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1997 AMENDED AND RESTATED

DECLARATION OF NEIGHBORHOOD RESTRICTIONS

FOR

FAIRWAY HEIGHTS II OWNERS' ASSOCIATION, INC.

[A.K.A. PARVIEW ESTATES]

*A Residential Planned Development*

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1997 AMENDED AND RESTATED  
DECLARATION OF RESTRICTIONS  
FOR

FAIRWAY HEIGHTS II OWNERS' ASSOCIATION, INC.  
[A.K.A. PARVIEW ESTATES]

THIS 1997 AMENDED AND RESTATED DECLARATION OF NEIGHBORHOOD RESTRICTIONS is made on the day and year hereinafter written, by FAIRWAY HEIGHTS II OWNERS ASSOCIATION, INC., a California nonprofit mutual benefit corporation ("Declarant" and "Neighborhood Association"), also known as Parview Estates, with reference to the following Recitals.

R E C I T A L S

A. Declarant is a corporation whose Members are the Owners of all the Lots within that certain real property in the City of San Diego, County of San Diego, State of California, more particularly described in Exhibit "A" attached hereto and made a part hereof (hereinafter "Property").

B. The Property was developed as a Planned Development, as defined in Section 1351(k) of the California Civil Code, and consists of one hundred and two (102) residential Lots located on Avenida Rorras in the City of San Diego, County of San Diego, State of California.

C. The Property is currently subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges set forth in the following documents:

RELATING TO THE COMMUNITY OF BERNARDO HEIGHTS:

1. The Declaration of Covenants, Conditions and Restrictions for The Community of Bernardo Heights recorded September 30, 1980 as File/Page No. 80-319018;
2. The First Amendment to Declaration of Covenants, Conditions and Restrictions recorded July 31, 1981 as File/Page No. 81-243645;
3. The Second Amendment to Declaration of Covenants, Conditions and Restrictions dated January 25, 1983 and recorded December 14, 1983 as File/Page No. 83-456035;

{Documents 1 through 3 above, and any subsequent amendments thereto, shall hereinafter be collectively referred to as "Community Declaration"}

RELATING TO THE NEIGHBORHOOD OF FAIRWAY HEIGHTS II (a.k.a. "Parview Estates"):

4. The Declaration of Neighborhood Restrictions recorded August 8, 1985 as File/Page No. 85-285285 (hereinafter "Declaration");
5. The Declaration of Annexation and Restrictions (Phase II) recorded August 16, 1985 as File/Page No. 85-296562; and
6. The Declaration of Annexation (Phase III) recorded on July 31, 1986 as File/Page No. 86-323217;

{Documents 4 through 6 above, and any subsequent amendments thereto which have been recorded prior to the date of recordation of this Amended and Restated Declaration of Restrictions for Fairway Heights Owners' Association, Inc., shall hereinafter be collectively referred to as "Neighborhood Restrictions"}

all of the Official Records of the County Recorder of San Diego County.

D. Declarant now desires to amend and restate the Neighborhood Restrictions and replace them in their entirety with these Amended and Restated Declaration of Restrictions (hereinafter "Restated Neighborhood Restrictions".) Declarant further desires that, upon recordation of these Restated Neighborhood Restrictions, the Property shall be subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens, and charges contained herein, and that these Restated Neighborhood Restrictions take the place of and relate back in time to the recording of the original Neighborhood Restrictions.

E. The original declarant/developer no longer holds any ownership interest with regard to any property affected by the Neighborhood Restrictions, nor any remaining rights under the Neighborhood Restrictions. The Neighborhood Restrictions, in Article 16, Section 16.1, provides that it may be amended by a written instrument signed and acknowledged by sixty-seven percent (67%) of the total voting power of the Neighborhood Association, and filed for record in the Office of the County Recorder of San Diego County, California. The undersigned President and Secretary of the Neighborhood Association certify that, to the best of their knowledge, the affirmative vote or written consent of at least the required percentage of Neighborhood Association Members has been obtained.

F. The Neighborhood Restrictions, in Article 16, Section 16.1, provides that fifty-one percent (51%) of First Mortgagees must approve of any amendment, but only if (a) such First Mortgagees have requested in writing that the Neighborhood Association notify such holders of any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders, and (b) if such amendment would (i) affect to any degree the rights, powers, privileges, interests or security of First Mortgagees as set forth in the Article thereof entitled "Planned Development Character of Project," "The Neighborhood Association," "Accounting," "Scope; Enforcement," "Rights of Mortgagees" and the following paragraphs thereof: 1.1.10, 1.1.11, 1.1.13, 2.1 and 16.1, (ii) change the boundaries of any Lot or convert any Lot into common area, or vice versa, (iii) impose any restriction on an Owner's right to sell or transfer his or her Lot, other than as set forth in subparagraph 2.1.5 thereof, or (iv) establish self management when professional management had been required previously by an Eligible Mortgage Holder pursuant to guidelines of the Federal National Mortgage Association. These Restated Neighborhood Restrictions (i) affect the rights, powers, privileges, interests or security of first Mortgagees as set forth in the Article thereof entitled "Planned Development Character of Project," "The Neighborhood Association," "Accounting," "Scope; Enforcement," "Rights of Mortgagees" and the following paragraphs thereof: 1.1.10, 1.1.11, 1.1.13, 2.1 and 16.1, and (ii) impose restrictions on an Owner's right to transfer his or her Lot. The required approval of at least the specified percentage of First Mortgagees has been obtained.

NOW, THEREFORE, Declarant hereby declares that all of the Property is and shall continue to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the declarations, limitations, covenants, conditions, restrictions, reservations, rights, and easements set forth in these Restated Neighborhood Restrictions, and as may be amended from time to time, all of which are declared and agreed to be in furtherance of a plan established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Property. All provisions of these Restated Neighborhood Restrictions shall constitute covenants running with the land and enforceable equitable servitudes upon the Property, and shall be binding on and for the benefit of all of the Property and all parties having or acquiring any right, title, or interest in all or any part of the Property, including the heirs, executors, administrators, and assigns of these parties and all subsequent owners and lessees of all or any part of a Lot.



DECLARATION

## ARTICLE 1 - DEFINITIONS

1.1 **"Common Property"** means all maintenance, recreational and other equipment acquired by the Neighborhood Association (i) for the maintenance and improvement of the Project and (ii) to implement the performance of the Neighborhood Association's other duties according to these Restated Neighborhood Restrictions.

1.2 **"Community"** means all of the real property subject to the Community Declaration (hereinafter defined).

1.3 **"Community Architectural Committee"** means the Community Architectural Committee established pursuant to Article VIII of the Community Declaration.

1.4 **"Community Articles"** means the Articles of Incorporation of the Community Association as said Articles of Incorporation may from time to time be amended.

1.5 **"Community Assessments"** means any assessments from time to time levied or imposed upon a Lot pursuant to the Community Declaration.

1.6 **"Community Association"** means The Community Association of Bernardo Heights, a California nonprofit mutual benefit corporation, or any successor entity charged with the duties, obligations and powers of said Community Association of Bernardo Heights.

1.7 **"Community Board"** means the Board of Directors of the Community Association.

1.8 **"Community Bylaws"** means the Bylaws for the Community Association as said Bylaws may from time to time be amended.

1.9 **"Community Declaration"** means that certain Declaration of Covenants, Conditions and Restrictions for the Community of Bernardo Heights, dated September 29, 1980, and recorded in the Office of the County Recorder of San Diego County, California, on September 30, 1980 as File/Page No. 80-319018, as amended by that certain First Amendment to Declaration of Covenants, Conditions and Restrictions, dated as of June 16, 1981, and recorded in the Office of the County Recorder of San Diego County, California, on July 31, 1981 as File/Page No. 81-243645, and as further amended by that certain Second Amendment to Declaration of Covenants, Conditions and Restrictions dated January 25, 1983, and recorded in the Office of the Recorder of San Diego County, California, on December 14, 1983, as File/Page No. 83-456035, and as said Declaration of Covenants, Conditions and Restrictions for the Community of Bernardo Heights may hereafter from time to time be further amended.

1.10 **"Dwelling"** shall mean a residential structure or structures, including any enclosed yard, balconies, patio areas and garages located on a Lot.

1.11 **"Eligible Lender"** a holder, insurer or guarantor of a First Mortgage that provides a written request to the Neighborhood Association stating the name and address of such holder, insurer or guarantor and the Lot number, and requesting notice to which such Eligible Lender is due under the Governing Documents.

1.12 **"Front Yard"** means that portion of a Lot located between (i) the edge, or if it exists, the curb, of any street forming the boundary of a Lot as shown on the subdivision map for the Project, and (ii) a continuous, imaginary line formed by the intersection with the ground of (a) the edge of the foundation nearest to such street of the residential structure located on such Lot, and (b) the edge nearest such street of any wall, continuing on a straight line through any gate in such a wall, erected by the original Developer between the residential structure on the Lot and a "side" Lot boundary intersecting with such street boundary, or the straight line extension of any such line in the event any such wall does not intersect with such "side" Lot boundary. In the event there is a dispute between an Owner and the Neighborhood Association, or any other person entitled to enforce the provisions of the Restated Neighborhood Restrictions, with regard to what area constitutes the Front Yard of any particular Lot, the Neighborhood Board shall, at the request of any such person, determine what portion of such Lot constitutes the Front Yard for purposes of the Restated Neighborhood Restrictions, and such determination shall be conclusive as between all such parties.

1.13 **"Governing Documents"** means the Restated Neighborhood Restrictions and any other documents such as the Neighborhood Articles, Neighborhood Bylaws, or Rules and Regulations which govern the operation of the Neighborhood Association.

1.14 **"Landscaping"** means all plants, trees, bushes, flora and other plant life, the roots thereof, the dirt surrounding such plant life, or within which such plant life grows, and the sprinkler systems in a designated area.

1.15 **"Lender"** means a Person to whom a Mortgage is made and includes the beneficiary of a deed of trust and any guarantor or insurer of a mortgage. "Institutional Lender" means a mortgagee that is a financial intermediary or depository, such as a bank, savings and loan, or mortgage company, that is chartered under federal or state law and that lends money on the security of real property or invests in such loans, or any insurance company or governmental agency or instrumentality, including the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Government National Mortgage Association (GNMA). "First Lender" means a mortgagee that has priority over all other mortgages or holders of mortgages encumber-

ing the same Lot or other portions of the Project. The term "Beneficiary" shall be synonymous with the term "Lender."

1.16 **"Lot"** shall refer to each of the Lots within the Project, including all improvements now or hereafter thereon.

