

FILE

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August 15, 2012

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To: All Owners, BERNARDO GREENS PROPERTY OWNERS ASSOCIATION

Re: BERNARDO GREENS PROPERTY OWNERS ASSOCIATION / Restated
CC&Rs
Our File No. 4008.001

Dear Owners,

The firm serves as general counsel for the BERNARDO GREENS PROPERTY OWNERS ASSOCIATION ("the Association"). As you may remember, the Association has endeavored over the past several years to amend and restate the community's CC&Rs, which ultimately resulted in the Association petitioning the San Diego Superior Court for an order reducing the voting percentage required by the original CC&Rs for the restatement and deeming the restatement approved on the basis of the votes received.

The Court entered this Order on July 6, 2012, and the Association thereafter executed the restated CC&Rs and sent them to the Office of the San Diego County Recorder for recordation. The CC&Rs were recorded on July 23, 2012, and a copy of the recorded First Restated CC&Rs is enclosed for your reference. The First Restated CC&Rs are thus binding and effective on all owners within Bernardo Greens.

Thank you for your attention to this letter. If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

GREEN BRYANT & FRENCH, LLP



JEFFREY A. FRENCH, ESQ.
HOLLY L. AMAYA, ESQ.

HLA/gb
CC: Board of Directors
Enclosure

FILE

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JUL 23, 2012 9:30 AM

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SAN DIEGO COUNTY RECORDER'S OFFICE
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**BERNARDO GREENS PROPERTY OWNERS
ASSOCIATION**

PAGES: 60

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Space Above for Recorder's Use

Bernardo Greens Property Owners Association

First Restated Declaration of Covenants, Conditions, and Restrictions

CC&Rs

BERNARDO GREENS PROPERTY OWNERS ASSOCIATION

***First Restated Declaration of
Covenants, Conditions and Restrictions***

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CC&Rs

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BERNARDO GREENS PROPERTY OWNERS ASSOCIATION

First Restated Declaration of Covenants, Conditions and Restriction

CC&Rs

THIS FIRST RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of this 6th day of July, 2012 by Bernardo Greens Property Owners Association, with reference to the following:

RECITALS

- A. Bernardo Greens Property Owners Association, a California nonprofit mutual benefit corporation (the "HOA" and also referred to herein as the "Association") is the governing organization for the common interest development commonly known as Bernardo Greens (the "Development") located in the City of San Diego, County of San Diego, State of California, more particularly described as:
- Parcels 1, Parcel 2, Parcel 3 and Parcel 4 of PARCEL MAP NO. 13509 filed in the Office of the County Recorder of San Diego County, California, on October 10, 1984.
- B. The HOA is a Common Interest Development as defined by the *Davis-Stirling Common Interest Development Act, California Civil Code section 1350, et. seq.*
- C. The HOA has the duty, responsibility and authority to perform certain functions set forth in the Governing Documents for the HOA, including the original Declaration of Restrictions for Bernardo Greens Property Owners Association recorded in the Official Records of San Diego County on December 3, 1984, as Document No. 84-450489.
- D. The Real Property consists of 154 Living Units divided among three (3) phases. Each Owner of a Unit has received a fee interest to a Unit plus an undivided fractional interest as tenancy in common in the Common Area together with any Exclusive Use Area conveyed appurtenant thereto. The phases break down as follows:

Phase No.	Property Within Phase	Number of Condominiums	Undivided Fractional Interest in Common Area in Phase
1	Parcel 1 of Parcel Map No. 13509	50	1/154
2	Parcel 2 of Parcel Map No. 13509	54	1/154
3	Parcel 3 of Parcel Map No. 13509	50	1/154

- E. The Condominium Property is part of the planned overall development of the Community of Bernardo Heights. Each Condominium subject to this Declaration will also 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 of 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. By acceptance of a deed to a Unit, each Owner agrees to be bound by the Community Declaration as well as this First Restated Declaration.

In accordance and compliance with the Governing Documents, the Association establishes this *First Restated Declaration of Covenants, Conditions, and Restrictions* ("CC&Rs" or "Declaration") for the protection and benefit of the Development. These CC&Rs entirely revoke, replace and supplant the Original Declaration (San Diego County Recorder Document No. 84-450489) and any Amendments and/or Supplements whether recorded (First Amendment Document No. 85-012876) or unrecorded.

ARTICLE I DEFINITIONS

Section 1.1 **Adjacent Owners.** Owners of Units separated by a Wall.

Section 1.2 **Alternative Dispute Resolution.** Mediation, arbitration, conciliation, or other non-judicial procedure that involves a neutral party in the decision making process.

Section 1.3 **Architectural Guidelines.** The policies and procedures established by the Board and the Architectural Review Committee governing any proposed changes to the Development.

- Section 1.4 **Architectural Review Committee or ARC.** The committee established by the Board in accordance with these CC&Rs to review changes to the Development proposed by Owners.
- Section 1.5 **Articles.** The Articles of Incorporation of the Bernardo Greens Property Owners Association, a California non-profit, mutual benefit corporation.
- Section 1.6 **Assessment.** Any regular, special or reimbursement assessment as defined in these CC&Rs and the *Davis-Stirling Common Interest Development Act*.
- Section 1.7 **Association.** The Bernardo Greens Property Owners Association, a California non-profit mutual benefit corporation exercising the powers and duties of a California non-profit corporation pursuant to the *Civil Code Section 1350*, et. seq., a common interest development. Also referred to as the "HOA."
- Section 1.8 **Beneficiary.** A mortgagee, or the beneficiary or holder of a note secured by a Deed of Trust, and/or the assignees of a mortgagee, beneficiary, or holder.
- Section 1.9 **Board of Directors or the Board.** The governing body of the HOA, as set forth in the Governing Documents.
- Section 1.10 **Bylaws.** The Bylaws of the HOA as the same may be amended or restated from time to time.
- Section 1.11 **CC&Rs.** This First Restated Declaration of Covenants, Conditions, and Restrictions. Also referred to as the "Declaration."
- Section 1.12 **Common Area.** Those portions of the Development, to which title is held by all of the Owners in common, and excepting the individual condominium Units.
- Section 1.13 **Common Expenses.** Any cost for which use of HOA funds is authorized by the Governing Documents or applicable laws.
- Section 1.14 **Community** shall mean and refer to the Community of Bernardo Heights, of which the Condominium Property is a constituent part, being all of the real property subject to the Community Declaration or annexed thereto.
- Section 1.15 **Community Architectural Committee** shall mean and refer to the Community Architectural Committee established pursuant to Article IX of the Community Declaration.
- Section 1.16 **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 1.17 **Community Assessments** shall mean and refer to the assessments levied by the Community Association pursuant to the Community Declaration.
- Section 1.18 **Community Association** shall mean and refer to the Community Association of Bernardo Heights as defined and established in the Community Declaration.
- Section 1.19 **Community Board** shall mean and refer to the Board of Directors of the Community Association.
- Section 1.20 **Community Bylaws** shall mean and refer to the Bylaws of the Community Association duly adopted by the Community Board.
- Section 1.21 **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 1.22 **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 1.23 **Community Member** shall mean and refer to any entity holding membership in the Community Association.
- Section 1.24 **Community Rules** shall mean the Rules adopted by the Community Board pursuant to Section 3.8 of the Community Declaration.
- Section 1.25 **Condominium.** Also referred to as a "Unit." An estate according to *Civil Code Section 1351(f)*, defined by the Condominium Plan.
- Section 1.26 **Condominium Plan** shall mean and refer to the Condominium Plan or Plans recorded pursuant to California Civil Code Section 1351 covering the Condominium Property.
- Section 1.27 **Declaration.** This *First Restated* Declaration of Covenants, Conditions, and Restrictions. The Declaration may also be referred to as the "CC&Rs."
- Section 1.28 **Development.** All of the real property and improvements commonly known as Bernardo Greens Property Owners Association, as depicted on the Condominium Plan, and more particularly described as:

Parcel 1, Parcel 2, Parcel 3 and Parcel 4 of PARCEL MAP NO. 13509 filed in the Office of the County Recorder of San Diego County, California, on October 10, 1984.

- Section 1.29 **Eligible Insurer, Guarantor.** An insurer or guarantor who has requested notice of certain matters as set forth in these CC&Rs.
- Section 1.30 **Eligible Mortgage Holder.** A holder of a first mortgage on a Unit who has requested notice of certain matters as set forth in these CC&Rs.
- Section 1.31 **Exclusive Use Common Area.** Common Area designated by the Governing Documents for the exclusive use of one or more, but fewer than all of the Owners in accordance with *California Civil Code Section 1351(I)*. 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. It shall generally consist of patios, decks, and garages.
- Section 1.32 **Fiscal Year.** The accounting period selected by the Board covering twelve (12) consecutive months, at the end of which the HOA's books are closed.
- Section 1.33 **Governing Documents.** As used in the *Davis-Stirling Act*, a collective term that refers to these CC&Rs, as well as all other documents enacted by the HOA or recorded or filed with any governmental agency with respect to the Development and the HOA.
- Section 1.34 **Guest.** Anyone who is in the Development but who is not a Resident (including Owners who have rented or leased their Unit).
- Section 1.35 **Improvement.** Any change to any part of the Development, and any part of the Development other than the real property.
- Section 1.36 **Living Unit.** Portions of the condominium property shown and described as such on the Condominium Plan; provided 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 1.37 **Member.** Any Owner of a Unit in the Development. All Owners are Members of the HOA.
- Section 1.38 **Mortgage.** Any security interest encumbering all or any portion of a Unit.
- Section 1.39 **Mortgagee.** The beneficiary of a mortgage encumbering all or any portion of a Unit.
- Section 1.40 **Mortgagor.** The trustor of a Deed of Trust as well as a mortgagor.
- Section 1.41 **Owner.** Any Owner of any Unit in the Development. All Owners are Members of the HOA. Owner does not include individuals or entities that have an interest in a unit merely as security for the performance of an obligation.

- Section 1.42 **Party Wall.** Any wall that is shared by more than one Owner, or shared by an Owner and the Association.
- Section 1.43 **Professional Manager.** The property management company and/or its representative.
- Section 1.44 **Recreation Area** shall mean and refer to all real property (including improvements thereon) owned by the Association for the common use and enjoyment of the Owners. The Recreation Area to be owned by the Association at the time of the conveyance of the first Condominium in the first phase of the Project consists of that certain real property located in the City of San Diego, County of San Diego, State of California, more particularly described as:
- Parcel 4 of PARCEL MAP NO. 13509 filed in the Office of the County Recorder of San Diego County California, on October 10, 1984.
- Section 1.45 **Quorum.** A majority of the Board or the Members that constitute a quorum thereof, unless specifically stated otherwise in a particular provision of the CC&Rs or Bylaws.
- Section 1.46 **Regular Assessment.** The assessment levied by the HOA with respect to all Units, used for paying regular expenses and funding reserves.
- Section 1.47 **Reimbursement Assessment.** An assessment levied by the HOA with respect to one or more Owners for reimbursement of costs and expenses of any kind, including attorney fees, incurred by the HOA on behalf or as a result of the Owner(s) subject to the assessment.
- Section 1.48 **Residents.** The people living in the Development, regardless of whether they are Owners.
- Section 1.49 **Rules and Regulations or Rules.** Policies and procedures enacted and implemented by the Board pursuant to the Governing Documents.
- Section 1.50 **Special Assessment.** An assessment levied with respect to all Units for payment of extraordinary expenses of the HOA.
- Section 1.51 **Tenant.** A Resident of the Development who is renting or leasing a Unit.
- Section 1.52 **Unit.** An estate according to *Civil Code Section 1351(f)*, defined by the Condominium Plan. Also used to refer to Living Unit.

ARTICLE II POWERS AND DUTIES OF THE HOA

Section 2.1 **Management and Control by the Board.** Except as otherwise specifically provided in these CC&Rs, the Board has the obligation and sole authority to manage, operate and control the Development, and to interpret these CC&Rs. The Board shall consist of five (5) persons that are Owners of a Unit within the Development.

Section 2.2 **Powers and Responsibilities of the HOA.**

- A. The HOA, acting through the Board and officers, has the right to adopt and amend rules relating to any use of the Development, subject to California Civil Code section 1357.100, *et. seq.*, and a reasonable fining policy for enforcement. A copy of the rules must be:
- (1) Maintained in the office of the HOA and be available for inspection during regular business hours; and,
 - (2) Given to each Owner and given to each new Owner within a reasonable time after the HOA has notice of occupancy of a Unit. Amendments to the rules must be given to each Owner at least ten (10) days prior to the effective date.
- B. The HOA has the right to limit the number of Guests using the Common Areas.
- C. After notice and a hearing, the HOA has the power to suspend the right to use the Common and Recreation Area for any period during which any assessment against a Unit remains delinquent.
- D. The HOA will enforce the Governing Documents as it determines in its sole discretion and consistent with applicable law. Penalties may be imposed by the HOA for failure to comply with the Governing Documents, including levy of a Reimbursement Assessment, suspension of use of the Common Area and Recreation Area, suspension of voting privileges and reasonable fines.
- E. The HOA may grant permits, licenses, utility easements and other easements or permits necessary for maintenance or operation of the Development, under, through or over the Common Area and Recreation Area.
- F. The HOA must pay all taxes and charges assessed against the Common Area, including the Recreation Area.

