diego County on January 14, 1981.

PARCEL 2:

Lot 103 of BERNARDO HEIGHTS UNIT NO. 12, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 9970 filed in the Office of the County Recorder of San Diego County on January 15, 1981.

PARCEL 3:

Lots 25 through 44, inclusive, of BERNARDO HEIGHTS UNIT NO. 14, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 11155 filed in the Office of the County Recorder of San Diego County on February 27, 1985.

PARCEL 4:

Lot 2 of BERNARDO HEIGHTS UNIT NO. 24, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 11156 filed in the Office of the County Recorder of San Diego County on February 27, 1985.