1.17 **"Member"** means every person or entity entitled to membership in the Neighborhood Association as provided in the Restated Neighborhood Restrictions.

1.18 **"Mortgage"** means a mortgage or deed of trust encumbering a Lot or any other portion of the Project. "First Mortgage" means a mortgage that has priority over all other mortgages encumbering the same Lot or other portions of the Project.

1.19 **"Neighborhood Architectural Control Committee"** means the Neighborhood Architectural Control Committee established and formed as set forth in Article 9 of the Restated Neighborhood Restrictions.

1.20 **"Neighborhood Articles"** means the Articles of Incorporation of FAIRWAY HEIGHTS II OWNERS' ASSOCIATION, INC., filed in the Office of the Secretary of State of the State of California on August 14, 1985 as File No. 1283307, and any amendments thereto now existing or hereafter adopted.

1.21 **"Neighborhood Association" and "Declarant"** means FAIRWAY HEIGHTS II OWNERS' ASSOCIATION, INC., a California nonprofit mutual benefit corporation created for the purpose of managing a common interest development.

1.22 **"Neighborhood Board"** means the Board of Directors of the Neighborhood Association.

1.23 **"Neighborhood Bylaws"** means the Bylaws of the Neighborhood Association and any amendments thereto.

1.24 **"Owner"** means any natural person, firm, corporation, partnership, trust or other entity which owns a fee simple interest in any Lot, including Neighborhood Association, and any contract sellers under recorded contracts of sale. "Owner" shall not include any persons or entities who hold an interest in a Lot merely as security for performance of an obligation. For purposes of exercising membership rights and incurring membership obligations when an Owner is a corporation, any director, officer, employee or agent designated by corporate resolution may exercise the membership rights attributable to the corporation. When an Owner is a trust, the trustee may exercise the membership rights attributable to the trust unless otherwise designated in writing by the trustee.

1.25 **"Person"** means a natural individual, a corporation, or any other entity with the legal right to hold title to real property.

1.26 **"Project"** means the entire common interest development as described in EXHIBIT "A" herein including all improvements thereon.

1.27 **"Property"** means the real property described in EXHIBIT "A" attached hereto.

1.28 **"Restated Neighborhood Restrictions"** means this Amended and Restated Declaration of Restrictions and any amendments hereto.

1.29 **"Rules and Regulations"** means any Rules and Regulations for the Neighborhood Association regulating the use of the Lots, the Common Property, the Project and any facilities located thereon adopted by the Neighborhood Board pursuant to Subsection 3.7.2 herein.

## ARTICLE 2 - THE PROPERTY

2.1 **Project Subject to Restated Neighborhood Restrictions.** The entire Project shall be subject to these Restated Neighborhood Restrictions upon recordation hereof.

2.2 **Equitable Servitudes.** The covenants and restrictions set forth in these Restated Neighborhood Restrictions shall be enforceable equitable servitudes and shall inure to the benefit of and bind all Owners. These servitudes may be enforced by any Owner or by the Neighborhood Association or by both.

2.3 **Prohibition Against Partition.** There shall be no judicial partition of the Project or any part of it, nor shall the Neighborhood Association or any person acquiring an interest in the Project or any part of it seek any judicial partition, except upon showing that such partition is consistent with the requirements of Section 1359 of the California Civil Code.

2.4 **Prohibition Against Severance of Elements.** Any conveyance, judicial sale, or other voluntary or involuntary transfer of a Lot shall include all interests and appurtenances as shown in the original deed of conveyance. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the Owner's entire estate shall also include the Owner's membership interest in the Neighborhood Association, as provided in Article 3 herein. Any transfer that attempts to sever those component interests shall be void.

2.5 **Drainage and Slope Easements.** The Owner of a Lot shall permit free access by Owners of adjacent or adjoining Lots, or the Neighborhood Association and its agents, to slopes or drainageways

located on his or her Lot, when such access is essential for the maintenance of permanent stabilization of said slopes, or maintenance of the drainage facilities for the protection and use of property other than the Lot on which the slopes or drainageway is located. The Owner of any Lot shall not in any way interfere with the established drainage pattern over his or her Lot from adjacent or adjoining Lots, and such Owner will make adequate provisions for property drainage in the event it is necessary to change the established drainage over his or her Lot. For the purpose herein, "established drainage" is defined as the drainage which occurred at the time of the overall grading of the Project was completed.

**2.6 Neighborhood Association Easements Over Lots.** The Neighborhood Association has an easement over each Lot, as the servient tenement, for the purpose of allowing the Neighborhood Association's agents to enter the Lot to perform such duties as may be required by the Governing Documents. Each Owner subject to the Restated Neighborhood Restrictions acknowledges and expressly consents to this easement.

**2.7 Neighborhood Association Grant of Easements.** The Neighborhood Association may grant to third parties easements in, on, and over the Property for the purpose of constructing, installing, or maintaining necessary utilities and services, or for any other purpose reasonably related to the operation and maintenance of the Project. Each Lot Owner, in accepting his or her deed to the Lot, expressly consents to such easement. No such easement can be granted, however, if it would interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of his or her Lot without the approval of the affected Owner.

**2.8 Encroachment Easements.** None of the rights and obligations of the Owners created herein, or by the deed creating the Project shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of such encroachments over a contiguous Lot upon which the encroachment exists so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful conduct of said Owner or Owners. In the event a structure on a Lot is partially or totally destroyed and then rebuilt or repaired, the Owners of such Lots agree that minor encroachments over adjoining Lots shall be permitted and there shall be easements for maintenance of such encroachment so long as they shall exist.

### ARTICLE 3 - NEIGHBORHOOD ASSOCIATION

**3.1 Organization of the Neighborhood Association.** The Neighborhood Association is incorporated as a nonprofit corporation organized under the California Nonprofit Mutual Benefit Corporation Law. The Neighborhood Association is created for the purpose of

managing the Project and is charged with the duties and invested with the powers prescribed by law and set forth in the Governing Documents. Further, the Neighborhood Association shall be a member of the Community Association in accordance with, and as permitted and required by, the Community Declaration.

3.2 **Board of Directors.** The affairs of the Neighborhood Association shall be managed and its duties and obligations performed by an elected Board of Directors, as provided in Article 3 of the Neighborhood Bylaws.

3.3 **Membership.** Every Owner, upon becoming an Owner, shall automatically become a Member of the Neighborhood Association. Ownership of a Lot is the sole qualification for membership. Each Member shall have the rights, duties, privileges, and obligations as set forth in the Governing Documents. Membership shall automatically cease when the Owner no longer holds an ownership interest in a Lot. All memberships shall be appurtenant to the Lot conveyed, and cannot be transferred, assigned, conveyed, hypothecated, pledged, or alienated except as part of a transfer of the Owner's entire ownership interest, and then only to the transferee. Any transfer of the Owner's title to his or her Lot shall automatically transfer the appurtenant membership to the transferee.

3.4 **Membership Class; Voting Rights.** The Neighborhood Association shall have one class of membership and the rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents. Each Member shall be entitled to cast one (1) vote for each Lot owned, subject to the provisions set forth in the Neighborhood Bylaws.

3.5 **Membership Meetings.** Meeting of Members shall be held in accordance with Article 2 of the Neighborhood Bylaws.

3.6 **Inspection of Accounting Books and Records.** The rights of Members and Directors to obtain and inspect the accounting books and records of the Neighborhood Association shall be in accordance with Article 6 of the Neighborhood Bylaws.

3.7 **General Powers and Authority.** The Neighborhood Association shall have all the powers of a nonprofit mutual benefit corporation organized under the California Nonprofit Mutual Benefit Corporation Law, subject to any limitations set forth in the Governing Documents. It may perform all acts that may be necessary for or incidental to the performance of the obligations and duties imposed upon it. Its powers shall include, but are not limited to:

- 3.7.1 The power to establish, fix, levy, collect, and enforce the payment of assessments against the Owners in accordance with the procedures set forth in Article 5 herein.

- 3.7.2 The power to adopt reasonable Rules and Regulations governing the use of the Lots and Dwellings, the Common Property, and any common facilities and Neighborhood Association owned property, and the conduct at Neighborhood Board and Members' meetings, in accordance with the following:
- (a) The Rules and Regulations may include, but are not limited to:
    - (i) Reasonable restrictions on use of the Common Property, Lots and Dwellings by the Owners and their families, guests, employees, tenants and invitees.
    - (ii) Reasonable restrictions on the conduct of Owners and their families, guests, employees, tenants and invitees as to activities on the Lots and Dwellings.
    - (iii) In accordance with Section 3.11 of the Neighborhood Bylaws, the establishment of reasonable hearing procedures and a schedule of monetary penalties and fines which may be imposed for violations of any provisions of the Governing Documents.
  - (b) A copy of the current Rules and Regulations, if any, and all modifications, revisions and updates shall be given to each Owner within thirty (30) days of adoption by the Neighborhood Board.
  - (c) If any provision of the Rules and Regulations conflicts with any provision of the Restated Neighborhood Restrictions, the Neighborhood Articles, or the Neighborhood Bylaws, the Restated Neighborhood Restrictions, Neighborhood Articles, or Neighborhood Bylaws shall control to the extent of the inconsistency.
- 3.7.3 The right to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the Owners, in matters pertaining to:
- (a) Enforcement of the Governing Documents.
  - (b) Damage to the Common Property.

- (c) Damage to any part of the Property that the Neighborhood Association is obligated to maintain or repair.
- (d) Damage to the Lots that arises out of, or is integrally related to, damage to the Property that the Neighborhood Association is obligated to maintain or repair.
- (e) Enforcement of payment of assessments in accordance with the provisions of Section 5.15 herein.
- (f) Any other matter(s) in which the Neighborhood Association is a party, including, but not limited to contract disputes.

3.7.4 Subject to the limitations set forth in Section 3.11 of the Neighborhood Bylaws, the right to discipline Owners for violation of any of the provisions of the Governing Documents by (i) suspending the Member's membership rights including the Member's voting rights, (ii) imposing monetary fines, and (iii) recording a notice of noncompliance in the Office of the County Recorder of San Diego County encumbering the Lot of the Owner.

3.7.5 The right for its agents, authorized independent contractors and employees to enter any Lot when necessary in connection with any maintenance, landscaping, or construction work for which the Neighborhood Association is responsible. This entry shall be made only upon reasonable notice to the Owner (except in the case of an emergency) and with as little inconvenience to the Owner as is practicable. Any damage caused thereby shall be repaired by the Neighborhood Association at its own expense.