- G. The HOA must provide for water, sewer, gas, electrical service, refuse collection and gardening service for the Common Area and Recreation Area.
- H. The HOA may borrow money for improving or restoring the Common Area and Recreation Area and for litigation related to the Development, but may not pledge assessments as security for any loan except with approval of a majority of a quorum of Owners.
- I. The HOA shall secure and maintain policies of insurance, including fire, casualty, liability, workers compensation, medical, and other insurance as required by the Governing Documents and by law.
- J. The HOA may take any lawful action which is in furtherance of its obligation to preserve, protect, maintain and enhance the Development.
- K. To contract for and pay for reconstruction of any portion of the Project damaged or destroyed, although the HOA is not obligated to pay for reconstruction of any owner's Living Unit.
- L. The HOA may enter into contracts for the benefit of the Development not exceeding one year in duration, subject to the exceptions set forth in the Bylaws and these CC&Rs. Notwithstanding this one-year limitation on contracts, the Board of Directors for the Association may enter into contracts for greater than one year if approved by the unanimous vote of all current Directors at a regular meeting of the Board. However, in no case shall the Board enter into any contract for greater than three (3) years.
- M. To delegate to others its powers.
- N. To prosecute or defend, under the name of the Association, any action affecting or relating to the Common Areas or the personal property or any action in which all of the Owners have an interest in the subject of the action or in whom any right to relief in respect to or arising out of the same transaction or series of transactions is alleged to exist.

Section 2.3

Limitation of Liability. No Member of the Board of Directors may be held individually or personally liable or obligated for performance or failure of performance of his or her duties or responsibilities, unless he or she fails to act in good faith, or is grossly negligent.

ARTICLE III MAINTENANCE RESPONSIBILITIES

Section 3.1 **Maintenance.** The HOA and Owner maintenance, repair and replacement obligations are set forth in detail in the Association/Owner Maintenance Repair Replacement Matrix attached hereto as Exhibit "A" and incorporated herein by this reference. To the extent that the maintenance, repair and/or replacement of any building or Development component is not addressed by Exhibit "A," the component shall be addressed consistent with California Civil Code Section 1364.

Section 3.2 **Association's Right to Perform Owner Maintenance.** If an Owner fails to carry out the maintenance or repair responsibilities referenced in this Article as well as Exhibit "A" hereto, within a reasonable time period provided by the Board, the Board may in its discretion cause such work to be done and may assess the costs thereof to such Owner pursuant to Article VII of this Declaration. Such assessment shall be due and payable within thirty (30) days after the Board gives written notice thereof. Every Owner must perform promptly all maintenance and repair work within his or her own Unit which if omitted would adversely affect the Development or other Units, and shall be expressly responsible for damages and liabilities that his or her failure to do may give rise to.

Section 3.3 **Alteration of Units.** All modifications or Improvements to a Unit shall be done in compliance with the requirements of Article IX. Any Owner that fails to comply with Article IX may be forced to modify or all together remove any unapproved Improvements. Subject to Article IX, each Owner shall have the right, at his or her 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, pursuant to the Association/Owner Maintenance Repair Replacement Matrix attached hereto as Exhibit "A" and subject to approval under Article IX. The installation of any hard surface flooring in upper level Units must first be approved in writing by the Association before the start of any work, and all such flooring installations must comply with the requirements set forth in the Association's Governing Documents. The Board shall require as part of the approval process that appropriate underlayment be installed and other steps be taken to minimize sound transmission. The Board may also establish via a Rule and Regulation adopted by the Board, maximum sound transmission standards as well as a preferred or required specification for the mitigation of sound transmission. Each Owner shall also have the right to substitute new finished surfaces in place of those existing on the ceilings, floors, walls, and doors of the Living Unit subject to Article IX. Each Owner shall further have the right, at the owner's expense, to facilitate access for handicapped persons in accordance with *Civil Code Section 1360*, or similar superseding statute. The HOA may require removal of the modifications when the person needing them no longer occupies the Unit.

- Section 3.4 **Mutual Easements.** Each Owner grants easements to all other Owners and to the HOA to enter onto each Unit to repair shared or common components of the Development. Entry into a Unit for non-emergency repairs shall be made only after three (3) days notice has been given to the Resident and the Resident has consented, which consent shall not be unreasonably withheld. In case of emergency involving immediate threat to life/safety or immediate, significant property damage the right to enter any Unit is immediate. In an emergency situation, however, prior to entering a Unit a reasonable attempt must be made to notify the Resident and the Owner of the Unit.
- Section 3.5 **Party Walls.** Owners are responsible for repair and replacement of Party Walls, including all items inside or attached to Party Walls, occasioned by their negligence, gross negligence or willful or wanton conduct.
- Section 3.6 **Interior Damage.** Notwithstanding any other provision in the Governing Documents, each Owner shall be solely responsible for causing the repair or replacement of any interior Unit damage, including water damage or mold, to any and all interior items of his or her Unit, and the cost thereof, including, but not limited to, any personal property, decorations, interior surfaces, floor and wall coverings, appliances, cabinets, tile, carpet, fixtures or other items therein, caused by whatever cause or source, including a Common Area cause or source. An Owner shall obtain and maintain at all times such insurance, at his or her sole expense, to protect against any Unit damage or loss of property due to whatever cause or source, and/or the cost of repair or replacement of damaged items for which such Owner is responsible. Any Owner that has a water leak shall notify the management company within twenty-four (24) hours of discovery of the leak.

ARTICLE IV USE REQUIREMENTS

- Section 4.1 **Residential Use.** 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 improved, used, or occupied for any commercial purpose. Notwithstanding the foregoing, Owners shall be entitled to conduct work related activities within a Living Unit provided that the activities do not increase traffic or parking for the Development and do not interfere with the quiet enjoyment of other Owners of the Common Area or their Unit. The occupancy of each Unit by its Residents shall be in a manner consistent with all applicable City and County occupancy limitations for single family residential dwellings of the particular size and type at issue.
- Section 4.2 **Pets and Animals.** The HOA reserves the right to control or expel from the Development any pet which becomes a nuisance, as determined in the sole discretion of

the Board. The following guidelines apply to all pets and are interpreted and conclusively determined in the sole discretion of the Board.

- A. Unless otherwise permitted by the Board, only a maximum of two (2) pets are permitted to reside in any Unit. Caged Birds and aquarium fish are allowed in reasonable quantities. No animal may be permitted to create excessive or disruptive noise, pose a threat to other animals or to people, or cause any damage to the Common Area.
- B. Only domesticated animals permitted by the HOA may be kept as household pets, provided they are not kept, bred, or raised for any commercial purposes whatsoever. Livestock is prohibited.
- C. Dogs must have a current license attached to their collars at all times when in the Common Area. Cats must have a collar with an identification tag when in the Common Area.
- D. Droppings deposited by animals in the Common Areas, including Common Area walkways, and hallways, must be immediately removed. Should any of the carpet hallways be stained or otherwise damaged by a pet, the Owner of the Unit at which the pet resides shall be responsible for cleaning and/or replacing the affected hallway carpet.
- E. Animals may not be tied to trees, stakes, or any exterior building structure, or left unattended at any time on patios or decks. Also, animals shall be prohibited from ever being permitted to use the patios or balcony decks to urinate or defecate.
- F. Dogs in the Common Areas of the Development must be kept on a leash held by a person capable of controlling the animal at all times. Dogs are prohibited from roaming freely throughout the Common Area off of a leash.
- G. No structure for housing any animal may be maintained so as to be visible from any part of the Common Area, except with the prior written approval of the HOA.
- H. The Owner of a Unit is jointly and severally liable for the activity or damage of any animal associated with or living in the Unit, regardless of ownership of the animal.
- I. No animal that, in the Board's opinion, creates an unreasonable annoyance, threat or nuisance to other Owners, may be kept at the Development. The Board shall have the power to have any animal that is deemed by the Board to be an unreasonable annoyance or nuisance permanently removed from the Development. After notice and a hearing, all Owners shall immediately comply with any removal order issued by the Association regarding an animal.

Section 4.3 **Use of Parking Spaces and Garages.** All Units have garages under the Condominium Plan for the development, and all Residents must first park in their garages. If a resident has more than one vehicle, he or she may park the second vehicle in the open parking spaces, if available. No vehicles may be left in a parking space for more than fourteen (14) days. If a vehicle is left in a parking space for more than fourteen (14) consecutive days it may be towed at the owner's expense and fined by the Association. Access must be available for emergency vehicles at all times. Double-parking and parking in front of the dumpster or a garage is prohibited. Vehicles double-parked or parked in front of the dumpster or a garage will be towed at the owner's expense and fined by the Association. Vehicles that are leaking fluids, oil, water, etc. or are not operable must be repaired or removed from the development. All vehicles parked within the development must have current registration and licensing as well as be operable. Storage of RV-type vehicles, boats, and trailers is prohibited. No parking space may be used in a manner that interferes with parking a vehicle in another space. No parking space may be used for any purpose except to park registered and operable vehicles. No parking space nor any part of the Common Area may be used to repair any automobile, except for emergency repairs necessary to remove the vehicle from the Development. Further rules and regulations regarding parking may be enacted and implemented by the Board of Directors pursuant to these Governing Documents, as the Board of Directors deems appropriate in their discretion. The maximum speed limit is ten (10) miles per hour.

Section 4.4 **Commercial and Recreational Vehicles.** No trailer, motor home, recreational vehicle, camper, commercial vehicle, boat or similar equipment or other vehicle deemed inappropriate by the Board, in its sole discretion, is permitted in the Development. Commercial vehicles in the Development conducting business are permitted only for the limited duration necessary to conduct business with the HOA or a Resident.

Section 4.5 **Window Coverings.** Windows may not be covered with non-standard window coverings such as foil or cardboard, and if visible from the Common Area, window coverings must be consistent with aesthetic appearance of the Development, as well as the overall Bernardo Heights Community, as determined by the Board and as set forth in the Rules and Regulations. Alterations in color, material or design of replacements for the existing windows or screens in any Unit require prior written approval of the Board of Directors.

Section 4.6 **Use of Exclusive Use Common Area.** Exclusive Use Area shall be (i) appurtenant to the Condominium, or Living Unit which bears the same number as the Exclusive Use Area as set forth on the Condominium Plan, and (ii) used only for the purposes set forth in this Declaration. The right to so use an Exclusive Use Common Area shall be exercisable only by the Owner(s) of the Unit appurtenant thereto and/or said Owner's tenants and licensee(s). If a Unit is rented or leased by an Owner to a tenant, the Owner shall transfer all of his or her rights to use and enjoy the Common Area as well as the Exclusive Use Common Area to the tenant(s) for the entire rental or lease term. Conveyance of a Unit shall effect conveyance of Exclusive Use Common Areas appurtenant thereto and transfer of all rights thereto to the vested Owner of the Unit. Any license(s) thereto shall be

terminated upon such conveyance. No Exclusive Use Common Area or any rights thereto (other than said revocable licenses) shall be transferred or conveyed apart from conveyance of the Unit to which they are appurtenant.

Section 4.7 **Use of Exclusive Use Areas.** Each Owner shall have the following rights with regard to the Deck or Patio, if any, which he or she has the exclusive right to use:

- (a) To place furniture, gas barbeque equipment and potted plants upon said area. All potted plants must have water dishes placed under them to collect any excess water. Potted plants shall not be placed or attached to railings or placed on top of block/stucco walls.
- (b) If appropriate areas exist therefor, to place flowers and shrubs in appropriate containers that do not unreasonably interfere with the enjoyment of adjacent Living Units and Exclusive Use Areas. Said plants and flowers shall be maintained by the owner and removed/replaced when they die or become unsightly. The Board may require the immediate removal of any plants or flowers deemed to be in violation of this section.

Each Owner shall have the right to park one (1) standard registered automotive vehicle or motorcycle in each Garage which he or she has the exclusive right to use.

Except as provided in this Section 4.8, 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 4.8 **Dangerous Use of Units.** No part of the Development may be occupied or used in any manner which causes it to be uninsurable against loss by fire or the perils of the extended coverage endorsement to the California Standard Fire Policy form, which causes any policy of insurance to be canceled or suspended, which causes the company issuing the policy to refuse renewal thereof, or which causes the cost of insurance to rise, without the prior written consent of the HOA.

Section 4.9 **Use of Common Area.** No part of the Common Area may be obstructed so as to interfere with its intended, ordinary use. No part of the Common Areas may be used for storage purposes, except for storage of Association and vendor maintenance equipment used exclusively to maintain the Common Area, or with prior written approval of the Board. Except as otherwise provided herein, no Owner shall make any alteration or improvement to the Common Area or remove any planting, structure, furnishing or other object therefrom except with the prior written consent of the Board.

Section 4.10 **Outside Drying Facilities and Clotheslines.** Outside drying facilities visible from the Common Area are prohibited, including items draped or placed outside of any Unit. No

exterior clotheslines shall be erected or maintained, and there shall be no outside drying or laundering of clothes, linens, towels or other items on the Common Area or Exclusive Use Common Area nor shall such items be placed or draped outside the Living Unit.