3.7.6 The power to remove any vehicle within the Project parked in violation of the Restated Neighborhood Restrictions or the Rules and Regulations in accordance with the provisions of California Vehicle Code Section 22658.2 and any amendments thereto.

**3.8 Duties of the Neighborhood Association.** In addition to the duties of the Neighborhood Association, its agents and employees set forth elsewhere in the Governing Documents, the Neighborhood Association shall be responsible for the following:



- 3.8.1 The Neighborhood Association, acting through the Neighborhood Board, shall operate, maintain, repair, and replace those components described in Section 7.2, or contract for the performance of that work, subject to the provisions of the Governing Documents.
- 3.8.2 The Neighborhood Association shall use the maintenance fund described in Article 5 herein to, among other things, acquire and pay for goods and services for the Project, including, but not limited to:
- (a) The insurance policies described herein.
  - (b) The services of any personnel that the Neighborhood Board determines are necessary or proper for the operation of the Neighborhood Association and the fulfillment of the obligations imposed upon the Neighborhood Association by the Governing Documents.
  - (c) Legal and accounting services necessary or proper in the operation of the Neighborhood Association or the enforcement of the Governing Documents.

#### ARTICLE 4 - COMMUNITY ASSOCIATION

4.1 **Nonexclusive Easement.** The officers, agents, employees and independent contractors of the Community Association shall have a nonexclusive easement to enter upon the Project, 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 and the rules and regulations of the Community Board and the Community Architectural Committee.

4.2 **Subordination of Liens.** The lien of any assessment imposed upon any Lot pursuant to this Declaration shall be subordinate and inferior to the lien of any assessment imposed upon such Lot pursuant to the Community Declaration.

4.3 **Manner of Collecting Assessments.** 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 Neighborhood Association to administer, levy, collect and enforce the Community Assessments imposed upon Lots within the Project. All such funds collected by the Neighborhood Association shall be held in trust by the Neighborhood Association for the benefit of the Community Association, and such funds shall be disbursed to the Community Association.

tion 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 provided for under the Restated Neighborhood Restrictions. All such funds collected by the Community Association shall be utilized in the manner and for the purposes specified in the Restated Neighborhood Restrictions and in the Community Declaration, the Community Bylaws, the Community Articles, and the rules and regulations of the Community Board and the Community Architectural Committee.

**4.4 Subordination of Neighborhood Association to Community Association.** In addition to all of the rights and obligations which have been conferred or imposed upon the Neighborhood Association pursuant to the Restated Neighborhood Restrictions, the Neighborhood Articles or the Neighborhood Bylaws, the Neighborhood 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 Neighborhood Association (including, without limitation, the Architectural Control Committee) 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.

**4.5 Subordination of Owners and Owners' Lots to Community Association.** Each Owner and such Owner's Lot(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 Restated Neighborhood Restrictions, the Neighborhood Bylaws, or Neighborhood Articles with any of the covenants, conditions, restrictions or provisions contained in the Community Declaration, the Community Bylaws, or the Community Articles, then, in such event, the covenants, conditions, restrictions and provisions contained in the Community Declaration, the Community Bylaws, and the Community Articles, as the case may be, shall govern and prevail.

## ARTICLE 5 - ASSESSMENTS AND COLLECTION PROCEDURES

**5.1 Covenant to Pay.** Each Owner by acceptance of the deed to the Owner's Lot is deemed to covenant and agree to pay to the Neighborhood Association the regular, special, and individual assessments, and all other charges duly levied by the Neighborhood Association pursuant to the provisions of the Restated Neighborhood Restrictions. A regular, special, or individual assessment and any late charges, reasonable costs of collection, and interest, as assessed in accordance with the provisions of this Article, shall be a personal debt of each Owner of the Lot at the time the assessment or other sums are levied. Co-Owners of a Lot shall be jointly and severally liable for all charges levied by the Neighborhood Association on that Lot. No Owner may waive or

otherwise escape liability for these assessments by nonuse of the Common Property or abandonment of the Owner's Lot.

**5.2 Purpose of Assessments.** Except as provided herein, the Neighborhood Association shall levy regular, special and individual assessments sufficient to perform its obligations. The assessments levied by the Neighborhood Association shall be used exclusively to promote the recreation and welfare of the Owners; for the operation, replacement, improvement, and maintenance of all personalty owned by the Neighborhood Association, and to discharge any other obligations of the Neighborhood Association under the Restated Neighborhood Restrictions. All assessment payments shall be put into a maintenance fund to be used for the foregoing purposes, except that an adequate reserve fund shall be established for the replacement of all personalty owned by the Neighborhood Association.

**5.3 Regular Assessments.** Concurrently with preparation of the financial documents and budget as required in Section 3.10 of the Neighborhood Bylaws, the Neighborhood Board shall estimate the net charges to be paid during that next fiscal year, including a reasonable provision for contingencies, replacements and reserves, with adjustments made for any expected income and surplus from the prior year's fund. The resulting amount shall constitute the regular assessments for the budgeted year. Regular assessments shall be divided equally among all Lots and allocated among, assessed against and charged to each Owner according to the ratio of the number of Lots owned by the assessed Owner to the total number of Lots subject to assessment. Each Lot shall bear an equal share of the total assessment. Failure of the Neighborhood Board to estimate the net charges within the time period stated herein shall not void any assessment imposed by the Neighborhood Board. Regular assessments for fractions of any month shall be prorated. Each Owner is obligated to pay assessments to the Neighborhood Association in equal monthly installments on or before the first day of each month unless the Neighborhood Board adopts an alternative method for payment.

**5.4 Special Assessments.** If the Neighborhood Board determines that the amount to be collected from regular assessments will be inadequate to defray the common expenses for the year, it shall make a special assessment for the additional amount needed. Special assessments shall be levied and collected in the same manner as regular assessments.

**5.5 Limitations on Regular and Special Assessments.** Except in emergency situations, the Neighborhood Board may not, without the approval of Owners constituting a quorum of the Owners and casting a majority of the votes at a meeting or election of the Neighborhood Association conducted in accordance with Corporations Code Sections 7510-7527 and 7613, impose a regular assessment per Lot that is more than twenty percent (20%) greater than the regular assessment for the preceding fiscal year, or levy special assess-

ments that in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Neighborhood Association for that fiscal year. For purposes of this Section, a "quorum" means more than fifty percent (50%) of the Owners of the Neighborhood Association. These limitations shall not apply to assessment increases that are necessary for emergency situations. An emergency situation is an extraordinary expense that is:

- 5.5.1 Required by a court order;
- 5.5.2 Necessary to repair or maintain the Project or any part of it for which the Neighborhood Association is responsible when a threat to personal safety in the Project is discovered; or
- 5.5.3 Necessary to repair or maintain the Project or any part of it for which the Neighborhood Association is responsible that could not have been reasonably foreseen by the Neighborhood Board in preparing and distributing the pro forma operating budget. Before the Neighborhood Board may impose or collect an assessment in this emergency situation, it shall pass a resolution containing written findings as to the necessity of the extraordinary expense and why the expense was not or could not have been reasonably foreseen in the budgeting process, and shall distribute the resolution to the Owners with the notice of assessment.

**5.6 Owner Notice of Regular and Special Assessments.** The Neighborhood Association shall provide notice by first-class mail to the Owners of any increase in the regular assessments or the imposition of a special assessment not less than thirty (30) nor more than sixty (60) days prior to the increase in the regular assessment or special assessment becoming due.

**5.7 Limitation on Regular Assessment Increases.** Unless the Neighborhood Board has complied with subdivision (a) of Section 1365 of the California Civil Code with respect to that fiscal year, the Neighborhood Board shall not be permitted to increase the regular assessments without first obtaining the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Neighborhood Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the California Corporations Code and Section 7613 of the California Corporations Code. For the purposes of this Section, "quorum" means more than fifty percent (50%) of the Owners of the Neighborhood Association.

**5.8 Individual Assessments.** Subject to the limitations of the Governing Documents and in addition to regular and special assessments, the Neighborhood Board may levy individual assessments

against Owners and Lots whenever the Neighborhood Association (i) performs any service or accomplishes any item of repair or maintenance which is the duty of any Owner to accomplish, but which has not been accomplished by such Owner, or (ii) incurs any costs which by law or as required by the Governing Documents must be reimbursed by an Owner. Such individual assessment shall include the cost thereof, together with any financing costs, administrative costs and attorney fees and costs incurred by the Neighborhood Association. Prior to levying such an individual assessment, the Neighborhood Board shall provide the Owner with notice and a hearing in accordance with Section 3.11 of the Neighborhood Bylaws.

**5.9 Monetary Penalty Assessments.** The Board of Directors may levy, subject to the limitations of the Governing Documents, monetary penalties or fines against an Owner and his or her Lot. In the event the Board of Directors imposes a monetary penalty or fine, that fine shall be subject to costs, late charges and interest as described in Section 5.12 and 5.14 for delinquent payment, but may not become a lien on the Unit, collectable by the Association as allowed by Section 5.15 herein.

**5.10 Taxes.** If any tax is assessed to the Neighborhood Association upon the entire Project, a share thereof shall be included in the assessment upon each Owner which share shall be equal to the number of Lots owned by Owner in proportion to the total number of Lots in the Project.

**5.11 Lots Not Subject To Assessment.** Assessments which would normally become due on Lots, but which Lots are owned by the Neighborhood Association by virtue of the Neighborhood Association having acquired such Lots through foreclosure, shall be deemed to be common expenses collectible from all of the remaining Lots in the same proportion that each Lot bears to the others less the number of Lots owned by the Neighborhood Association.

**5.12 Costs, Late Charges and Interest.** Late charges may be levied by the Neighborhood Association against an Owner for the delinquent payment of regular, special and individual assessments, fines, and monetary penalties. An assessment, including any installment payment, is delinquent fifteen (15) days after its due date. If an assessment is delinquent the Neighborhood Association may recover all of the following from the Owner:

5.12.1 Reasonable costs incurred in collecting the delinquent assessment, including actual attorneys' fees;

5.12.2 A late charge not exceeding ten percent (10%) of the delinquent assessment or ten dollars (\$10.00), whichever is greater, or the maximum amount allowed by law; and

5.12.3 Interest on the foregoing sums, at an annual percentage rate of twelve percent (12%) commencing thirty (30) days after the assessment becomes due.

No late charge may be imposed more than once for the delinquency of the same payment. However, the imposition of a late charge on any delinquent payment shall not eliminate or supersede charges imposed on prior delinquent payments. The amounts delinquent, including the entire unpaid balance and any related costs described herein, may be collected by the Neighborhood Association as provided in Section 5.15 hereinbelow.

5.13 **Priority of Payments.** The Neighborhood Board, in its sole discretion, may enact policies, not in violation of applicable law, including Civil Code Section 1367, regarding how payments received from Owners will be applied to any outstanding balances applicable to that Owner.

5.14 **No Offsets.** All assessments shall be payable in the amounts specified by the Neighborhood Association, and no offsets against such amount shall be permitted for any reasons, including, without limitation, a claim that the Neighborhood Association is not properly exercising its duties of maintenance, operation or enforcement.

5.15 **Enforcement of Assessments and Late Charges.** A delinquent regular, special or individual assessment, fine, monetary penalty, and any related late charges, reasonable costs of collection (including actual attorneys' fees) and interest assessed in accordance with Section 5.12 herein shall become a lien upon the Lot when a Notice of Assessment Lien is duly recorded as provided in Section 1367 of the California Civil Code or applicable statute. Unless otherwise required by statute, the Notice of Assessment Lien shall describe the amount of the delinquent assessment or installment, the related charges authorized by the Restated Neighborhood Restrictions, a description of the Lot, the name of the purported Owner, and, if the lien is to be enforced by power of sale under nonjudicial foreclosure proceedings, the name and address of the trustee authorized by the Neighborhood Association to enforce the lien by sale. The Notice of Assessment Lien may be signed by any officer or director of the Neighborhood Association, or any employee or agent of the Neighborhood Association authorized to do so by the Neighborhood Board. The Notice shall be mailed in the manner set forth in Civil Code Section 2924b, to all record owners of the Lot no later than ten (10) calendar days after recordation.

Unless otherwise allowed by statute, the Notice of Assessment Lien may not be recorded until after the Association has mailed, via certified mail, a written demand for payment to the delinquent Owner. The written demand shall include the fee and penalty procedures of the Association, provide an itemized statement of the charges owed by the Owner, including items on the statement which

indicate the principal owed, any late charges and the method of calculation, and any attorney's fees, and the collection practices used by the Neighborhood Association, including the right of the Neighborhood Association to the reasonable costs of collection. If the delinquent assessment or installment and related charges are paid or otherwise satisfied in accordance with the demand for payment, the Neighborhood Association shall not record the Notice of Assessment Lien.

If not paid in full within thirty (30) days after recordation of the Notice of Delinquent Assessment, any lien described herein may be enforced in any manner permitted by law, including judicial foreclosure or nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted by the trustee named in the Notice or by a trustee substituted pursuant to Section 2934(a) of the California Civil Code, in accordance with the provisions of Sections 2924, 2924(b), and 2924(c) of the California Civil Code.

If all sums specified in the Notice of Assessment Lien are paid before the completion of any judicial or non-judicial foreclosure, the Neighborhood Association shall (i) record a notice of satisfaction and release of lien, and (ii) upon receipt of a written request by the Owner, shall also record a notice of rescission of any recorded notice of default and demand for sale.

The Notice of Assessment Lien is not required to be amended by the Neighborhood Association or Trustee to reflect any partial payments made on the account of the delinquent Owner after its recordation, and any such partial payments received shall not be construed to invalidate the Notice of Assessment Lien and said Notice of Assessment Lien may be foreclosed upon as set forth herein even though the delinquent Owner has made one or more partial payments.

**5.16 Priority of Assessment Lien.** As set forth hereinbelow, the assessment lien referred to in Section 5.15 shall be superior to all other liens, except (i) all taxes, bonds and governmental assessments which, by law, would be superior thereto, and (ii) the lien or charge of any First Mortgage of record. Notwithstanding any other provision to the contrary, the following provisions shall govern the priority and obligation for payment of the assessment lien:

5.16.1 Only the judicial or non-judicial foreclosure of the First Mortgage shall operate to transfer title free of the assessment lien or obligation for any assessment lien, and then only as to payments which became due prior to the date of sale, and excluding those assessment liens recorded prior to the recording of the First Mortgage.

5.16.2 Neither the transfer of a Lot pursuant to a foreclosure of any Mortgage, nor an election by the Neighborhood Association to proceed against any new Owner for payment, shall serve to cancel the personal obligation of the prior Owner for payment of the delinquent assessments and charges which accrued during such Owner's period of ownership. The personal obligation of any Owner for payment of delinquent assessments and charges may only be satisfied, and therefore discharged, by payment of the entire amount of the delinquent assessments and charges, whether or not such Owner remains in possession of his or her Lot.

5.16.3 No sale or transfer of any Lot shall relieve such Lot or its new Owner from liability for any future assessments which accrue during such Owner's period of ownership.

5.17 **Statement of Delinquent Assessment.** The Neighborhood Association shall provide any Owner, upon written request, with a statement specifying the amounts of any delinquent assessments and related late charges, interest, and costs levied against the Owner's Lot.

#### ARTICLE 6 - USE RESTRICTIONS AND COVENANTS

6.1 **General.** The use and enjoyment of the Project by Owners and their tenants, guests, invitees or any other person deriving rights from such Owner, shall be subject to the covenants and restrictions contained in these Restated Neighborhood Restrictions. Each such person shall comply with the provisions hereof and be subject to any enforcement actions in the event of violations. Unless otherwise stated in the Governing Documents, the Neighborhood Association, through the Neighborhood Board, shall be responsible for the enforcement of these provisions.

6.2 **General Restrictions on Use.** In exercising the right to occupy or use a Lot, the Owner and the Owner's family, guests, employees, tenants, and invitees shall not:

- 6.2.1 Modify, construct, build or otherwise alter any portion of his or her Lot or Dwelling other than as provided in Article 8, below.
- 6.2.2 Attempt to further subdivide a Lot.
- 6.2.3 Occupy or use a Lot, or permit all or any part of a Lot to be occupied or used, without Neighborhood Board approval, for any purpose other than as a private residence. The Neighborhood



Board may establish guidelines in the Rules and Regulations to allow certain home occupations which (a) are consistent with the normal residential usage of the Project, (b) do not cause any external effects which are detrimental to neighboring Lots or the Project, and (c) are compatible with the characteristics of residential use in the Project.

6.2.4 Lease or rent a Lot in derogation of the following:

- (a) All leases and rental agreements must be in writing.
- (b) All leases and rental agreements must be for the entire Dwelling, and not merely parts thereof, unless the Owner remains in occupancy.
- (c) No lease or rental shall be for a period of less than thirty (30) days.
- (d) All leases and rental agreements shall be subject in all respects to the Governing Documents, and shall provide that failure to comply with the requirements of the Governing Documents shall constitute a default under the lease which may be cured by eviction of the tenant either by the Owner or the Neighborhood Association.
- (e) An Owner who leases or rents their Lot shall promptly notify the Neighborhood Association in writing of the names of all tenants and members of a tenants' family occupying such Lot and shall provide the Neighborhood Association with a complete copy of the lease or rental agreement.
- (f) All Owners leasing or renting their Lot shall promptly notify the Neighborhood Association of the address and telephone number where such Owner can be reached.

6.2.5 Perform any act or keep anything on or in any Lot that will increase the rate of insurance on the Neighborhood Association, the Neighborhood Board, the officers and directors of the Neighborhood Association, or the Common Property without the Neighborhood Board's prior written consent. Further, no Owner shall permit anything to be done or kept on his or her Lot that

would result in the cancellation of insurance on any Lot, any item of Common Property, the Neighborhood Association, the Neighborhood Board, the officers or directors, or that would violate any law.

- 6.2.6 Store gasoline, kerosene, cleaning solvents, or other flammable liquids or substances, or any toxic or hazardous materials in any Lot; provided, however, that amounts of these liquids, substances or materials which are reasonable for household use may be placed in appropriate containers and properly stored.
- 6.2.7 Discharge or cause the emission of any dust, sweepings, dirt, cinders, odors, gases, or other substances into the atmosphere other than normal residential chimney or outdoor grill emissions.
- 6.2.8 Erect or display any sign on or from any Lot except as allowed by Sections 712 and 713 of the California Civil Code, or as stated in the Rules and Regulations.
- 6.2.9 Erect or attach a basketball standard or fixed sports apparatus on any Lot or to any building on a Lot, including, but not limited to, a residential structure or garage on any Lot.
- 6.2.10 Erect or display any radio or television antenna, satellite dish or other equipment or apparatus for transmitting or receiving transmissions. Notwithstanding the foregoing, an Owner may erect a video or television antenna, including a satellite dish, as allowed by any applicable statute or law, with the prior approval of the Neighborhood Board. The Neighborhood Board may impose reasonable restrictions on its approval.
- 6.2.11 Raise or keep pet(s) or other animal(s) in or on the Project except as permitted by regulations adopted by the Neighborhood Board. Notwithstanding the foregoing, no Owner or other occupant of a Lot may raise or keep pets which interfere with, or have a reasonable likelihood of interfering with, the rights of any Owner or other occupant of a Lot to the peaceful and quiet enjoyment of the Lot. In the event the Neighborhood Board determines that any such pet(s) or other animal(s) create an unreasonable annoyance or nuisance to any Owner or other occupant of a Lot, the raising or keeping thereof shall be discontinued within a reasonable

time after such determination. No owners may raise or keep animals for commercial purposes. The Neighborhood Association, its Neighborhood Board, officers, employees and agents shall have no liability to any Owner, their family members, guests, invitees, tenants and contract purchasers, or any other person on the Project, for any damage or injury to persons or property caused by any pet, absent any willful or wanton negligence on the part of the Neighborhood Association, or its Neighborhood Board, officers, employees and agents.

- 6.2.12 Engage in any illegal, noxious or offensive activity in any part of the Project, or do any act which unreasonably threatens the health, safety and welfare of other residents of the Project.
- 6.2.13 Install, use or maintain any exterior newspaper tube or freestanding mailboxes except as may have been initially installed by the original developer of the Project, or thereafter approved by the Architectural Control Committee.
- 6.2.14 Convert or use any garage for purposes other than parking of the number of vehicles such garage was designed to contain and storage of reasonable amounts of household goods that do not interfere with the ability to park the number of vehicles such garage was designed to accommodate or create a fire or safety hazard.
- 6.2.15 Park any automobile, other motor vehicle, boat, camper shell or equipment of any kind in the Project except wholly within a garage or other enclosed building on a Lot; provided, however, that passenger automobiles owned or regularly used by an Owner or a member of an Owner's immediate family, or guests thereof, may be temporarily parked in the driveway of such Owner's Lot during the normal waking hours of such Owner or such Owner's family. No junk or derelict vehicle or unregistered vehicle shall be kept upon any portion of the Project so as to be visible from the Common Area or another Lot. The Neighborhood Board, in its discretion, may adopt reasonable rules governing the operation, maintenance, storage and parking of any vehicle, including trucks, campers, trailers, boats or commercial vehicles on the Lots, including the garages and driveways.