Section 4.11 **Antennae / Satellite Dishes.** Unless otherwise stated herein, there shall be no outside television or radio antennae, masts, poles or wires constructed, installed or maintained on the Development for any purpose whatsoever. No outside television or radio antennae or other similar device is permitted in the Development, except for satellite dishes. No satellite dish or similar device shall be installed anywhere within the Project without the prior written approval of the Board of Directors. Upon the written approval of the Association Board of Directors, satellite dishes may be placed on an Owner's Separate Interest, Exclusive Use common area and/or on the Association provided roof-top mounts, if available. Any Owner receiving written permission shall install the dish so as to minimize its aesthetic impact and make reasonable efforts to conceal any and all wiring. All satellite wiring shall be run through the Association-provided conduit unless exempted by the Board in writing.

Section 4.12 **Signs and Flags.** Pursuant to California Civil Code Section 1353.5 (or other applicable statutes or amendments), the Association shall not limit or prohibit the display of the United States flag by an Owner on or in the Owner's separate interest or within the Owner's Exclusive Use Common Area. However, the Board of Directors may limit, regulate, or curtail an Owner's placement of the United States flag in the event such placement poses a public health or safety concern to the Bernardo Greens development, or adjacent properties.

Except for signs installed by the HOA, no commercial sign, other than one sign of customary and reasonable dimensions (10" x 12") advertising a Unit for sale or lease, may be displayed in the Unit or Development. No "For Sale or Lease" sign shall be displayed on the Unit's designated garage door.

Section 4.13 **No Equipment Repair.** Automobiles may not be dismantled, repaired or serviced in the Common Area, except emergency repairs necessary to remove the equipment or vehicle from the Development. Also, vehicles shall not be washed in the Common Area portions of the Development at any time. No power equipment may be used in the Common Area except that such equipment may be used by cleaning or service person so long as such work complies with this Declaration.

Section 4.14 **Diseases and Insects.** Residents may not permit any thing or condition to exist in the Development that may induce, breed or harbor infectious plants, diseases or insects.

Section 4.15 **Impairment of Development and Easements.** Residents may not do anything that will impair the structural soundness or integrity of any part of the Development, nor impair any easement, nor do any act or allow any condition to exist which impairs ordinary use of other Units and/or Residents.

Section 4.16 **Nuisance.** All noxious, illegal, offensive activity or any activity that endangers the health of, or unreasonably annoys or disturbs other residents, as determined in the sole discretion of the Board, is prohibited. All residents that smoke in their Unit or on Exclusive Use Common Areas shall take reasonable steps to mitigate the effects of second-hand smoke on other Units and Unit Owners. The Board may require further mitigation or abatement of Resident smoking that rises to the nuisance level as determined in the sole discretion of the Board. Any hard-surface floor installed in a Living Unit must be installed with sound-proofing material approved by the Board in writing prior to the start of any work. The Board may also require in its sole discretion that other sound mitigation efforts be taken with regard to hard-surface flooring, even where such flooring has already been installed with Board or Developer approval, such as requiring certain overlays or soft floor coverings to further reduce sound transmission. The terms of this section will be interpreted in the sole discretion of the Board with respect to the HOA's actions, but the Board cannot affect the rights of an Owner to proceed individually for relief from interference with his or her property or personal rights. The Board has the discretion to determine that activities within the terms of this section must nevertheless be resolved by the owner or owners involved, and not by the Association. **SOUND TRANSMISSION WARNING: ALL OWNERS OR PROSPECTIVE OWNERS SHOULD BE AWARE THAT THESE BUILDINGS WERE CONSTRUCTED OVER 20 YEARS AGO UNDER AN EARLIER VERSION OF THE UNIFORM BUILDING CODE AND THAT THERE IS SOUND TRANSMISSION BETWEEN UNITS. ALL PROSPECTIVE OWNERS SHOULD FULLY INVESTIGATE POSSIBLE SOUND TRANSMISSION ISSUES BEFORE PURCHASING A UNIT.**

Section 4.17 **Unightly or Unkempt Condition and Entry Doors.** Activities that cause disorderly, unsightly, or unkempt conditions, as determined in the sole discretion of the Board, to have a negative effect upon the Development, are prohibited. Unit entry doors must be kept shut at all times except when entering or exiting a Unit.

Section 4.18 **Responsibility for Damage to the Common Area.** Any person who damages the Common Area shall be liable to the HOA for the damage, and the Owner and Resident of the Unit with which the person causing the damage is associated are jointly and severally liable to the HOA. The HOA may recoup any costs associated with the damage from the responsible Owner via a Reimbursement Assessment.

Section 4.19 **Common Area Walkways and Decks/Patios.** Decks/patios should not be used for storage purposes, and must be maintained in a manner which does not detract from the overall aesthetic quality of the Project as a whole. Each owner shall only store and use a gas-operated barbeque on the deck/patio provided that it does not interfere with use of the deck/patio or cause damage to the deck/patio, nor create a safety risk or fire hazard. No plant may be kept on a deck/patio that unreasonably interferes with the use of the deck/patio, or causes damage thereto. Nothing may be stored or placed on the Common Area walkways at any time. The Board may adopt additional rules and regulations

regarding the use of walkways and decks/patios which are not inconsistent with these CC&Rs and the Board retains sole discretion to determine whether an Owner's deck/patio or walkway complies with this Section 4.19 or any rules and regulations adopted pursuant to this Section.

Section 4.20 **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 material default under the lease. Any Owner leasing or renting his or her Unit shall provide the tenant(s) with a copy of the current Rules and Regulations for the Association. The Association shall have the right to request and receive a copy of any Owner's lease agreement at any time. 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 less than six (6) months. Upon the lease or rental of a Unit to a tenant, the Owner shall concurrently transfer all rights to use and enjoy the Common Area for the full duration of the lease or rental term.

Section 4.21 **No Timeshares.** Timeshare developments, timeshare estates, timeshare programs and timeshare uses, as defined by Section 11003.5 of the *California Business & Professions Code*, of Units are prohibited, and timeshares and timeshare programs or use similar to a timeshare arrangement of a Unit are prohibited.

Section 4.22 **Garbage Cans.** All Owners shall use the Association provided dumpsters and recycle bins to dispose of all waste material, which shall be limited to normal day to day house hold waste and shall not include oversized items, chemicals or other hazardous substances or materials including but not limited to furniture, construction material, computers, electronics, car batteries, or oil. The Association shall have the power to fine or charge an Owner's account for any extra disposal costs incurred by the Association as a result of any violation of Section 4.22 by the Owner or Resident of the Owner's Unit.

Section 4.23 **Washer/Dryer Use.** In an effort to reduce sound transmission from Unit to Unit, Owners shall only use their washers and dryers between the hours of 8:00 a.m. – 10:00 p.m. each day.

Section 4.24 **Smoking.** Smoking in the Common Area portions of the Development is prohibited. Also, the disposal of cigarettes, cigars, or other smoking materials in the Common Area is prohibited. Owners that smoke in their Units or on their Exclusive Use Common Areas shall take reasonable steps to mitigate the spread of the smoke or smell to other Units, and the Common Area. Should the Board receive complaints about smoking by a Resident, the Board may examine each complaint on a case-by-case basis and possibly pursue the matter under Section 4.16 as a Nuisance requiring further mitigation or complete abatement of the Nuisance.

ARTICLE V COMMON AREA USES AND IMPROVEMENTS

Section 5.1 **Ownership of Common Area.** The Common Areas are and shall be owned by the Owners as tenants in common, in equal, undivided shares. Unless otherwise expressly stated therein, any transfer or conveyance (by operation of law or otherwise) of a Unit shall be presumed to transfer or convey the entire condominium, including but not limited to the interest of the Owner of such Unit in and to the Common Area.

Section 5.2 **Title to the Recreation Area.** The original developer of the Project covenants for itself, its successors and assigns that it has conveyed fee simple to the Recreation Area in the first phase of the Project to the Association free and clear of all encumbrances and liens.

Section 5.3 **Transfers.** The beneficial interest in personal property acquired by the Board shall be owned by the Owners in the same proportion as their respective interests in the Common Area. A transfer or conveyance (by operation of law or otherwise) of a Condominium shall transfer to the transferee ownership of transferor's beneficial interest in such personal property.

Section 5.4 **Severing interest.** No owner shall voluntarily or involuntarily sever, one from the others, any of the component interests which comprise their Condominium. The restriction set forth in this section shall not extend beyond the period in which the right to partition is suspended.

Section 5.5 **Easement for Maintenance.** Owners grant the HOA an easement over, under, upon and across the Common Area for the purpose maintaining and altering the Development.

Section 5.6 **Limitation on Alterations.** No person or entity other than the HOA may alter the Development, except as otherwise provided in the Governing Documents.

Section 5.7 **Owners Easement of Enjoyment.** Every Owner is hereby granted an easement for access to and from, and for enjoyment of the Common Area, except as to Exclusive Use Areas, subject to the rights and duties of the HOA, described in these CC&Rs.

Section 5.8 **Owners' Easements of Enjoyment.** Every Owner of a Condominium shall have a right and easement of ingress, egress and of enjoyment in and to the Recreation Area which shall be appurtenant to and shall pass with the title to every such 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 on the recreation Area.

- (b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Condominium 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 which satisfies the minimum requirements of Section 7041 of the California Corporations Code as set forth in the Bylaws.
- (c) The right of the Association to dedicate or transfer its assets, including all or any part of the Recreation Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the vote or written consent of two-thirds (2/3) of the Members.
- (d) The right of the Association, in accordance with the Articles and Bylaws, to borrow money for the purpose of improving the Recreation Area and in aid thereof, and with the assent of two-thirds (2/3) of each class of Members, pledge any or all real or personal property owned by the Association as security for the loan.

Section 5.9 **Delegation of Use.** Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Recreation Area and facilities thereon to the members of his family, his tenants or contract purchasers who reside in his Living Unit.

Section 5.10 **The Board's Responsibility for the Common Area.** The Board is responsible for the repair, maintenance and beautification of the Common Area portions of the Development. The Board shall also maintain, repair and replace those portions of the Development assigned to it in Exhibit "A" to these CC&Rs.

Section 5.11 **Damage by Wood-Destroying Pests.** Consistent with California Civil Code section 1364 (or equivalent sections), the HOA is responsible for the inspection and treatment of wood-destroying pests in the Common Area occasioned by wood-destroying pests or organisms, except that Owners shall be responsible for the treatment repair and maintenance of the Owner's Living Unit and his or her Exclusive Use Common Area occasioned by wood-destroying pests or organisms. The cost of temporary relocation of Residents must be borne by the Resident of the Unit affected. The HOA may cause the temporary, summary removal of any Resident for such periods and at such times as may be necessary for prompt, effective treatment of wood-destroying pests or organisms.

Section 5.12 **Activity in Common Area.** No activity shall be carried on in the Common Areas which shall be contrary to the Rules and Regulations of the Board relating to use of and activity in the Common Areas.

ARTICLE VI MEMBERSHIP AND VOTING RIGHTS

Section 6.1 **Membership.** Every Owner of a Unit is a Member of the HOA, with all rights and obligations associated with Membership. Membership is appurtenant to, and may not be separated from, ownership of a Unit. Only Members in good standing may exercise the membership rights set forth in the Governing Documents for the Association. Members in good standing shall not have any open violations, shall be current in the payment of assessments and shall not owe any fines to the Association.

Section 6.2 **Voting Rights.** All Members have the right to vote, unless the right to vote is suspended by the HOA.

- A. Members are entitled to one (1) vote for each Unit owned. Cumulative voting is not permitted in any election. When two (2) or more people hold an interest in a Unit, the vote for the Unit must be exercised as they between or among themselves determine, but only one full vote may be cast for each Unit.
- B. The HOA may refuse to accept a vote from any Member if the HOA has written notice of a voting dispute between or among co-owners, in which case the Unit may be counted only to establish a quorum.

Section 6.3 **Written Notice.** Written notice by the Board of each annual and special meeting shall be served on the Owner of each Condominium not less than ten (10) days nor more than ninety (90) days prior to such meeting. Said notice shall specify a reasonable time, date and place of such meeting, and in the case of a special meeting, the general nature of the business to be transacted.

Section 6.4 **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 Association.

Section 6.5 **Elimination of Cumulative Voting.** Notwithstanding what is set forth in the Bylaws or any other Governing Document for the Association, Cumulative Voting shall be prohibited in all Association elections after the adoption of this Restated Declaration,

including Director elections. Removal of any Director elected at an election where cumulative voting is prohibited, may later be removed from office by the vote of a majority of a quorum of the Owners.

ARTICLE VII ASSESSMENTS

Section 7.1 **Purpose of Assessments.** Assessments must be used to preserve, protect, maintain and enhance the Development, to reimburse the HOA for costs incurred on behalf of any Owner(s) and for any other purposes determined to be appropriate by the Board and permitted by law.

Section 7.2 **Types of Assessments.** The HOA may impose any or all of the following assessments:

- A. *Regular Assessments:* Assessments used to pay the HOA's operating expenses and to fund reserves.
- B. *Special Assessments:* Assessments for extraordinary expenses, including but not limited to, for litigation related to the Development.
- C. *Reimbursement Assessments:* Assessments levied against an Owner or Owners to recoup funds expended by the HOA, including but not limited to, attorney fees attributable to an Owner or Owners or funds spent to repair damage to the Common Area caused by an Owner, guest or Resident.