- 6.2.16 Erect or place any structure of a temporary character, trailer, tent, shack or other outbuilding on any Lot, either temporarily or permanently. Nothing contained in the foregoing shall be construed to preclude the use of a trailer, outbuilding or other temporary structure used to facilitate construction, or the convenience of persons engaged in construction, during the period of construction of any single-family residence on any Lot, provided that any such trailer, outbuilding or structure shall be removed forthwith upon the completion of any such single-family residence.
- 6.2.17 Maintain or display any equipment, refuse cans or other containers on any Lot or street unless such equipment, refuse cans or other containers are kept screened and concealed from view from any of the Lots or streets within the Community. All rubbish, trash and refuse shall be regularly removed from each Lot and shall not be allowed to accumulate thereon.
- 6.2.18 Maintain or display any outside clotheslines or other outside clothes drying or airing facilities on any Lot unless same is/are not visible from any of the Lots or streets within the Community.

6.3 **Damage Liability.** Each Owner shall be liable to the Neighborhood Association for any damage to Neighborhood Association owned property, including any access control systems, to the extent that the damage is not covered by insurance, if the damage is sustained because of the negligence, willful misconduct, or unauthorized or improper installment or maintenance of any improvement by the Owner or the Owner's family, guests, tenants, contract purchasers, or invitees. In the case of joint ownership of a Lot, the liability of the co-owners shall be joint and several, unless the co-owners and the Neighborhood Association have agreed in writing to an alternative allocation of liability.

## ARTICLE 7 - REPAIR AND MAINTENANCE

7.1 **General; Standards of Maintenance.** The Neighborhood Association and all Owners are required to fulfill the maintenance requirements imposed by the Governing Documents. For purposes of this Article "maintenance" shall include without limitation painting, weatherproofing and cleaning to keep a clean, safe, and sanitary condition necessary to preserve the attractive appearance of the Lots, Dwellings, and the Project, and protect the values thereof. The Neighborhood Board shall have the power to determine the standards of such maintenance.

**7.2 Neighborhood Association Responsibility.** The Neighborhood Association shall provide for the maintenance, repair, replacement and preservation of the Landscaping located within the Front Yard on each Lot in the Project so as to maintain such Landscaping with an aesthetically uniform and flourishing appearance throughout the Project. No Owner shall make any alteration or improvement to the Front Yard of any Lot, or remove any Landscaping therefrom, except with the prior written consent of the Neighborhood Board. Subject to the offset of such amounts as the Neighborhood Association may receive from insurance carried by the Neighborhood Association, the Owner of each Lot shall be liable to the Neighborhood Association for any damage to the Landscaping in the Front Yard of a Lot caused by such Owner, its guest(s), licensee(s), or occupant(s) of such Owner's Lot. Any damage to any structure, Landscaping or other improvement located on a Lot caused by the Neighborhood Association, or any officer, agent, employee or independent contractor of the Neighborhood Association, while performing any such work shall be repaired by the Neighborhood Association at the sole cost and expense of the Neighborhood Association. The Neighborhood Association shall provide for the maintenance and repair of (i) all common landscaping, both "soft-scape" and "hard-scape," including trees, shrubs, lawns, drainage facilities, brow ditches, fountains and other items, if any, and (ii) all furnishings, equipment and property that is owned by, or may be acquired by the Neighborhood Association.

**7.3 Ownership of Common Property.** The Neighborhood Association shall be and become the owner of all maintenance, recreational and other equipment acquired by it (i) for the maintenance and improvement of the Project and (ii) to implement the performance of its other duties hereunder (herein "Common Property".) The transfer of such Common Property by the Neighborhood Association shall transfer title thereto free and clear of any claim on the part of any Owner.

**7.4 Owner Responsibility.** Except for those portions of the Project which the Neighborhood Association is required to maintain and repair, each Lot Owner shall, at his or her sole cost and expense, maintain and repair his or her Lot and all improvements thereon in an attractive and neat manner, and in good condition and repair, including:

- 7.4.1 All buildings, structures and improvements other than Landscaping upon each Lot, including all interior and exterior elements and components, the structure itself, the driveway, all walkways on the Lot, and the backyard ornamental fence;
- 7.4.2 All landscaping on such Owners' Lot, EXCEPT the Landscaping located in the Front Yard on such Lot, in conformance with standards established by the Community Architectural Committee, remov-

ing all weeds and watering lawns and shrubs as often as the same shall be necessary or prudent;

No rubbish or debris of any kind shall be placed or permitted by an Owner to accumulate upon or adjacent to any Lot, so as to render such property or portion thereof unsanitary, unsightly, offensive or detrimental to other residents.

**7.5 Failure to Maintain.** In the event an Owner fails to maintain, repair or replace the areas described herein pursuant to the standards set by the Neighborhood Board, the Neighborhood Board may provide to the Owner written notification of the work required and request that the same be done within thirty (30) days from the time of giving of such Notice. The notice shall state that, in the event the Owner fails to carry out such maintenance within said time period, the Neighborhood Association will enter the Lot, or cause its officers, agents, employees, or authorized independent contractors to enter the Lot, and cause such work to be done and the cost thereof shall immediately be paid by such Owner to the Neighborhood Association and until paid shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by law). In the event the Owner fails to carry out such maintenance within said time period, the Neighborhood Board may enter the Lot, or cause its officers, agents, employees, or authorized independent contractors to enter the Lot, and cause such work to be done and the cost thereof shall immediately be paid by such Owner to the Neighborhood Association and until paid shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by law). Such entry and maintenance work shall be in addition to all other remedies available to the Neighborhood Association as provided herein. Neither the Neighborhood Association nor any officer, agent, employee or authorized independent contractor of the Neighborhood Association shall, by such entry, be deemed guilty of any manner of trespass. Any such entry onto a Lot shall occur at a reasonable hour and after reasonable prior written notice to the Owner of not less than five (5) days. In the event that there is an emergency and the Owner of such Lot is not available at the time of such emergency, the officers, agents, employees and independent contractors of the Neighborhood Association may enter such Lot immediately and without notice for the sole purpose of taking such action as is necessary under the circumstances.

**7.6 Termite Control.** The responsibility for control of wood destroying pests or organisms shall be as follows:

7.6.1 Each Owner shall be responsible for the maintenance and repair of their Lots, personal property, Dwelling and any other Lot improvements as required to control the presence of or damage caused by wood-destroying pests or organisms.

- 7.6.2 Neither the Neighborhood Association, the Neighborhood Board, officers, agents and employees shall have any liability, absent willful or wanton negligence, to any Owner, family member, guest, invitee or tenant for any damage caused by any treatment for controlling the presence of or damage caused by wood-destroying pests or organisms.

**7.7 Damage Caused by Owner or Item Under Control of Owner.** Should any damage to the Common Property, any Lot or Dwelling result from the willful or negligent act or neglect of any Owner, or such Owner's tenants, guests, invitees, pets or other person or entity deriving any interest through such Owner, or from any item the maintenance, repair or replacement of which an Owner is responsible, the cost of all repairs shall be borne solely by the culpable Owner.

The Neighborhood Association shall be responsible for performing the repair of any damage to the Common Property or items over which the Neighborhood Association has control at the culpable Owner's expense. The culpable Owner shall be responsible for performing the repair of any damage to his or her own property. The Owner of any other property which sustained damage shall be responsible for performing the repair of any such damage, and may charge the cost thereof to the culpable Owner.

If the culpable Owner disputes or refuses to pay any repair costs incurred by the Neighborhood Association, the Neighborhood Association, after reasonable notice and hearing procedures as provided for the imposition of monetary fines or suspensions, may charge the cost of those repairs to such Owner as an individual assessment, with the full authority to lien on such amount in the event of non-payment. If the damage is such as may be covered by any insurance carried by the Neighborhood Association, the Neighborhood Board may, in its sole discretion, elect to submit the claim for the cost of repairs to its insurance carrier. Provided the submitted claim is covered by the Neighborhood Association's insurance, the culpable Owner shall be responsible for the cost of any deductible applicable to the covered claim. If the submitted claim is not covered by the Neighborhood Association's insurance, the Owner shall be responsible for the total cost of repair.

All repairs performed to correct any damage shall be sufficient to return the damaged property only to its condition prior to the damage, with upgrades as may be required to conform with any applicable building codes in effect at the time the damage is repaired.

## ARTICLE 8 - ARCHITECTURAL AND DESIGN CONTROL

8.1 **General.** Any change or improvement to the exterior of a Dwelling or any portion of a Lot shall be governed by this Article. The powers and duties set forth in this Article shall be vested in, and exercised by, the Neighborhood Board. The Neighborhood Board may establish a Neighborhood Architectural Control Committee as provided herein to assist the Neighborhood Board in reviewing architectural submittals, and to provide recommendations to the Neighborhood Board with regard to approval or disapproval of any submittal. The foregoing notwithstanding, the Neighborhood Board shall be solely responsible for approving or rejecting any architectural submittal.

8.2 **General Modifications Requiring Prior Approval.** Nothing may be erected, placed or planted on the exterior of any Dwelling or Lot, including any building, fence, wall, pool, spa, antenna, satellite dish, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, trellis, tree, grass, shrub or other landscaping, any improvement or structure of any kind without the prior written approval of the Neighborhood Board in accordance with this Article. Additionally, and except as provided in Section 8.4 below, prior written Neighborhood Board approval shall be required for any alteration, modification, painting or other change, addition or deletion to any existing improvement or landscaping.

8.3 **Specific Modifications.** The following provisions govern the specific changes and modifications outlined below:

- 8.3.1 Modifications or alterations of the exterior of any Dwelling or other portion of the Lot to facilitate handicapped access as provided by Section 1360 of the California Civil Code must have the prior written consent of the Neighborhood Board or Architectural Control Committee.
- 8.3.2 Installation of any landscaping must have prior approval of the Neighborhood Board or Architectural Control Committee. Replacement of such landscaping will require approval only if it differs from the original landscaping being replaced (e.g. replacing stone walkway with concrete, or annual flowers with shrubs). In addition, the Neighborhood Board may, in its sole discretion, require the removal and/or replacement of landscaping which does not conform to the general character of the Project.
- 8.3.3 Maintenance of the landscaping, Lot and Dwelling (e.g. pruning trees, trimming shrubs, replacing annual flowers, etc.) shall not be considered a modification for purposes of this Article.



- 8.3.4 Interior shutters, blinds, curtains, drapes or other appurtenances in or on any window or door do not need prior approval but must be in conformance with any standards established by the Neighborhood Board. Owners shall be responsible for correcting any nonconforming appurtenances.

**8.4 Architectural Changes Not Requiring Prior Approval.** Notwithstanding Sections 8.2 and 8.3 above, no permission or approval shall be required to repaint in accordance with the original color scheme or as previously approved by the Neighborhood Board. No permission or approval shall be required to repaint, repair or replace the backyard ornamental iron fences in accordance with the original plans and color scheme, or as previously approved by the Neighborhood Board. Nothing contained herein shall be construed to limit the right of an Owner to paint the interior of his or her Dwelling any color desired, or to improve or alter any improvements within the interior of the Dwelling.

**8.5 Procedure for Obtaining Approval of Architectural Changes.** The procedure for obtaining approval of any architectural change shall be as follows:

- 8.5.1 Complete plans and specifications showing the nature, kind, shape, color, size, height, materials to be used and location of any proposed improvements, alterations or landscaping, as well as the proposed contractor and any other information as required by the Neighborhood Board, shall be prepared by the requesting Owner and submitted to the Neighborhood Architectural Control Committee.
- 8.5.2 The Neighborhood Architectural Control Committee shall review the submission and provide a written recommendation as to approval or disapproval of any such submission, including the reasons for any decision, to the Neighborhood Board and the requesting Owner within thirty (30) days of receipt of such submission.
- 8.5.3 The Neighborhood Board shall review such recommendation within thirty (30) days of receipt of the Neighborhood Architectural Control Committee's written recommendation and provide a written response to the requesting Owner, including reasons for such response.
- 8.5.4 In the event the Neighborhood Board fails to provide a written response to the requesting Owner within sixty (60) days of receipt of the request from the Owner, approval will not be re-

quired and the related covenants shall be deemed to have been fully satisfied.

- 8.5.5 Once an Owner has obtained approval for an architectural submittal, work on such approved submittal shall promptly commence and shall be completed within a reasonable time.

8.6 **Inspection of Work.** The Neighborhood Board may require that final approval of an architectural submittal be conditioned upon an inspection of the completed work. Provided a final inspection is required, the Owner shall be responsible for the costs associated therewith. After such inspection, the Neighborhood Board shall, upon request by the Owner, provide the Owner with a certificate certifying either: (a) all improvements made and other work completed by said Owner complies with the Governing Documents, or (b) such improvements or work do not so comply, in which event the certificate shall identify the non-complying improvements or work and set forth with particularity the basis of such non-compliance. In the event the work is found not to comply with the Governing Documents, the Owner shall promptly correct such deficiency and reapply for another inspection, or shall remove the proposed improvement and return the area to its original condition.

Any purchaser from the Owner, or from anyone deriving any interest in said Lot through such Owner, shall be entitled to rely on a certificate issued by the Neighborhood Board, with respect to the matters therein set forth, such matters being conclusive as between the Neighborhood Association, the Owners and such persons deriving any interest through them.

8.7 **Standard of Architectural Review.** An architectural submittal made by an Owner shall be reviewed for conformity with the Architectural Rules. Additional factors to be considered include, but are not limited to, the quality of proposed workmanship, the design and harmony of the improvement with existing structures, the interference or potential for interference with the view from any Lot, the location of the improvement in relation to surrounding structures, topography, and finish grade elevation, Owner and contractor insurance coverage, compliance with governmental permit requirements, contractor license status and compliance with the Restated Neighborhood Restrictions.

8.8 **Architectural Rules.** The Neighborhood Board may, in its sole discretion, adopt, amend and repeal, as it deems necessary and by majority vote, rules and regulations to be known as "Architectural Rules." Said Architectural Rules shall interpret and implement the provisions of this Article by setting forth the standards for review by the Neighborhood Board and Neighborhood Architectural Control Committee and guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use in the Project; provided, however, that said

Architectural Rules shall not be in derogation of the standards required by these Restated Neighborhood Restrictions. The Architectural Rules may also address the information which is required to be presented in connection with an architectural submittal.

8.9 **Neighborhood Architectural Control Committee.** The Neighborhood Architectural Control Committee shall consist of three (3) members, formed as follows:

- 8.9.1 The Neighborhood Board shall have the right to appoint all of the members of the committee.
- 8.9.2 Members appointed to the committee by the Neighborhood Board shall be Members of the Neighborhood Association, and at least one shall be a member of the Neighborhood Board.
- 8.9.3 Members shall be appointed for terms as prescribed by the Neighborhood Board. Notwithstanding the foregoing, all members of the committee may be removed by the Neighborhood Board at any time with or without cause.
- 8.9.4 The committee shall meet as often as it deems necessary to properly carry out the obligations imposed upon it, unless otherwise directed by the Neighborhood Board.
- 8.9.5 The vote or written consent of the majority of the committee shall be required for any recommendation.

8.10 **Compensation.** The members of the Neighborhood Board and Neighborhood Architectural Control Committee shall receive no compensation for services rendered, other than reimbursement by the Neighborhood Association for expenses incurred by them in the performance of their duties hereunder.

8.11 **Liability.** Neither the Neighborhood Board, the Neighborhood Architectural Control Committee nor any member thereof shall be liable to the Neighborhood Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; or (c) the development of any property within the neighborhood; provided, however, that such member has acted in good faith on the basis of such information as may be possessed by him or her.

8.12 **Enforcement.** In addition to other enforcement remedies set forth in these Restated Neighborhood Restrictions, the Neighborhood Board or Neighborhood Architectural Control Committee shall have enforcement rights with respect to any matters required to be submitted to and approved by it, and may enforce such architectural control by any proceeding at law or in equity in accordance with this Section.

8.12.1 No work for which approval is required shall be deemed to be approved simply because it has been completed without a complaint, notice of violation or commencement of a suit to enjoin such work.

8.12.2 The Neighborhood Board or committee shall have the authority to order an abatement of any construction, alteration or other matter for which approval is required, to the extent that it has not been approved by the Neighborhood Board or committee or if it does not conform to the plans and specifications submitted to the Neighborhood Board or committee.

8.12.3 If the Owner fails to remedy any noticed noncompliance within thirty (30) days from the date of such notification, the committee shall notify the Neighborhood Board in writing of such failure.

8.12.4 The Neighborhood Board shall then set a date on which a hearing before the Neighborhood Board shall be held regarding the alleged noncompliance. The hearing date shall not be more than thirty (30) days nor less than fifteen (15) days after the notice of the noncompliance is issued by the Neighborhood Board to the Owner, to the Neighborhood Architectural Control Committee, and to any other interested party.

8.12.5 At the hearing, the Owner, a representative(s) of the committee and, in the Neighborhood Board's discretion, any other interested person may present information relevant to the question of the alleged noncompliance. After considering all such information, the Neighborhood Board shall determine whether there is a noncompliance.

8.12.6 If a noncompliance is determined to exist, the Neighborhood Board shall require the Owner to remedy or remove the same within such period or within any extension of such period as the

Neighborhood Board, at its discretion, may grant.

- 8.12.7 If the Owner fails to take corrective action after having a reasonable opportunity to do so, the Neighborhood Board at its option, may pursue all legal and equitable remedies available to remedy or remove the noncomplying improvement and the Owner shall reimburse the Neighborhood Association for all expenses incurred in connection therewith upon demand. If such expenses are not properly repaid by the Owner to the Neighborhood Association, the Neighborhood Board shall recover such expenses through the levy of an individual assessment against such Owner.
- 8.12.8 The approval by the Neighborhood Board or Neighborhood Architectural Control Committee of any plans, drawings or specifications for any work of improvement done or proposed, or for any other matter requiring the approval of the Neighborhood Architectural Control Committee under these Restated Neighborhood Restrictions, or any waiver thereof, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval by the same or some other Owner. Different location for improvements, the size of the structure, proximity to other residences and other factors may be taken into consideration by the Neighborhood Board or committee in reviewing a particular submittal.
- 8.12.9 If any legal proceeding is initiated to enforce any of the provisions hereof, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to the costs of such proceeding.

**8.13 Non-Compliance with Laws.** Neither the Neighborhood Association, the Neighborhood Board nor the Neighborhood Architectural Control Committee shall be responsible for any non-compliance with any governmental law, rule or regulation of any building or other structure erected, constructed, installed, placed, altered or maintained in accordance with or pursuant to any plans and specifications approved by the Neighborhood Board or any defect in any conditions or requirements they may have imposed with respect thereto.

**8.14 Approval by City.** Prior to commencing any alteration or improvements approved by the Neighborhood Board, the Owner shall comply with all appropriate governmental laws and regulations. The Neighborhood Association shall not be obligated to enforce the

provisions of this Section. Approval by the Neighborhood Board shall not be considered to satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction, nor shall the approval of any governmental entity be considered to satisfy the requirement of Neighborhood Board approval. An Owner's failure to obtain such governmental approval may subject such Owner to certain penalties imposed by the governmental entity, notwithstanding the approval of the Neighborhood Board, which penalties shall be the responsibility of such Owner.

## ARTICLE 9 - INSURANCE

9.1 **Fire and Casualty Insurance.** The Neighborhood Association shall obtain and maintain a master multi-peril policy of hazard or fire and casualty insurance which contains an extended coverage endorsement for the full insurable replacement value of all fixtures, equipment, supplies and personalty owned by the Neighborhood Association. Such master policy shall include protection against the following: (i) loss or damage by fire and all other hazards that are normally covered by the standard extended coverage endorsement; (ii) perils covered for similar planned development projects, including those covered by the standard "all risk" endorsement; (iii); and such other endorsements as may be required by the FNMA and/or FHLMC to purchase, guarantee, insure or subsidize any mortgage encumbering a Lot at any time that FNMA and/or FHLMC has acquired, or proposes to acquire an interest in any such mortgage. The amount of coverage of such insurance shall be not less than 100 percent of the fair market value of such fixtures equipment, supplies and personalty as determined annually by an insurance carrier selected by the Neighborhood Board. This insurance shall be maintained for the benefit of the Neighborhood Association, the Owners, and their Lenders, as their interests may appear as named insured, subject, however, to any loss payment requirements set forth in the Restated Neighborhood Restrictions. If required by any First Lender who notifies the Neighborhood 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.