Section 7.3 **Creation of Obligation for Assessments.** Each Owner of any Unit 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 the Association:

- (a) Regular assessments and
- (b) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The regular and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be charged on the Unit and shall be a continuing lien on the Unit against which each such assessment is made. Said lien shall become effective upon recordation of a notice of assessment, fifteen (15) days after the mailing of the delinquent Owner of a written notice of default and demand to cure such default. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who is the Owner of such Unit at the time when 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. No Owner of a Unit may exempt himself or herself from liability for his or her contribution towards the common expenses by waiver of the use of enjoyment of any of the Common Area or by abandonment of his or her Unit.

Section 7.4 **Assessment Lien and Personal Liability.** All assessments together with late charges, interest, costs, and all attorneys' fees are a charge and a continuing lien upon the Unit against which each assessment is made. Assessments are also the personal obligation of any person who held an ownership interest in the Unit at the time when the assessment fell due. Each Owner of a Unit is jointly and severally liable for the entire assessment.

Section 7.5 **No Avoidance of Assessment Obligations.** No Owner is exempt from personal liability for assessments by waiver of the use and enjoyment of the Common Area, by abandonment or non-use of the Unit or any other portion of the Development or in any other manner, except as specifically provided by law.

Section 7.6 **No Withholding of Assessments.** Payment of assessments may not be withheld because of non-use of the Common Area, for the Association's failure to perform services, or for any other reason, except as specifically provided by law.

Section 7.7 **Regular Assessments.**

- A. Not fewer than thirty (30) nor more than ninety (90) days prior to the beginning of the HOA's Fiscal Year, the Board shall estimate the total amount required to fund the anticipated Common Expenses for the next succeeding fiscal year, and shall prepare and distribute to all Members a budget. If the Board fails to distribute a budget accordingly, Regular Assessments may not be increased for that fiscal year, except with vote or written assent of a majority of Owners. Until such time as the Association shall change the same, regular assessments shall be due and payable monthly on the first day of each calendar month.
- B. The HOA's total annual estimated expenses (less projected income from sources other than assessments) will be the aggregate Regular Assessment for each fiscal year, provided that the Board may not impose a Regular Assessment that is more than twenty percent (20%) greater than the Regular Assessment for the HOA's immediately preceding fiscal year without the vote or written assent of a majority of a quorum of Owners per California Civil Code Section 1366.
- C. Prior to raising the Regular Assessments, except when an increase is set forth in an annual budget provided to all Owners, the HOA shall provide thirty (30) days written notice of the proposed increase to all Members.
- D. The requirement of a membership vote to approve Regular Assessment increases in excess of twenty percent (20%) of the previous fiscal year's Regular

Assessment, or Special Assessments greater than five percent (5%) of the gross budget for the Association, does not apply to assessment increases necessary to address emergency situations. An emergency situation is any of the following:

- (1) An extraordinary expense required by an order of a court;
- (2) An extraordinary expense where a threat to personal safety is discovered;
or
- (3) An extraordinary expense necessary to repair or maintain the Common Area that could not have been reasonably foreseen by the Board in preparing the annual budget, provided that prior to the imposition or collection of an assessment under this paragraph, the Board must pass a resolution containing written findings as to the necessity of the extraordinary expense and why the expense could not have been reasonably foreseen. The Board's resolution must be distributed to the Members together with the notice of assessment.

- E. If the HOA fails to make an estimate of the Common Expenses for any fiscal year then the Regular Assessment made for the preceding fiscal year will be assessed against each Owner for the then current fiscal year. Nothing in this section E may be interpreted to limit the HOA's authority to impose any assessment or increase.

Section 7.8 **Special Assessments.** Unless otherwise provided by law, Special Assessments may not exceed, in the aggregate during any fiscal year, an amount equal to five percent (5%) of the budgeted gross expenses of the HOA for that fiscal year, without the vote or written assent of a majority of a quorum of all Owners per California Civil Code Section 1366.

Section 7.9 **Reimbursement Assessments.** Reimbursement Assessments are due and payable after notice pursuant to these CC&Rs is given to the Owner subject to the assessment. The Association may levy a reimbursement assessment against any Owner who causes, directly or indirectly through a guest, tenant or pet, damage to Common Area, property owned by the Association located at the Development, or for bringing an Owner or his or her Unit into compliance with the provisions of this Declaration, the Articles of Incorporation, the Bylaws, the Rules and Regulations, or any other charge designated an assessment in the Association Governing Documents together with attorneys' fees, interest and other charges related thereto as provided in this Declaration. A reimbursement assessment is made pursuant to and consistent with *California Civil Code* Section 1367.1(d), and its successor statutes or law. A reimbursement assessment may be enforced and collected via a lien to the same extent and with the same force as a regular assessment and special assessment referenced above provided that the monetary charge is intended to reimburse the Association for costs incurred by the Association in the repair of damage to the common areas and facilities for which the Owner is responsible.

Section 7.10 Exemption From Assessments. The following real property subject to these CC&Rs, unless devoted to use as a residential dwelling, is exempted from Assessments:

- A. Part of the Development dedicated to and accepted by a governmental agency;
- B. The Common Area; and
- C. Any real property owned or leased by the HOA.

Section 7.11 Effect of Non-Payment of Assessments. As more particularly provided in *California Civil Code Sections 1367 and 1367.1*, at any time after any assessments, including Reimbursement Assessments, have become delinquent the HOA may file for recording in the Office of the San Diego County Recorder a notice of delinquency/assessment lien ("lien") as to the Unit. The lien must state all amounts which have become delinquent, interest which has accrued, costs (including attorney fees) and the amount of any assessments relating to the Unit which are due and payable, although not delinquent. The lien must also include a description of the Unit and the name of the record or reputed record Owner. The lien must be signed by an officer of the HOA, or by the Association's attorney.

Immediately upon recording a lien, the amount set forth in the notice will become a lien upon the Unit described therein. The lien will then secure all other payments, assessments, costs (including attorney fees), penalties and interest which become due and payable with respect to the Unit following recording, until all amounts secured thereby are fully paid or otherwise satisfied.

If the delinquent assessments and all other assessments which have become due and payable with respect to the Unit, together with all costs (including attorney fees) and interest which have accrued on the amounts are fully paid or otherwise satisfied prior to the completion of a sale held to foreclose the HOA's lien, the HOA shall record a subsequent notice stating the satisfaction and releasing the lien.

Section 7.12 Foreclosure of Assessment Lien. Each assessment lien may be foreclosed upon in the same manner as the foreclosure of a mortgage upon real property, or may be enforced by sale, and to that end a power of sale is hereby conferred upon the HOA.

Section 7.13 Acceptance of Payments by the HOA. Payments to the HOA must be applied to the Owner's account in the following priority:

- A. Reimbursement Assessments;
- B. Interest and late charges;
- C. Fees and costs;

- D. Special Assessments; and,
- E. Regular Assessments.

Section 7.14 **Uniform Rate Assessments.** All Regular and Special Assessments shall be fixed at a uniform rate for each Unit.

Section 7.15 **Non-Payment of Assessments.**

- A. All assessments are due and payable pursuant to the payment schedule set forth by the Board and distributed to all Owners. Any assessment not paid on the date due is delinquent.
- B. Any assessment not paid within thirty (30) days of the date due is subject to a late fee of ten percent (10%) of the outstanding assessment.
- C. Any assessment not paid within thirty (30) days after the date due will bear interest from the date due at the rate of twelve percent (12%) per annum, as provided by law.

Section 7.16 **Estoppel Certificate.** Upon request of any person, the HOA shall furnish a certificate setting forth all accounts payable and receivable for any Unit, executed and acknowledged by two (2) members of the Board. A properly executed certificate is binding upon the HOA as of the date of its issuance for any period of time set forth therein, or if not stated, for one (1) day. Such a certificate shall be furnished to any Owner within ten (10) days of a written request thereof and payment of a reasonable fee set by the Board.

Section 7.17 **Assignment of Rents.** Each Owner assigns to the HOA, absolutely and regardless of possession of the property, all money now due or to become due under any agreement for the use or occupation of any part of any Unit, now existing or hereafter made, for the purpose of collecting all Assessments and costs and expenses due the HOA which are in default. The HOA confers on each Owner the authority to collect and retain money due under any agreement for the use or occupation of any part of any Unit, provided that the HOA may revoke the authority at any time by written notice of a default in the payment of any Assessments. Upon revocation the HOA may collect and retain the money until the delinquent Assessments and related charges are satisfied, whether the money is past due and unpaid or current. The HOA's rights under this provision are subordinate to the rights of any First Mortgagee.

Section 7.18 **Membership Suspension.** The membership rights and privileges, together with the voting rights of any Member of the Association, may be suspended by the Board for any

period of time during which the assessments on his or her Unit remain unpaid, and for a period not to exceed thirty (30) days from any infraction of the Association's Governing Documents after reasonable written notice and an opportunity for a hearing before the Board.

Following the determination that a Member should be suspended, due process and hearing procedures in accordance with *California Civil Code Section 1363(h)* shall be implemented.

The Board shall give the member believed to be in violation at least ten (10) days prior written notice of the intended suspension and a hearing to be held regarding the proposed suspension. The member shall be given the opportunity to appear in person or via a written document at the hearing. The written notice required may be given by any method reasonably calculated to provide actual notice. If the Board votes to impose any form of discipline against the Owner following the hearing, the Owner must receive written notice of the discipline within fifteen (15) days after the hearing.

ARTICLE VIII COMMUNITY ASSOCIATION

Section 8.1 **Easement to Community Association.** The officers, agents, employees and independent contactors of the Community Association shall have a non-exclusive easement to enter upon the Condominium 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 8.2 **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 8.3 **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 8.4 **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. 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 8.5 **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 each 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 IX ARCHITECTURAL CONTROL

Section 9.1 **Architectural Approval.** Any architectural change or Improvement to the Development visible from any Unit, the Common Area or public area surrounding the Development, or resulting in a structural change to a Unit/building, must be approved in advance and in writing by the Association. Owner changes to Unit flooring of any kind must be approved in advance and in writing by the Association. As part of the application process, the Owner must present a specification for mitigating vertical and other sound transmission to the Board. Any flooring installed without the prior written approval of the Association, or without Association approved sound proofing, shall be subject to removal at Owner expense if removal is required by the Association. Additionally, any Owner that secures written Association approval to install hard surface flooring and proceeds with such installation does so with the understanding that they may later be required to further mitigate sound transmission issues via soft floor coverings or rugs should the Board later determine in its sole discretion that sound transmission levels are unreasonable for surrounding unit(s). Also, any Owner modification to the plumbing system or electrical system for the building must be approved in writing by the Association if the modification will have any impact on the normal operation of these systems. The owner is responsible for the removal of old materials and appliances and the associated costs. All Owners doing any work on their Unit shall keep the construction area and common area neat and clean at all times during construction. The Association has the authority to grant conditional approval, which approval may be automatically withdrawn if conditions imposed are not met, or cease to exist.

A. **Sound Transmission Disclosure:** The subject buildings and Units were designed, permitted and constructed in or about the early 1980's. As such, there is sound transmission between Units. Also, some Units within the development have hard surface flooring which may result in more sound transmission between Units. Further, the use and occupancy of surrounding Units may have an impact on sound transmission from one Unit to another. Owners, residents, and prospective buyers are encouraged to investigate this issue.

Section 9.2 **Architectural Review Committee.** The Board may appoint an Architectural Review Committee ("ARC") which must consist of at least three (3) Members, but no more than five (5), who may be a Director. If no ARC is appointed, the Board shall be the ARC. All references to the ARC are to the ARC if it exists, or otherwise to the Board. Members of the ARC may not receive any compensation for services rendered.

Section 9.3 **Duties of the Committee.** The ARC shall consider and act upon all proposals submitted in accordance with the Governing Documents, subject to Board approval.

Section 9.4 **Meetings and Actions.** The ARC shall meet from time to time as necessary to perform its duties. The vote or written consent of a majority of the ARC members constitutes the act of the ARC, unless the unanimous decision of the Committee is required by the Governing Documents or by the Board. The ARC may maintain a written record of all actions taken.

Section 9.5 **Architectural Guidelines.** The ARC may, with the approval of the Board, adopt, amend and/or repeal Architectural Guidelines. The Architectural Guidelines will interpret and implement the Governing Documents by setting forth the standards and procedures for ARC review, and the guidelines for design and placement of alterations.

Section 9.6 **Approval by ARC.** Approval of the ARC must be granted by majority decision of the Members of the ARC, and reviewed and approved by a majority of the Board. No approval is final without approval by the Board.

Section 9.7 **Approval of Improvements.**

- A. The ARC should act on plans submitted to it within sixty (60) days of receipt. If the ARC fails to act on plans within sixty (60) days, upon demand the applicant is entitled to a hearing at the next regularly scheduled Board meeting to discuss the plans.
- B. Once plans have been approved by the ARC, no material modifications may be made to the approved plans and no subsequent alteration, relocation, or addition may be made without a separate written approval by the ARC. Also, once plans have been approved, the owner shall secure all necessary and/or required permits and approvals for the project.