9.2 **General Liability Insurance.** The Neighborhood Association shall obtain and maintain a comprehensive public liability and property damage liability policy or policies insuring the Neighborhood Association, Neighborhood Board members, any manager, Owners, and occupants of Lots against any liability for bodily injury, death, and property damage arising from the performance of obligations imposed upon the Neighborhood Association by the Restated Neighborhood Restrictions, including, but not limited to, the performance of work in the Front Yard of any Lot. 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. The policies of such insurance shall contain a waiver of subrogation by the insurer(s) against (i) the Neighborhood Association; (ii) the Neighborhood Board; (iii) the directors and officers of the Neighborhood Board; and (iv) the Owners.

**9.3 Directors and Officers Liability Insurance.** The Neighborhood Association shall obtain and maintain one or more policies of insurance which include coverage for individual liability of officers and directors of the Neighborhood Association for negligent acts or omissions of those persons acting in their capacity as officers and directors. Limits of liability under this insurance shall be determined by the Neighborhood Board at its sole discretion.

**9.4 Fidelity Coverage.** The Neighborhood Association shall purchase and maintain fidelity coverage for any person or entity handling funds of the Neighborhood Association, whether or not such persons or entities are compensated for their services. If an agent handles Neighborhood Association funds, such agent shall be covered by the Neighborhood Association's coverage, unless such agent provides similar coverage. The Neighborhood 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 Neighborhood Association. The coverage may be in an amount that is at least one and one-half (1 1/2) times the Neighborhood Association's estimated annual operating expenses and reserves. The bond or policy must contain a provision that it may not be cancelled or substantially modified without at least ten (10) days' prior written notice to the Neighborhood Association.

**9.5 Other Neighborhood Association Insurance.** The Neighborhood Association shall purchase and maintain workers' compensation insurance to the extent necessary to comply with any applicable laws. The Neighborhood Association may purchase such other insurance that the Neighborhood Board considers necessary or advisable, including earthquake insurance coverage.

**9.6 Additional Policy Provisions.** All such insurance policies required under the provisions of this Article shall: (i) provide that they shall not be reducible or cancelable by the insurer without first giving at least ten days' prior notice in writing to the named insureds; (ii) contain a waiver of subrogation by the insurer(s) against the Neighborhood Association, the Neighborhood Board and the Owners; (iii) contain or have attached a standard mortgagee clause or endorsement (customarily used by private institutional lenders in San Diego County, California) in favor of all First Mortgagees; (iv) provide that any insurance trust agreement will be recognized; (v) provide that the insurance will not be prejudiced by any acts or omissions of Owners that are not under the control of the Neighborhood Association; (vi) provide that the policy will be primary, even if an Owner has other insurance that covers the same loss; and (vii) contain such other

endorsement(s) as such First Mortgagees may require to fully protect their interests in form and of content as customarily used by private institutional lenders in San Diego County, California.

9.7 **Named Insureds.** Unless otherwise required by the provisions of this Article, the name of the insured under each policy of such insurance shall be "Fairway Heights II Owners' Association, Inc., a California non-profit mutual benefit corporation, for the use and benefit of individual owners." Authority to adjust losses covered by the Neighborhood Association's policy(ies) shall be vested in the Neighborhood Board.

9.8 **Review of Insurance; Notice of Cancellation or Modification.** The limits and coverage of insurance carried by the Neighborhood Association shall be reviewed at least annually by the Neighborhood Board and increased or decreased in its discretion. Such policies shall include a provision for at least ten (10) days' prior written notice to the Neighborhood 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.

9.9 **Qualifications of Insurance Carriers.** The Neighborhood Association shall use generally acceptable insurance carriers from which to purchase and maintain the coverage required herein.

9.10 **Failure to Acquire Insurance.** The Neighborhood 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 Neighborhood Board in its sole discretion determines is unreasonable under the circumstances, or the Neighborhood Association Members fail to approve any assessment increase needed to fund the insurance premiums. In such event, the Neighborhood Board immediately shall notify each Member and any Lender entitled to notice that the specific insurance will not be obtained or renewed.

The Neighborhood 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 Neighborhood Association. The Neighborhood Board may, in good faith 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 Neighborhood Board may, but is not required to, base its decision upon, among other things, a vote of the Owners.

9.11 **Trustee for Policies.** The Neighborhood Association, acting through its Neighborhood Board, is appointed and shall be



deemed trustee of the interests of all named insureds under all insurance policies purchased and maintained by the Neighborhood Association. All insurance proceeds under any of those policies shall be paid to the Neighborhood Board as trustee. The Neighborhood Board shall use the proceeds for the repair or replacement of the property for which the insurance was carried or for the purposes described in Article 10 herein. The Neighborhood 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.

9.12 **Insurance Premiums.** Insurance premiums for any insurance coverage obtained by the Neighborhood 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.

9.13 **Insurance Policy Deductibles.** Unless otherwise stated in the provisions of this Article, the Neighborhood Board shall have the power, in its sole discretion, to determine the amount of any deductible applicable to any insurance policy carried by the Neighborhood Association.

9.14 **Owner Notification of Insurance.** The Neighborhood 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 Neighborhood Association or Neighborhood Board other than that provided for in such statute or law.

9.15 **Planned Development Character.** Nothing contained in this Article shall be construed to supersede any provision of the Article entitled "Planned Development Character of Project."

#### ARTICLE 10 - DAMAGE OR DESTRUCTION

10.1 **Duty to Restore Lot.** If all or any portion of any Lot or Dwelling is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of such Lot to rebuild, repair or reconstruct the Dwelling and the Lot in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty or as otherwise approved by the Neighborhood Board. The Owner of any damaged Lot or Dwelling and the Neighborhood Board shall be obligated to proceed with all due diligence hereunder, and such Owner shall mitigate any danger presented by such damage or destruction and thereafter cause reconstruction to commence within three (3) months after the damage occurs and be completed within one year after damage occurs, unless prevented by causes beyond his or her reasonable control.

10.2 **Duty to Restore Property Insured by the Neighborhood Association.** If all or any portion of the property or items insured by the Neighborhood Association is damaged or destroyed, it must be repaired or replaced promptly by the Neighborhood Association unless the Project is terminated, or repair or replacement would be illegal under a state statute or municipal ordinance.

10.3 **Cost of Repair.** Any cost of repair or replacement in excess of insurance proceeds and reserves shall be a common expense, levied against Lots as a special assessment in the same proportion as regular assessments are levied.

10.4 **Insurance Proceeds.** The Neighborhood Board shall hold any insurance proceeds in trust for the Neighborhood Association, Owners and lien holders as their interests may appear. Subject to the provisions of these Restated Neighborhood Restrictions, the proceeds shall be disbursed first for the repair or restoration of the damaged property. The Neighborhood Association, Owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus after the damaged property has been completely replaced, repaired or restored, or unless the Project is terminated.

10.5 **Disbursements to Owners and Lenders.** Any insurance proceeds distributed to Owners and Lenders shall be distributed so that each Owner receives one equal share of such proceeds for each Lot in the Project owned by such Owner.

10.6 **Certificates by Attorneys or Title Insurance Companies.** If payments are to be made to Owners or Lenders, then the Neighborhood Board shall obtain and may rely on a title insurance company's or attorney's title certificate or a title insurance policy based on a search of the Official Records of the County Recorder, stating the names of the Owners and the Lenders.

## ARTICLE 11 - EMINENT DOMAIN

11.1 **Neighborhood Association as Trustee for Owners.** If all or part of the common property owned by the Neighborhood Association is threatened to be, or shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages for or on account of the taking of the common property, exclusive of compensation for consequential damages to certain affected Lots, shall be payable to the Neighborhood Association as trustee for all Owners and Lenders according to the loss or damages to their respective interest in the common property. The Neighborhood Association, acting through the Neighborhood Board, shall have the right to act on behalf of the Owners with respect to the negotiation, settlement and litigation of the issues with respect to the taking and compensation affecting the common property. Each Owner hereby designates and appoints the Neighborhood Association as his or her attorney-in-fact for such purposes.

11.2 **Condemnation of a Lot.** If all or any part of a Lot is taken by eminent domain, the award shall be disbursed to the Owner of the Lot subject to the rights of the Owner's Lenders. If the taking renders the Lot uninhabitable, the Owner shall be divested of any further interest in the Project, including membership in the Neighborhood Association, and the interest of the remaining Owners shall be adjusted accordingly.

## ARTICLE 12 - RIGHTS OF LENDERS

12.1 **General.** Any Owner may voluntarily or involuntarily encumber his or her Lot with or by a real property mortgage, deed of trust or other instrument of hypothecation. No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall render invalid the lien of any First Lender on any Lot made in good faith and for value, but all of said 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.

12.2 **No Right of First Refusal.** These Restated Neighborhood Restrictions neither contain nor shall be amended to contain any provision creating a "right of first refusal" to the Neighborhood Association before a Lot can be sold. Should any such rights nevertheless be created in the future, such rights shall not impair the rights of any First Lender to: (a) foreclose or take title to a Lot pursuant to the remedies provided in the mortgage, (b) accept a deed (or assignment) in lieu of foreclosure in the event of a default by a Borrower, or (c) sell or lease a Lot acquired by the Lender.

12.3 **Unpaid Dues or Charges.** Where the Lender of a First Mortgage of record or other purchaser of a Lot obtains title to the same pursuant to the remedies in the Mortgage or as a result of foreclosure, such acquirer of title, his or her successors and assigns, shall not be liable for the share of the common expenses or assessments made by the Neighborhood Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Lots including such acquirer, his or her successors and assigns.

12.4 **Action Requiring Lender Approval.** Except as provided by statute in case of condemnation or substantial loss to the Lots and Common Area, unless at least two-thirds (2/3) of the First Lenders (based upon one (1) vote for each Mortgage owned), or two-thirds (2/3) of the total voting power of the Neighborhood Association have given their prior written approval, the Neighborhood Association and/or the Owners shall not be entitled to:

- 12.4.1 By act or omission seek to abandon, or terminate the Project (except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain).
- 12.4.2 Change the pro rata interest or obligations of any individual Lot for the purpose of (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Lot in the Common Property, provided that no Owner's undivided interest in the Common Property may be changed without the consent of that Owner.
- 12.4.3 Partition or subdivide any Lot.
- 12.4.4 Waive or abandon any scheme of regulations or the enforcement thereof pertaining to the architectural design or the exterior appearance of the residential improvements situated on the Lots, the exterior maintenance of said residential improvements or the upkeep of the Landscaping in each Lot.
- 12.4.5 Fail to maintain insurance coverage under an extended coverage hazard policy(ies) against loss by fire and perils with respect to all insurable Common Property owned by the Neighborhood Association in an amount not less than one hundred percent (100%) of the insurable value (based on then current replacement costs) of said Common Property as determined annually by an insurance carrier selected by the Neighborhood Board pursuant to the Restated Neighborhood Restrictions.
- 12.4.6 Use hazard insurance proceeds for losses to any of the Project (whether to Lots or to Common Property) for other than the repair, replacement or reconstruction of such property.