Section 9.8 **Appeal.** Any decision of the ARC may be appealed by submission of a written request for review to the Board, within thirty (30) days of receipt of the decision of the ARC. The Board must make a final decision by the date of the second regularly scheduled Board meeting following receipt of the appeal. If the ARC is the Board, there shall be no right of appeal.

Section 9.9 **Variances.** The ARC may allow reasonable variances with respect to this Article or any restrictions specified in the Governing Documents in order to overcome practical difficulties, and to avoid unnecessary hardships, provided that the following conditions are met:

- A. If a variance will necessitate deviation from or modification of a use restriction that would otherwise apply under these CC&Rs, the ARC must conduct a hearing on the proposed variance after giving at least thirty (30) days' prior written notice to the Board and to all Owners in the building where the Unit is located, and in buildings immediately adjacent to the building in which the Unit is located. The

Owners receiving notice of the proposed variance will have thirty (30) days to submit to the Board or ARC written comments or objections with respect to the variance. No decision may be made with respect to the proposed variance until the thirty (30) day comment period has expired.

- B. In order to grant a variance, the ARC must make a good faith determination that:
- (1) The variance will not constitute a material deviation from the overall plan and scheme of development within the Development or from any restriction contained in the Governing Documents, and that the proposal allows the objective of the violated requirements to be substantially achieved despite noncompliance; and
 - (2) The variance relates to a requirement or restriction that it is unnecessary or burdensome under the circumstances; and
 - (3) The variance, if granted, will not result in a material detriment, or create an unreasonable nuisance with respect to any other Unit, the Common Area, Residents, Guests, or any part of the Development.

Section 9.10 **No Waiver Based Upon Prior Approval.** Approval by the ARC of any other matter requiring the approval of the ARC may not be deemed to constitute a waiver of the right to withhold approval of the same or a similar matter subsequently submitted for approval.

Section 9.11 **No Liability of ARC.** Neither the ARC nor any member of the Committee who has acted in good faith and who has not been grossly negligent may be liable to the Association, any Owner or to any other party for any damage suffered or claimed on account of:

- A. The approval or disapproval of any plans, drawings, or specifications; or,
- B. The construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications.

ARTICLE X RENTING OR LEASING

Section 10.1 **Renting or Leasing.** Occupancy of a Unit by any person who pays the Owner of the Unit consideration for living in the Unit. As used in these CC&Rs, any reference to any form of the word "lease" means the corresponding form of the word "rent," and vice versa. The Association shall have the right to charge any Owner renting or leasing his or her

Unit a reasonable move-in and/or move-out fees to defray increased costs to the Association.

Section 10.2 **Terms.** Leasing a Unit must be pursuant to a written document, which is subject to the Governing Documents and the following provisions:

- A. The HOA may request reasonable information from Owners about Tenants, including the names of the Tenants, the terms and conditions of the lease, and/or a copy of the executed lease.
- B. Leases must contain the following language, and if it is not expressly contained in the lease then the language is deemed to be incorporated into the lease by existence of these CC&Rs. All Owners, and Tenants by occupancy of a Unit, agree to the incorporation of the following terms into the lease, and application of the following to the landlord-tenant relationship:
 - (1) **Units may not be rented for transient purposes. All rentals must be for a term of no fewer than six (6) consecutive months in any one (1) calendar year, except month-to-month tenancy created by law after the initial six (6) month term.**
 - (2) Each Owner expressly assigns his or her right to collect any rental income to the Association in the event that the Owner becomes delinquent in the payment of any assessment called for under Article VII of these CC&R's. Upon written request from the HOA, Tenants must pay to the Association that portion of the rent necessary to satisfy any obligation of the Owner of the Unit to the HOA for payment of delinquent assessments. All payments thus made will reduce the Tenant's obligation to Owner of the Unit by like amount. Payment of assessments is deemed necessary for the habitability of the Units.
 - (3) Owners must give Tenants copies of these CC&Rs, the Bylaws, and any Rules. Tenants shall comply with all provisions of the Governing Documents, and violation thereof will constitute a default under any lease. If a Tenant or Resident violates the Governing Documents resulting in a Reimbursement Assessment, all Owners, Residents and Tenants associated with the Unit will be jointly and severally liable to pay the assessment.

Section 10.3 **Delegation of Right to Evict Tenant.** Owners hereby delegate and assign to the HOA the power and authority of enforcement against Tenants for breach of a lease resulting from violation of the Governing Documents, including the power and authority to evict the Tenant on behalf of and for the benefit of the Owner. The HOA must give the Owner and the Tenant thirty (30) days written notice prior to initiating eviction proceedings. If the Association proceeds to evict a Tenant, all costs, including attorneys' fees and court

costs associated with the eviction, may become a Reimbursement Assessment payable by the Owner of the Unit.

Section 10.4 **Use of Common Area.** Owners must completely transfer and assign to Tenant(s), for the duration of lawful tenancy, all rights and privileges that the Owner has to use the Common Area.

Section 10.5 **Existing Leases.** Leases existing on the effective date of these CC&Rs are permitted to continue in accordance with the terms of the Original Declaration. However, any assignment, extension, renewal, or modification of any lease agreement, including, but not limited to, changes in the terms, rental amount or duration of occupancy, will be deemed a termination of the existing lease for purposes of application of these CC&Rs.

Section 10.6 **Non-Application of Article.** This Article does not apply to any leasing transaction entered into by the holder of any first mortgage on a Unit which becomes the Owner of the Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by the mortgage.

ARTICLE XI DISPUTE RESOLUTION PROCEDURE (MEET AND CONFER/INTERNAL DISPUTE RESOLUTION)

Section 11.1 **Application.** This Article XI applies to a dispute between the Association and an Owner involving their rights, duties or liabilities under *California Civil Code* Section 1363.810 et seq., under the Nonprofit Mutual Benefit Corporation Law, or under the governing documents of the Association. This procedure referenced in this Article XI shall be initiated prior to initiating the dispute resolution procedure referenced in Article XI below, if applicable. This Article XI applies to the applicable disputes referenced in Section 11.2.

Section 11.2 **Procedure.** Either party to a dispute within the scope of Civil Code Section 1363.810, et seq., may invoke the following procedure:

- A. The party may request the other party to meet and confer in an effort to resolve the dispute. The request shall be in writing;
- B. An Owner may refuse a request to meet and confer; however, the Association may not refuse a request to meet and confer;
- C. The Board shall designate a member of the Board to meet and confer;

- D. The parties shall meet promptly at a mutually convenient time and place, explain their positions to each other, and confer in good faith in an effort to resolve the dispute; and
- E. A resolution of the dispute agreed to by the parties shall be memorialized in writing and signed by the parties, including the Board designee on behalf of the Association

Section 11.3 **Enforceable Agreement.** An agreement reached under Section 11.2(E) above binds the parties and is judicially enforceable if both of the following conditions are satisfied: (1) The agreement is not in conflict with law or the governing documents of the Association; and (2) the agreement is either consistent with the authority granted by the Board to its designee or the agreement is ratified by the Board.

Section 11.4 **Fees.** Unless otherwise stated by California law, an Owner may not be charged a fee to participate in the process described in this Article XI.

ARTICLE XII ALTERNATIVE DISPUTE RESOLUTION (MEDIATION/ARBITRATION)

Section 12.1 **Subsequent Prelitigation Procedure.** After the Dispute Resolution procedure set forth in Article XII is completed and complied with, the Alternative Dispute Resolution procedure set forth in this Article XII shall be initiated before litigation is commenced, provided this Article is applicable.

Section 12.2 **Applicable Disputes.** The Association or an Owner may not file an enforcement action in the Superior Court unless the parties have endeavored to submit their dispute to alternative dispute resolution, consistent with *California Civil Code* Sections 1369.510, et seq., and other successor California statutes and law. This Article applies to enforcement actions in the Superior Court solely for (1) declaratory relief; (2) injunctive relief; (3) writ relief; and (4) relief in conjunction with a claim for monetary damages not in excess of five thousand dollars (\$5,000.00). This Article does not apply to Small Claims actions and assessment disputes.

Section 12.3. **Request for Resolution.** Any party to a dispute may initiate Alternative Dispute Resolution under this Article by serving on another party to the dispute a Request for Resolution. Service of the Request for Resolution shall be by personal delivery, first-class mail, express mail, facsimile transmission, or other means reasonably calculated to provide the party on whom the request is served actual notice of the Request. The Request for Resolution must include:

- A. A brief description of the dispute between the parties;
- B. A request for alternative dispute resolution; and,
- C. A notice that the party receiving the Request for Resolution is required to respond within thirty (30) days of receipt of the request, or it will be deemed rejected.

Section 12.4 Response to Request For Resolution. The party receiving a Request for Resolution has thirty (30) days following receipt to accept or reject alternative dispute resolution. If not accepted within thirty (30) days the Request may be deemed rejected. If alternative dispute resolution is accepted, it must be completed within ninety (90) days of the date of receipt of the acceptance by the party initiating the Request, unless extended by written stipulation signed by both parties.

Section 12.5 Certificate of Completion. At the time of filing a civil action, the party filing the action shall file with the complaint a certificate stating that alternative dispute resolution has been completed in compliance with *California Civil Code* Section 1369.560 and these CC&Rs. Failure to file a certificate may be grounds for a demurrer or motion to strike unless the Court finds that dismissal of the action for failure to comply with this Article would result in substantial prejudice to one of the parties pursuant to Section 430.10 of the *California Code of Civil Procedure*.

Section 12.6 Cost of Alternative Dispute Resolution. The cost of the alternative dispute resolution hearing must be borne equally by the parties. Refusal to share costs equally constitutes rejection of alternative dispute resolution, regardless of prior acceptance.

Section 12.7 Failure to Comply. Failure of a Member to comply with the pre-filing requirements of these CC&Rs and *California Civil Code* Section 1369.510, et seq. may result in the loss of a party's right to pursue another Member or the HOA regarding enforcement of the Governing Documents.

ARTICLE XIII RIGHTS OF LENDERS

Section 13.1 Liability for Unpaid Assessments. Any First Lender/Trust Deed Holder who obtains title to a Unit pursuant to the foreclosure remedies provided in a Mortgage is not liable for unpaid assessments or charges against the Unit which accrued prior to the acquisition of title.

Section 13.2 Subordination of Lien. Every lien created pursuant to the Governing Documents is subordinate and subject to the lien of any real property mortgage or deed of trust encumbering any interest in a Unit given in good faith for value. If a lender acquires title

to any interest in a Unit by judicial or non-judicial foreclosure, and thereafter conveys the interest in the Unit, any real property mortgage or deed of trust received by that lender as security for all or a portion of the purchase price of the interest in the Unit will be incontrovertibly deemed "given for value."

Section 13.3 Superiority of Liens. Notwithstanding any other provision in these CC&Rs, any lien created by or pursuant to the Governing Documents, including liens securing payments of assessments, accruing prior to sale of a Unit by a real property lender and prorated over the period of the lender's holding of title to the interest in a Unit is a lien superior to the lien of a real property mortgage or deed of trust received to secure a portion of the purchase price. All covenants, conditions, and restrictions set forth in this Declaration are binding upon and effective against any Owner whose title is derived through foreclosure at a trustee sale.

Section 13.4 Mortgage Protection. The liens authorized hereunder or by law are subject and subordinate to the rights of the obligee of any indebtedness secured by any recorded first mortgage upon a Unit made in good faith and for value, provided that after foreclosure of any mortgage, the Board has the authority to create a lien on the interest of the purchaser at the foreclosure sale to secure all assessments levied hereunder for or payable during any period after the date of the foreclosure sale, which lien will have the same effect and be enforced in the same manner as provided herein in the case of other liens for unpaid assessments.

Section 13.5 Additional Lien Rights. The holder of the trust deed is entitled to written notification from the HOA, thirty (30) days prior to the effective date of any change in the Governing Documents, upon prior written request. The holder of the trust deed is entitled to written notification from the HOA of any default by the trustor of any Unit in the performance of the trustor's obligation under the Governing Documents, which is not cured within thirty (30) days, upon prior written request.

Any holder of the trust deed which comes into possession of a Unit pursuant to the remedies provided by law, or the deed of trust, shall take the property, free of any claims for unpaid assessments or charges against the Unit which accrue prior to the time the holder comes into possession of the Unit (except for claims for a pro rata share of such assessments or charges to all Units including the subject Unit).

Unless all holders of first trust deed liens on individual Units have given their prior written approval, the Association must employ a professional manager, may not change the pro rata interest or obligation of any Unit for purposes of levying assessments, may not, or by act or omission to act, seek to abandon the planned residential development status of the Development, except in the case of substantial loss to the Common Area.

No breach of these CC&Rs nor the enforcement of any lien provisions herein will defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, but all of these covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise.

ARTICLE XIV INSURANCE

Section 14.1 **Fire and Casualty Insurance – Common Area.** The Association shall obtain and maintain a “Bare Walls” policy or industry equivalent policy or policies of fire and casualty insurance with coverage for the full insurable replacement value of the improvements in the Common Area, excluding the Units. The “Bare Walls” policy will not cover the Unit interior, including but not limited to flooring, wall coverings, cabinets, personal property, interior finishes, appliances, fixtures, owner improvements, or other such items located therein. The Board may, at its sole option, obtain an extended coverage endorsement if it desires to extend the scope of the coverage to include some portions of the Unit. The amount of any deductible shall be determined by the Board in its sole discretion. This insurance shall be maintained for the benefit of the Association, the Owners, and their Lenders as their interests may appear as named insured, subject, however, to any loss payment requirements set forth in this Declaration. If required by any First Lender who notifies the Association of its requirement, and if economically feasible and available, such policies shall contain an agreed amount endorsement, an inflation guard endorsement, and a construction code endorsement.

Section 14.2 **Fire and Casualty Insurance – Recreation Area.** A standard all risk of loss perils insurance policy under an extended coverage casualty policy in the amount of the maximum insurable replacement value of all improvements to the Recreation Area, a policy covering all loss to personalty owned by the Association insured with coverage in the maximum insurable fair market value of such personalty as determined annually by an insurance carrier selected by the Association. Insurance proceeds for improvements in the Recreation Area and personalty owned by the Association shall be payable to the Association. In the event of any loss, damage or destruction, the Association shall cause the same to be replaced, repaired or rebuilt if it occurred in the Recreation Area. In the event the cost of such replacement, repair or rebuilding of Recreation Area (i) exceeds the insurance proceeds available therefore, or (ii) no insurance proceeds are available therefore, the deficiency or full cost thereof shall be assessed to the Owners as a special assessment pursuant to Article VII above.

Section 14.3 **General Liability Insurance.** The Association shall obtain and maintain a policy or policies of general liability insurance insuring the Association, its Officers, Directors, agents and employees, the Owners, and the Owners’ relatives, invitees, guests, employees,

and their agents against any liability for bodily injury, death, and property damage arising from the activities of the Association and its Members, with respect to the Common Area and any Units owned by the Association. Limits of liability under the insurance shall not be less than three million dollars (\$3,000,000.00) covering all claims for death, personal injury, and property damage arising out of a single occurrence.

Section 14.4 **Directors and Officers Liability Insurance.** The Association shall obtain and maintain one or more policies of insurance which include coverage for individual liability of Officers and Directors of the Association for negligent acts or omissions of those persons acting in their capacity as Officers and Directors. Limits of liability under this insurance shall not be less than one million dollars (\$1,000,000.00)..

Section 14.5 **Fidelity Coverage.** The Association shall purchase and maintain fidelity coverage for any person or entity handling funds of the Association, whether or not such persons or entities are compensated for their services. If an agent handles Association funds, such agent shall be covered by the Association's coverage, unless such agent provides similar coverage. The Association's coverage may be in the form of a separate bond, a separate policy (e.g., crime policy), or may be added by endorsement to the general policies carried by the Association. The bond or policy must contain a provision that may not be cancelled or substantially modified without at least ten (10) days prior written notice to the Association.

Section 14.6 **Other Association Insurance.** The Association may purchase and maintain workers' compensation insurance to the extent necessary to comply with any applicable laws. The Association also may purchase and maintain a blanket policy of flood insurance, and demolition insurance in an amount that is sufficient to cover any demolition that occurs following the total or partial destruction of the Project and a decision not to rebuild. The Association may purchase such other insurance the Board considers necessary or advisable, including earthquake insurance coverage.

Section 14.7 **Review of Insurance; Notice of Cancellation or Modification.** The limits and coverage of insurance carried by the Association shall be reviewed at least annually by the Board and increased or decreased in its discretion. Such policies should include a provision for at least ten (10) days prior written notice to the Association, and, if available, to each First Lender which is listed as a scheduled holder of a First Mortgage in the insurance policy, of any cancellation or substantial modification by any party.

Section 14.8 **Qualifications of Insurance Carriers.** The Association shall, to the extent possible, use generally acceptable insurance carriers from which to purchase and maintain the coverage required herein.

Section 14.9 **Failure to Acquire Insurance.** The Association, and its Directors and Officers, shall have no liability to any Owner or Lender if, after a good faith effort, it is unable to obtain any insurance required hereunder, because the insurance is no longer available or, if

available, can be obtained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the Members fail to approve any assessment increase needed to fund the insurance premiums. In such event, the Board immediately shall notify each Member and any Lender entitled to notice that the specific insurance will not be obtained or renewed.

The Association, and its Directors and Officers, shall also have no liability to any Owner or Lender if it does not obtain any of the insurance referenced hereunder which is not required but may be obtained at the discretion of the Association. The Board may, in good faith and in its sole discretion, determine that obtaining any of the discretionary insurance is unreasonable or unnecessary under the circumstances. In making a determination as to whether to acquire any such discretionary insurance, the Board may base its decision upon, among other things, a vote of the Owners.

Section 14.10 Trustee for Policies. The Association, acting through its Board, is appointed and shall be deemed trustee of the interests of all named insureds under all insurance policies purchased and maintained by the Association. The Board as Trustee of Association's policies shall have the authority to submit a claim on any of the Association's policies. Any Owner wishing to make a claim on an Association policy must work with the Association as Trustee for the policy in making a claim. For good cause, the Association may elect not to submit some owner claims on Association policies. All insurance proceeds under any of those policies shall be paid to the Board as Trustee. The Board shall use the proceeds for the repair or replacement of the property for which the insurance was carried. The Board also is authorized to negotiate loss settlements with the appropriate insurance carriers, to compromise and settle any claim or enforce any claim by any lawful action, and to execute loss claim forms and release forms in connection with such settlements.

Section 14.11 Insurance Premiums. Insurance premiums for any insurance coverage obtained by the Association shall be included in the regular or special assessments. That portion of the assessments necessary for the required insurance premiums shall be used solely for the payment of the premiums when due.

Section 14.12 Insurance Policy Deductibles. The Board of Directors shall have the power, in its sole discretion, to determine the amount of any deductible applicable to any insurance policy carried by the Association. In the event of a loss for which Association insurance coverage is used, the responsibility for payment of any deductible shall be as follows:

- A. Owners shall be responsible for the cost of any deductible if the damage or loss occurs to the Owners' real or personal property, or other property for which the Owner is responsible ("Owner Property"), unless the cause is a Common Area component, in which case the Association shall pay the deductible amount.

- B. The Association shall be responsible for the cost of any deductible if the damage or loss occurs to any real or personal property owned by the Association, or for which the Association is responsible ("Association Property"), unless the cause is a building component for which an Owner is responsible to maintain and repair, in which case the Owner shall pay the deductible amount.
- C. If the damage or loss occurs to any Owner property and any Association property or to more than one Owners Property, the responsibility for the payment of any deductible shall be allocated completely to the Owner of the Unit from which the cause of the loss originated, or to the Association if a Common Area component is the cause.
- D. The Association shall pay any Owner's insurance deductible of up to \$1,000.00 if a Common Area component is the cause of the loss. Likewise, if an Owner is responsible for causing damage to another Unit(s), the responsible Owner shall pay the deductible for each damaged Unit in the maximum amount of \$1,000.00 per Unit.

Section 14.13 **Insurance Disclosures.** The Association shall disclose such information regarding insurance coverage as and when required by any applicable statute or law. Failure to disclose such information shall not impose any liability upon the Association or Board other than that provided for in such statute or law.

Section 14.14 **Individual Property Insurance.** Each Owner shall obtain and maintain such insurance, at his or her sole expense, to protect against any gaps in the Association insurance, insurance deductibles, damage to, or loss of the Owner's Unit and personal property, Owner-caused damage to the Common Area or other Units, and the cost of repair or replacement of the Unit and damaged items, including, but not limited to, any improvements made by the builder, an Owner, any personal property, decorations, floor and wall coverings, appliances, cabinets, fixtures or other items therein, or any exterior items for which such Owner is responsible. The Owner's policy shall be the primary policy for any claims for damages to or loss of Owner's Unit and/or property. The Association shall not be liable to any Owner or his or her tenants, guests or others, for damage to or loss of any such Unit, property, or the cost of repair or replacement of any damaged property or portions of such Owners' Unit or Exclusive Use Common Area, unless such damage is caused by the gross negligence of the Association, its Board, Officers, agents or employees.

If a "Bare Walls" policy of fire and casualty insurance is put in place by the Board of Directors as permitted by Section 14.1, the following warning applies:

THE "BARE WALLS" INSURANCE MAINTAINED BY THE ASSOCIATION DOES NOT COVER THE OWNER'S OR OCCUPANT'S PERSONAL PROPERTY, NOR ANY FURNITURE, APPLIANCES, FLOOR COVERINGS,

WALL COVERINGS, CABINETS, OR FIXTURES WITHIN THE UNIT AND DOES NOT COVER PERSONAL LIABILITY FOR DAMAGES OR INJURIES OCCURRING WITHIN THE UNIT.

All such insurance that is individually carried must contain a waiver of subrogation rights by the carrier as to other Owners, the Association, and any institutional First Lender of such Unit. Except as provided in this Section, no Owner can separately insure his or her Unit or any part of it, against loss by fire or other casualty covered by the Association's blanket insurance carried under Section 14.1. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable pursuant to the provisions of Section 14.1 that results from the existence of such other insurance will be chargeable to the Owner who acquired such other insurance, and the Owner will be liable to the Association to the extent of any diminution.

Section 14.15 Individual Liability Insurance. Unless otherwise stated in this Article XIV, an Owner may carry whatever personal liability and property damage liability insurance with respect to his or her Unit that he or she desires. However, any such policy shall include a waiver of subrogation clause acceptable by the Board and to any First Lender.

ARTICLE XV PARTITION

Section 15.1 Partition Prohibited; Exceptions. Owners are prohibited from partitioning or in any other way severing or separating any part of the ownership of a Unit from any of the other part of the ownership of a Unit, except upon the showing that:

- A. Three (3) years after damage or destruction to the Development which renders a material part thereof unfit for its use prior thereto, the Development has not been rebuilt or repaired substantially to its state prior to its damage or destruction; or,
- B. 3/4 or more of the Development is destroyed or substantially damaged and Owners holding in the aggregate more than a fifty percent (50%) interest in the Common Area are opposed to repair or restoration of the Development; or,
- C. The Development has been in existence in excess of fifty (50) years, it is obsolete, and Owners holding in the aggregate more than a seventy-five (75%) interest in the Common Area are opposed to repair or restoration of the Development.

If any of the forgoing conditions are met the net proceeds from the sale and any proceeds of insurance carried by the HOA must be divided among the Units within Development based on the ratio that the square footage of the floor area of each Unit bears to the total square footage of the floor area of all Units. Nothing herein

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

Section 15.2 **Power of Attorney.** Owners grant the HOA an irrevocable power of attorney to sell the Development for the benefit of all the Owners upon partition as described in this Article. This power of attorney, however, does not apply to the Secretary, Department of Veterans Affairs, or an officer of the United States of America.

ARTICLE XVI DAMAGE, DESTRUCTION AND CONDEMNATION OF COMMON AREA

Section 16.1 **Common Area 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 \$100,000.00, 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 \$100,000.00, 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. If said Owners do not so agree, then all insurance proceeds shall be paid to the account of the Association to be held for the benefit of the Owners and their Mortgagees as their respective interests shall appear.
- C. Anything in the immediately preceding paragraph to the contrary notwithstanding, the Board shall contract for such repair or rebuilding of Common Area which consists of building(s) containing Living Units (or portions thereof and/or improvements thereto) if fifty percent (50%) or more of the Owners owning Living Units in said building(s) agree to the repair or restoration of said buildings.
- D. If a bid to repair or rebuild is accepted, the Board shall levy a special assessment against each Condominium in the same proportion the Condominiums are assessed for regular assessment amounts to make up any deficiency between the total insurance proceeds and the contract price for such repair and rebuilding, and such assessment and all insurance proceeds, whether or not subject to liens of Mortgagees, shall be paid to the account of the Association to be used for such rebuilding.

Section 16.2 Condemnation. If any portion of the Condominium Property is taken by condemnation, eminent domain or any proceeding in lieu thereof, then:

- A. In the event of any taking of a Living Unit, the Owner (and his Mortgagees as their interests may 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 all further interest in the Condominium Property if such Owner shall vacate his Living Unit as a result of such taking. In such event said Owner shall grant his interest in the Common Area, 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.
- B. In the event of any taking of the Common Area, the Owners of the Common Area, and their Mortgagees, shall be entitled to receive the award for such taking in proportion to the interest of each in the Common Area; provided, however, that should it be determined to repair or rebuild any portion of the Common Area, such proceeds shall be paid to the Association for that purpose in the same manner and subject to the same conditions and limitations as provided above in Section 1 of this Article XVI for determining whether to rebuild or repair following damage or destruction.

ARTICLE XVII DAMAGE AND DESTRUCTION OF LIVING UNITS

Section 17.1 Destruction of Living Unit. In the event of damage or destruction of any Living Unit, the Owner thereof shall reconstruct the same as soon as reasonably practicable and substantially in accord with the original plans and specifications therefor; provided, however, that any such Owner may, with the written consent of the Board, reconstruct or repair 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 of the receipt thereof, they shall be deemed to have been approved.

ARTICLE XVIII GENERAL PROVISIONS

Section 18.1 Notice to Individual Owners. Notice to Owners other than to the entire membership must be given by first-class mail sent to the address to which assessment notices are sent, within a reasonable timeframe based upon the subject matter of the notice. Notices sent

in this manner are presumed delivered if not returned as undeliverable by the United States Post Office within ten (10) days of posting.

When the board of directors is to meet to consider or impose discipline upon a member, the board shall notify the member in writing, by either personal delivery or first-class mail, at least ten (10) days prior to the meeting. The notification shall contain, at a minimum, the date, time and place of the meeting, the nature of the alleged violation for which a member may be disciplined, and a statement that the member has a right to attend and may address the board at the meeting. If the board imposes discipline on a member, the board shall provide a notification of the disciplinary action by either personal delivery or first-class mail to the member within fifteen (15) days following the action. A disciplinary action shall not be effective against a member unless the board fulfills the requirements of this subdivision. Notwithstanding the foregoing or any other provision of these CC&Rs, all notice requirements are waived by any acknowledgment of receipt of notice.

Section 18.2 **Annexation by Association.** Additional property may be annexed to the Development or to this Declaration upon the vote or written assent of two-thirds (2/3) of the Owners. Upon approval, the property may be annexed to the terms of these CC&Rs, without alteration.

Section 18.3 **Enforcement.** The HOA and any Owner have the right to enforce the Governing Documents. Failure by the HOA or any Owner to enforce any covenants or restrictions may not be deemed a waiver of the right to do so thereafter. In the event the Association or any owner commences litigation to enforce these governing documents, the prevailing party shall be entitled to costs of suit, including attorneys' fees.

Section 18.4 **Severability.** If any provision in these CC&Rs is void or become invalid or unenforceable in law or equity or by judgment or court order, the remaining provisions will remain in full force and effect, to which limited extent only, this Declaration shall be deemed severable.

In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles of Incorporation shall control; in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control. In case any of these By-Laws conflict with the provisions of the California Condominium Act, the provisions of the statute shall control.

Section 18.5 **Amendments.** This Declaration may be amended at any time, and from time to time, from an instrument in writing signed approved by fifty-one percent (51%) of the HOA; provided, however, that if any provision of this declaration requires a greater or lesser percentage of the voting rights of Members in order to take any action under such provision, the same percentage of the HOA shall be required to amend or revoke such

provision. Any amendment shall become effective upon the recording thereof with the Office of the County Recorder of San Diego County, California.

Section 18.6 **Required Amendments.** If any law applicable to the Development is enacted after the date of recording of these CC&Rs which directly contradicts, restricts, limits or changes any provision contained herein, these CC&Rs will be deemed amended by operation of law. Any provision herein to the contrary notwithstanding, if an amendment occurs by operation of law the Board may, by unanimous written consent, cause a document describing the amendment by operation of law to be distributed to the Members and recorded with the San Diego County Recorder's Office as an amendment to these CC&Rs.

Section 18.7 **Extension of Declaration.** This restated Declaration will run with and bind the land as an equitable servitude for a term of twenty (20) years from the date of recording, and automatically be extended for successive periods of ten (10) years, unless all Owners have executed and recorded a written instrument in which it is agreed that these CC&Rs terminate.

Section 18.8 **Resident Relocation.** Notwithstanding any other portion of these CC&Rs, no owner shall be entitled to the payment of or reimbursement for relocation costs of any kind if they are forced to vacate their Unit so that repairs of any kind may be made to the Unit, Exclusive Use Common Area and/or Common Area, regardless of the cause of the work.

Section 18.9 **Technical Amendments.** The Board of Directors shall have the power, via unanimous vote of the entire Board at a regular meeting of the board, to rerecord an approved amendment to this Declaration or record another amendment to this Declaration to cure any technical or typographical error or errors associated with any amendment process involving the Declaration.


CERTIFICATION

We, the undersigned, do hereby certify:

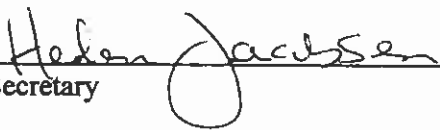
That we are the duly elected and acting President and Secretary of the Bernardo Greens Property Owners Association.

That on or about July 6, 2012, the San Diego Superior Court granted the Association's Petition to Reduce Required Voting Percentage for the Bernardo Greens Property Owners Association, and ordered that for the exclusive purpose of approving the First Restated Declaration, the requirements imposed by Article XII, Section 12.3 of the original Declaration are dispensed with, and instead, consistent with Civil Code section 1356, this First Restated Declaration is decreed ordered and adopted and approved by the membership of the Bernardo Greens Property Owners Association on the basis of substantial compliance with the membership voting requirements as a result of the number of affirmative votes actually received. On July 6, 2012, the Court ordered the First Restated Declaration validly approved. A copy of the Court's Order is attached hereto as Exhibit "B."

IN WITNESS WHEREOF, we have hereunto subscribed our names this 14 day of July, 2012.



President



Secretary

STATE OF CALIFORNIA)
) ss.
COUNTY OF San Diego)

6544

On July 14, 2012, before me, Michelle Shelton Notary Public,
personally appeared James Nadeau,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.



Michelle Shelton
Notary Public

STATE OF CALIFORNIA)
) ss.
COUNTY OF San Diego)

On July 14, 2012, before me, Michelle Shelton, Notary Public,
personally appeared Helen Jacobson,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Michelle Shelton
Notary Public

(SEAL)

EXHIBIT "A"

BERNARDO GREENS PROPERTY OWNERS ASSOCIATION

EXHIBIT "A"

**ASSOCIATION/OWNER MAINTENANCE, REPAIR,
& REPLACEMENT MATRIX**

The following is a listing of the items within the Development, the maintenance, repair and replacement duty for which Owners and the Association are responsible per this exhibit to the Declaration of Covenants, Conditions and Restrictions. This does not eliminate the Owner's responsibility to request and receive architectural approval pursuant to the Governing Documents or supersede the Owner's obligations under the Governing Documents.

COMPONENT(S)	OWNER	ASSOC
Air Conditioning System (Unit)	X	
Appliances - Built-in (Unit)	X	
Appliances - Free Standing (Unit)	X	
Bathtub and Overflow (Unit)	X	
Cabinets (Unit)	X	
Carpeting (Unit)	X	
Carport/Driveway/Parking Space - Concrete and Asphalt Surfaces		X
Caulking - Exterior		X
Caulking - Interior (Unit)	X	
Ceilings (Unit)	X	
Common Area Improvements		X
Doors - Entry - Frame & Door (Unit)	X	
Doors - Entry - Locks and Hardware (Unit)	X	
Doors - Entry - Painting - Exterior Surface (Unit)		X
Doors - Entry - Painting - Interior Surface (Unit)	X	
Doors - Entry - Weather Stripping/Waterproofing (Unit)	X	
Doors - Interior (Unit)	X	
Doors, Screen/Storm/Security (Unit)	X	
Doors, Sliding Glass (Unit)	X	
Doors, Sliding Glass - Frame and Tracks (Unit)	X	
Doors, Sliding Glass - Screen (Unit)	X	
Drainage Systems (e.g., ditches, catch basins)		X
Drains - Bathtubs, Showers, Sinks (including gooseneck) -- to the point each component ties into pipe servicing multiple Units.	X	
Drains - Common Area		X
Drains - Landscaped Areas		X
Dryer Vents - Cleaning	X	

COMPONENT(S)	OWNER	ASSOC
Drywall - Damage Repairs (e.g., cracks, inside minor localized water damage, dents, holes, etc.)	X	
Drywall - Interior - Replace (Unit)	X	
Electrical Panel/Circuit Breakers/Interior	X	
Electrical Switches, Sockets, Wall Plates - Interior	X	
Electrical Wiring - Interior - to the point that it joins the electric meter owned by the electric company.	X	
Electrical Common Area Panel and Wiring		X
Exhaust Fans (Unit)	X	
Exterior Building Surfaces		X
Exterior Faucets, Handles, Washers (Common Area)		X
Exterior Lighting Fixtures (Common Area)		X
Fences - Common Area		X
Fences - Exclusive Use Common Area		X
Floor (Unit)	X	
Floor Coverings - Carpet, Vinyl and Tile (Unit)	X	
Front Entry Landings		X
Garage Doors		X
Garage Door Opener	X	
Garbage Disposal	X	
Gas Lines - Below Ground, Serve Multiple Units, Serve Common Area		X
Gas Lines that Service a Single Unit	X	
Glass - Windows/Doors (entire assembly)	X	
Gutters & Downspouts		X
Heating Equipment and Systems Servicing a Unit	X	
Hose Bibs		X
Insulation (Within Unit)	X (Interior Walls)	X (Exterior Unit Walls and Party Walls)
Insulation (Exterior Wall between Units)		X
Interior surfaces of the Unit, including interior non-bearing walls and the surfaces of interior bearing walls	X	
Interior Damage to the Unit and Contents	X	
Landscaping - Common Area		X
Lighting Fixtures - Common Areas		X
Lighting Fixtures - Inside Units	X	
Lighting Fixtures - Outside - Front		X
Lighting Fixtures - Outside - Patio/Balcony	X	

COMPONENT(S)	OWNER	ASSOC
Linoleum & Vinyl Flooring - Inside Units	X	
Painting - Interior (Unit)	X	
Patio/Balcony Deck Membranes/Waterproofing	X	
Patio/Balcony Deck Railings - Painting (Inside/Outside Surfaces)		X
Patio/Balcony Deck Railings - Replacement		X
Patio/Balcony Painting		X
Plumbing drains and drainage systems serving the Unit to the point where they tie into a common pipe serving two or more Units	X	
Plumbing Fixtures - Interior (Toilets/Tubs/Sinks/Faucets, Etc.)	X	
Plumbing Lines that Serve Two or More Units		X
Plumbing Lines - Located within floors, behind or within walls or ceilings that serve only one unit	X	
Roof Flashing & Other Roofing Components		X
Roof Shingles/Tiles		X
Roof Underlayment		X
Roof Vents		X
Sewer Lines - Common Use (2 or more units)		X
Sewer Lines - Single Use (Services only one Unit)	X	
Sidewalks - Common Areas		X
Slab, Concrete (all inclusive)		X
Sliding Patio Door Flashing/Waterproofing	X	
Sliding Patio Door Frames & Tracks	X	
Sliding Patio Door Hardware	X	
Sliding Patio Doors	X	
Spraying for Household Pests (Unit and Exclusive Use Common Area)	X	
Spraying for Landscaping Pests (Common Area)		X

EXHIBIT B

F I L E D

Clerk of the Superior Court

JUL 06 2012

By: *[Signature]* Deputy

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

In the Matter of
**BERNARDO GREENS OWNERS
ASSOCIATION**, a California nonprofit
mutual benefit corporation,

Petitioner.

CASE NO. 37-2012-00095434-CU-PT-CTL

~~PROPOSED~~ ORDER GRANTING
PETITION TO REDUCE REQUIRED
VOTING PERCENTAGE

[CIVIL CODE § 1356]

Date:
Time:
Dept.:

The petition to restate the Declaration of the BERNARDO GREENS OWNERS ASSOCIATION ("the Association" or "Petitioner") came on regularly for hearing on July 6, 2012. Holly L. Amaya, Esq. appeared on behalf of Petitioner. Oral and documentary evidence was presented and considered by the court.

THE COURT NOW FINDS:

1. The Petitioner has given the required notices.
2. Balloting on the proposed restatement to the Declaration was conducted in accordance with all the applicable provisions of the governing documents of the common interest development.
3. A reasonably diligent effort was made to permit all eligible members of the Association to vote on the proposed restatement.
4. Owners of the common interest development having more

1 than 50% of the votes in the Association under the single voting structure voted in favor of the
2 restatement.

3 5. The restatement is reasonable.

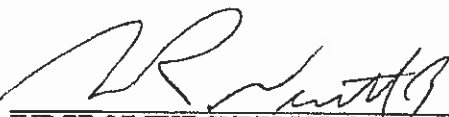
4 6. Granting the petition is not improper for any of the reasons stated in Civil Code
5 section 1356(e).

7 IT IS ORDERED AS FOLLOWS:

8 1. For the exclusive purpose of approving the Restated Declaration of the Bernardo
9 Greens Owner's Association, the requirements imposed by Article XII, Section 12.3 of the
10 original Declaration are dispensed with. Instead, consistent with Civil Code section 1356, the
11 Restated Declaration is decreed and ordered adopted and approved by Petitioner's members on
12 the basis of substantial compliance with the membership voting requirements as a result of the
13 number of affirmative votes actually received. The restatement is confirmed as validly approved.

14 ~~2. Any objections filed with respect to the Petition are overruled.~~

15
16 DATED: 7/6/12

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18 By: 
19 JUDGE OF THE SUPERIOR COURT
20 WILLIAM R. NEVITT, JR.

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FIRST AMENDMENT TO BYLAWS

OF

BERNARDO GREENS PROPERTY OWNERS ASSOCIATION

BYLAWS

Article VII, Section 7.2, is amended and replaced as follows:

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 shall be Members of the Association, in good standing. "Good standing" shall mean all homeowners assessments or other charges levied are paid current by the Member, and that the Member's rights to use the Common Area, or to vote, are not suspended.

Article VII, Section 7.4, is amended and replaced in its entirety as follows:

Section 7.4. Vacancies. A vacancy in the Board is deemed to exist in the case of: (1) death, (2) resignation, (3) removal, or (4) an amendment to the Bylaws providing for an increase in the number of directors. In addition, the Board has the discretion to declare a vacancy in the event of a director's absence from three or more regular Board meetings in one year.

Vacancies created other than by the removal of any director may be filled by a majority of the remaining directors, even though less than a quorum, and each director so elected shall hold office until his or her 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 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 approved, authorizing an increase in the number of directors.

No reduction of the number of directors shall have the

effect of removing any director prior to the expiration of his or her term of office.

CERTIFICATE OF AMENDMENT

I, the undersigned, do hereby certify:

1. That I am duly elected and acting Secretary of the BERNARDO GREENS PROPERTY OWNERS ASSOCIATION, a California Nonprofit Mutual Benefit Corporation and certify:

2. That the foregoing first Amendment to the Bylaws was adopted by the members entitled to exercise a majority of the voting power of the Association.

IN WITNESS WHEREOF I hereunto subscribe my name this 12th day of April, 1995.

**BERNARDO GREENS PROPERTY OWNERS
ASSOCIATION**

By: Thinnie M. Baumer
Secretary

PETERS & FREEDMAN

ATTORNEYS AT LAW

385 SOUTH RANCHO SANTA FE RD., SUITE 300
SAN MARCOS, CALIFORNIA 92069

(619) 744-3300
FAX (619) 744-6299

SIMON J. FREEDMAN
DAVID M. PETERS

CYNTHIA L. BASHORE
ELLEN FENSTERMACHER
LAURIE F. MASOTTO
LAURIE S. POOLE

PALM DESERT OFFICE
74-041 HIGHWAY 111, SUITE B
PALM DESERT, CA 92260
(619) 773-4463

2235 ENCINITAS BLVD., SUITE 112
ENCINITAS, CA 92024
(619) 436-3441

September 26, 1994

Re: Bernardo Greens Property Owners Association \ Proposed Amendment
to Bylaws
Our File No. 1236.1

Dear Members:

The Board of Directors for Bernardo Greens Property Owners Association ("Association") has determined to propose the enclosed First Amendment to the Bylaws of the Association. These amendments will benefit the project in the following manner:

DIRECTORS REQUIRED TO BE MEMBERS

Article VII. Section 7.2.

The Bylaws currently provide that Directors need not be Members of the Association. This exclusion permitted the developer to serve on the Board during the initial stages of the Project. After the developer is no longer involved, this section should be changed to allow only members to serve as Directors.

**VACANCY CREATED DUE TO ABSENCE FROM
THREE OR MORE BOARD MEETINGS**

Article VII. Section 7.4.

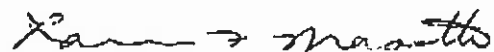
The object of this amendment is to permit the Association to replace a Director who has missed three (3) or more meetings to insure that persons serving on the Board actively participate in the decision-making process.

Please review the enclosed amendments carefully, and fill out the enclosed ballot. Please return the ballot to the Association in the self-addressed, stamped envelope that has been provided by the Property Manager. At least a majority of the voting power of the Association is required to adopt these amendments. In order for your vote to be considered, please return it no later than _____, 1994.

Thank you for your participation in your community.

Sincerely,

PETERS & FREEDMAN



Laurie F. Masotto

LFM:vm:c:clients\bernardo\bylaws.ltr

FIRST AMENDMENT TO BYLAWS

OF

BERNARDO GREENS PROPERTY OWNERS ASSOCIATION

BYLAWS

Article VII, Section 7.2, is amended and replaced as follows:

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 shall be Members of the Association, in good standing. "Good standing" shall mean all homeowners assessments or other charges levied are paid current by the Member, and that the Member's rights to use the Common Area, or to vote, are not suspended. *ok*

Article VII, Section 7.4, is amended and replaced in its entirety as follows:

Section 7.4. Vacancies. A vacancy in the Board is deemed to exist in the case of: (1) death, (2) resignation, (3) removal, or (4) an amendment to the Bylaws providing for an increase in the number of directors. In addition, the Board has the discretion to declare a vacancy in the event of a director's absence from three or more regular Board meetings in one year.

Vacancies created other than by the removal of any director may be filled by a majority of the remaining directors, even though less than a quorum, and each director so elected shall hold office until his or her successor is elected at an annual meeting of Members, or at a special meeting called for that purpose. *th*

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 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 approved, authorizing an increase in the number of directors.

No reduction of the number of directors shall have the

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3

effect of removing any director prior to the expiration of his or her term of office.

CERTIFICATE OF AMENDMENT

I, the undersigned, do hereby certify:

1. That I am duly elected and acting Secretary of the **BERNARDO GREENS PROPERTY OWNERS ASSOCIATION**, a California Nonprofit Mutual Benefit Corporation and certify:

2. That the foregoing first Amendment to the Bylaws was adopted by the members entitled to exercise a majority of the voting power of the Association.

IN WITNESS WHEREOF I hereunto subscribe my name this 12th day of April, 1995.

**BERNARDO GREENS PROPERTY OWNERS
ASSOCIATION**

By: Winnie M. Baumer
Secretary

FIRST AMENDMENT TO BYLAWS
OF
BERNARDO GREENS PROPERTY OWNERS ASSOCIATION

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**BERNARDO GREENS PROPERTY OWNERS
ASSOCIATION**

By: Winnie M. Baumer
Secretary

Master

BYLAWS
OF
BERNARDO GREENS PROPERTY OWNERS ASSOCIATION

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BYLAWS
OF
BERNARDO GREENS PROPERTY OWNERS ASSOCIATION

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 Association as they may from time to time be amended.

Section 2.2. "Association" shall mean and refer to BERNARDO GREENS PROPERTY OWNERS ASSOCIATION, a California Nonprofit Mutual Benefit Corporation, its successors and assigns.

Section 2.3. "Board" or "Board of Directors" shall mean and refer to the governing body of said Association.

Section 2.4. "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 2.5. "Common Area" shall mean and refer to all portions of the Condominium Property not located within a Living Unit.

Section 2.6. "Common Expenses" means and includes the actual and estimated expenses of operating the Condominium Property and the Recreation Area and any reasonable reserve for such purposes.

Section 2.7. "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 2.8. "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 2.9. "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:

Parcel 1 of PARCEL MAP NO. 13509 filed in the Office of the County Recorder of San Diego County, California, on October 10, 1984,

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

Section 2.10. "Declarant" shall mean and refer to W AND W, a California general partnership, 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 or Guarantor" shall mean and refer to an insurer or governmental guarantor who has requested notice from the Association 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 Association 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 Garages, Patios and Decks.

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 and Recreation Area, 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. "Recreation Area" shall mean and refer to all real property owned by the Association for the common use and enjoyment of the Owner.

Section 2.23. "VA" shall mean and refer to the Veterans Administration.

ARTICLE III

VOTING RIGHTS IN ASSOCIATION

The Association 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 Recreation Area and paying the necessary expenditures of the Association 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 and Recreation 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 or Recreation Area, including the cost of major repair or rebuilding to reimburse the Association 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 Association 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 Association in compliance with these Bylaws, and in the event of default by any Owner, said interest of such Owner may be foreclosed by the Association 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 Association. Assessments imposed to reimburse the Association for costs incurred in bringing a Member or his Condominium into compliance with the provisions of the Declaration, these Bylaws, any amendments thereto, the Articles or Association 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 Association 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 Recreation Area or abandonment of his Living Unit.

Section 4.4. Payment of Assessments by Declarant. The Declarant shall pay all assessments levied by the Association 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 Association, 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, and the Recreation Area. 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 and the Recreation Area.

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 Association'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 Association'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 Recreation Area 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 Association or supplied by him to the Association 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 Association 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 Association 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 Association; 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 requirement 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 Association. 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 Association.

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 or Recreation Area.

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 or Recreation 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 Association shall receive any monetary compensation for their services performed in the conduct of the business of the Association, except upon the vote or written consent of a majority of the voting power of each class of Members of the Association, 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 Association, and (ii) at least fifty-one percent (51%) of the total voting power of Members of the Association other than Declarant. Nothing herein contained shall be construed or preclude any director or officer from serving the Association in any other capacity as an agent, employee or otherwise and receiving compensation therefor. Directors and officers of the Association may be reimbursed for expenses incurred in carrying on the business of the Association; provided, however, that no such expenses in excess of \$50.00 during any fiscal year of the Association shall be reimbursed by the Association 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 Association; 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 Association 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 or Recreation 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 Association 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 Association shall be a president, a vice president, a secretary and a chief financial officer. The Association 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 Association 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 Association may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in the Bylaws or as the Board 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 Association. 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 Association and shall, subject to the control of the Board, have general supervision, direction and control of the business and officers of the Association. 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 Association.

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 Association, 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 Association and shall deposit all moneys and other valuables in the name and to the credit of the Association with such depositories as may be designated by the Board. He shall disburse the funds of the Association 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 Association, 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 ASSOCIATION

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 Association, 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 Association, 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 Recreation Area and the facilities owned or controlled by the Association.

Section 9.3. Borrowing of Money. To borrow money and incur indebtedness for the purposes of the Association, 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 Association, to (a) hypothecate, mortgage, pledge or deed in trust any or all of the real or personal property owned by the Association as real security for money borrowed or debts incurred, and (b) sell any real or personal property owned by the Association. 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 Association, and (ii) two-thirds (2/3) or more of the voting power of Members of the Association other than Declarant.

Section 9.4. Insurance. To contract and pay for fire, casualty, liability, fidelity and other insurance adequately insuring the Association and Owners with respect to the Common Area, the Recreation Area and the affairs of the Association, 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 Association 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 Association who have at least ten percent (10%) of the Association's voting power or any first Mortgagee or any insurer or governmental guarantor of any first Mortgage, the Association 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 Association's annual assessment plus reserves, which names the Association as obligee and protects against misuse and misappropriation of Association property by Members of the Board, officers and employees of the Association, 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, the Recreation Area and, to the extent not separately metered or charged, for each Living Unit.

Section 9.6. Management of Common Area and Recreation 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 or Recreation 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 Association with the vote or written assent of a majority of the voting power of each class of Members of the Association; 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 Association, and (ii) at least fifty-one percent (51%) of the total voting power of Members of the Association 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 Association, the rules and regulations adopted by the Board and the provisions of any agreement to which the Association is a party.

Section 9.9. Right to Contract. To contract and pay for goods and services relating to the Common Area and Recreation 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 Recreation Area or for the Association 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 Association, 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 Association, and (ii) at least fifty-one percent (51%) of the total voting power of Members of the Association 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 Association;

(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 or the Recreation Area 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 or Recreation Area 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 Association 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 and Recreation Area. To pay any taxes and governmental special assessments which are or could become a lien on the Common Area or Recreation Area or any portion of either.

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 Recreation 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 and Recreation 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 Association as provided in these Bylaws.

Section 9.14. Notification to Mortgagee. Upon written request to the Association, 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 Association.

(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 Association in writing of their addresses, of any loss to or taking of the Common Area or Recreation 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 Association, any action affecting or relating to the Common Area or Recreation Area or the property owned by the Association, 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 Association.

Section 9.20. Right to Permit Use of Common Area and Recreation Area. To permit utility suppliers to use portions of the Common Area and Recreation 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 Association. 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 Association 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 or Recreation Area 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 Association, 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 Association 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 Association and properties owned or controlled by the Association. The right of inspection shall include the right, at the director's 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 Association 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 Association as of said date and shall summarize the financial transactions in which the Association 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 Association 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 Association'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 Association 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 Association'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 Association to be prepared for the second and each succeeding fiscal year of the Association, a copy of which shall be distributed personally or by mail to each of the Members of the Association 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 Association on an accrual basis for the next fiscal year.

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

Section 9.25. Fiscal Year. The fiscal year of the Association 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 Association. However, the fiscal year of the Association 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 Association, which shall be signed or endorsed by the president and chief financial officer of the Association.

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 Association 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 Association 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 Association, and (ii) at least a majority of the voting power of Members of the Association 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 and 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 and 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 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 Association, the VA and/or the FEA, respectively, shall have the right to veto any amendments to the Bylaws.

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

I, the undersigned, do hereby certify:

1. That I am the incorporator of BERNARDO GREENS PROPERTY OWNERS ASSOCIATION, a California nonprofit mutual benefit corporation; and,

2. That the foregoing Bylaws, comprising twenty-five (25) pages, constitute the Bylaws of said corporation duly adopted by Written Consent of the Incorporator dated November 30, 1984.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said corporation this 3rd day of December, 1984.

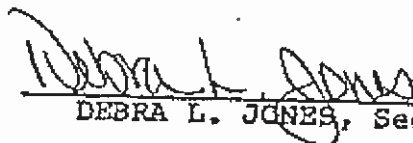


ALEX C. McDONALD, Incorporator

CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify:

1. That I am the duly elected and acting Secretary of BERNARDO GREENS PROPERTY OWNERS ASSOCIATION, 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 December 4, 1984:



DEBRA L. JONES, Secretary