12.5 **Payment of Taxes and Insurance.** First Lenders may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Property. First Lenders making such payments shall be owed immediate reimbursement from the Neighborhood Association.

**12.6 Priority of Proceed or Award Distribution.** Any other provision herein contained to the contrary notwithstanding, no provision of the Governing Documents shall give an Owner, or any other party, priority over any rights of the First Lender pursuant to its Mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Project or any part thereof.

**12.7 Notification of Lender.** Upon written request to the Neighborhood Association, identifying the name and address of the holder, insurer or guarantor and the Lot number or address, any Eligible Lender will be entitled to timely written notice of:

- 12.7.1 Any condemnation loss or any casualty loss which affects a material portion of the Project or the Lot insured or guaranteed by such Eligible Lender;
- 12.7.2 Any default in the performance by an Owner of any obligation under the Governing Documents not cured within sixty (60) days;
- 12.7.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Neighborhood Association; and
- 12.7.4 Any proposed action which would require the consent of a specified percentage of Eligible Lenders as required by the Governing Documents.
- 12.7.5 Any and all meetings of the Neighborhood Association which are open to the Members according to Civil Code Section 1363.05.

**12.8 Termination of Professional Management.** Provided professional management has previously been required by any Eligible Lender, any decision to establish self-management by the Neighborhood Association shall require the consent of at least sixty-seven percent (67%) of the total voting power of the Neighborhood Association and at least fifty-one percent (51%) of Eligible Lenders; provided that so long as any Mortgage which is a lien on a Lot is insured or guaranteed by the Federal Housing Administration, any termination and failure to replace professional management shall require the prior written approval of the Federal Housing Administration.

**12.9 Inspection of Documents, Books and Records.** The Neighborhood Association shall make available to Eligible Lenders, current copies of the Governing Documents and the accounting books, records and financial statements of the Neighborhood Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

12.10 **Non-Curable Breach.** Any Lender who acquires title to a Lot by foreclosure or by deed in lieu of foreclosure or assignment-in-lieu of foreclosure shall not be obligated to cure any breach of this Restated Neighborhood Restrictions that is non-curable or of a type that is not practical or feasible to cure.

12.11 **Loan to Facilitate.** Any First Mortgage given to secure a loan to facilitate the resale of a Lot after acquisition by foreclosure or by a deed-in-lieu of foreclosure or by an assignment-in-lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of this Article.

12.12 **Lenders Furnishing Information.** Any Lender can furnish information to the Neighborhood Board concerning the status of any Mortgage.

12.13 **Financial Statement.** Any First Lender shall be entitled, on written request therefor, to have the Neighborhood Association provide an audited financial statement for the immediately preceding fiscal year, which statement shall be furnished within a reasonable time following such request.

12.14 **Termination without Substantial Destruction.** Except as provided by statute or by other provision of the Governing Documents in case of substantial destruction or condemnation of the Project, the consent of at least sixty-seven percent (67%) of the total voting power of the Neighborhood Association and the approval of fifty-one percent (51%) of Eligible Lenders shall be required to terminate the Project; provided that if termination is for reasons other than substantial destruction or condemnation, the agreement of sixty-seven percent (67%) Eligible Lenders is required.

12.15 **Conflict With Other Provisions.** In the event there shall be any express or implied conflict between any provision of this Article and any other provision of these Restated Neighborhood Restrictions, the provisions of this Article shall govern and prevail.

### ARTICLE 13 - ENFORCEMENT

13.1 **Right to Enforce; Remedies.** The Neighborhood Association, the Community Association, any Owner or any Lender shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the Governing Documents. Damages at law for any such breach, other than breach for failure to pay assessments, are hereby declared to be inadequate. The remedies provided for herein are to be considered cumulative and the use of one remedy shall not preclude the use of any other.

13.2 **Nuisance.** The result of every act or omission, whereby any provision, condition, restriction, covenants, easement, or reservation contained in the Governing Documents is violated in whole or in part, is declared to be and constitute a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result and may be exercised by any Owner and/or the Neighborhood Association. Each remedy provided herein shall be cumulative and not exclusive.

13.3 **Failure to Enforce.** Failure by the Neighborhood Association or any Owner to enforce any provisions of the Governing Documents shall in no event be deemed a waiver of the right to do so thereafter.

13.4 **Violation of Law.** Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any Lot within the Project is declared to be a violation of the Restated Neighborhood Restrictions and subject to any or all of the enforcement procedures herein set forth.

13.5 **Compliance with Statute.** All activities to enforce the provisions of the governing documents shall be conducted in accordance with all applicable laws, statutes and ordinances. This Section shall apply to both the Neighborhood Association and to all Owners.

#### ARTICLE 14 - AMENDMENTS

14.1 **Owner Approval of Amendments.** These Restated Neighborhood Restrictions may be amended by the vote or written consent of Owners representing not less than sixty-seven percent (67%) of the voting power of the Neighborhood Association. Notwithstanding any contrary provision in this Section, the percentage of the voting power necessary to amend a specific clause or provision of the Restated Neighborhood Restrictions shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause or provision.

An amendment becomes effective after (i) the approval of the required percentage of Owners has been given, (ii) that fact has been certified in the form of a written document executed and acknowledged by an officer designated by the Neighborhood Association for that purpose or, if no such designation is made, by the President of the Neighborhood Association, (iii) the approval of the Community Association has been given, which fact has been certified in the form of a written document executed and acknowledged by an officer designated by the Community Association for that purpose or, if no such designation is made, by the President of the Community Association, and (iv) the document has been recorded in the Office of the County Recorder of San Diego County.

**14.2 Eligible Lender Approval of Amendments.** Except as provided by statute or by other provision of the Governing Documents in case of substantial destruction or condemnation of the Project, the consent of sixty-seven percent (67%) of the voting power of the Neighborhood Association and the approval of fifty-one percent (51%) of Eligible Lenders shall be required to add or amend (i) any provision which is for the express benefit of holders or insurers of First Mortgages, or (ii) any material provisions of the Restated Neighborhood Restrictions which establish, provide for, govern or regulate any of the following:

- 14.2.1 Voting rights;
- 14.2.2 Increases in assessments greater than twenty-five percent (25%), assessment liens or the priority of such liens;
- 14.2.3 Insurance or fidelity bonds;
- 14.2.4 Rights to use the Common Area;
- 14.2.5 Expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project;
- 14.2.6 Restoration or repair of the Project after damage or partial condemnation, in a manner other than that specified in the Governing Documents;
- 14.2.7 Convertibility of Lots into Common Area, or Common Area into Lots;
- 14.2.8 Restrictions on leasing of Lots;
- 14.2.9 Imposition of any restriction on the right of an Owner to sell, transfer or otherwise convey his or her Lot; or
- 14.2.10 Any provisions that expressly benefit mortgage holders, insurers or guarantors.

**14.3 Eligible Lender Approval Response.** An Eligible Lender who receives a written request to approve additions or amendments by certified or registered mail, return receipt requested, addressed to the address provided by such Eligible Lender, who does not deliver or post to the requesting party a negative response within thirty (30) days after the notice of the proposed addition or amendment, shall be deemed to have approved such request. No Lender may charge a fee in connection with reviewing a request for a response. Any response from a Lender which only requests a fee for review shall not be deemed a "negative response" for the



purposes of determining Lender consent within the meaning of this Section.

#### ARTICLE 15 - GENERAL PROVISIONS

15.1 **Term.** The provisions of the Restated Neighborhood Restrictions shall continue in effect for a term of fifty (50) years from the date of execution. Thereafter, it shall be automatically extended for successive periods of ten (10) years, until the membership of the Neighborhood Association decides to terminate it. The Restated Neighborhood Restrictions shall not be terminated, except pursuant to the terms of this Article, and upon execution and filing for record in the Office of the County Reorder of San Diego county, California, of a written instrument which (i) declares that the provisions of the Restated Neighborhood Restrictions are thereby terminated and extinguished, (ii) is signed and acknowledged by the Owners entitled to exercise a majority of the total voting power of the Neighborhood Association, and (iii) bears, or has attached thereto, the consent of at least two-thirds (2/3) of all First Mortgagees as of the time of recordation of said written instrument.

15.2 **Nonwaiver of Remedies.** Each remedy provided for in the Restated Neighborhood Restrictions is separate, distinct, and nonexclusive. Failure to exercise a particular remedy shall not be construed as a waiver of the remedy.

15.3 **Severability.** The provisions of the Restated Neighborhood Restrictions shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one (1) provision shall not affect the validity or enforceability of any other provision.

15.4 **Binding.** The Restated Neighborhood Restrictions, as well as any amendment thereto and any valid action or directive made pursuant to it, shall be binding upon the Owners and their heirs, grantees, tenants, successors, and assigns.

15.5 **Interpretation.** The provisions of the Restated Neighborhood Restrictions shall be liberally construed and interpreted to effectuate its purpose of creating a uniform plan for the development and operation of a common interest development. Failure to enforce any provision of the Restated Neighborhood Restrictions shall not constitute a waiver of the right to enforce that provision or any other provision of the Restated Neighborhood Restrictions.

15.6 **Limitation of Liability.** The liability of any Owner for performance of any of the provisions of these Restated Neighborhood Restrictions shall terminate upon sale, transfer, assignment, or other divestment of the Owner's entire interest in his or her Lot

with respect to obligations arising from and after the date of the divestment.

15.7 **Fair Housing.** Neither the Neighborhood Association nor any Owner shall, either directly or indirectly, forbid the conveyance, encumbrance, renting, leasing, or occupancy of the Owner's Lot to any person on the basis of race, color, sex, sexual orientation, religion, ancestry, national origin, age, marital status or physical handicap.

15.8 **Number and Headings.** As used in the Restated Neighborhood Restrictions, the singular shall include the plural, unless the context requires the contrary. The headings are not a part of the Restated Neighborhood Restrictions, and shall not affect the interpretation of any provision.

15.9 **Attorneys Fees.** In the event an attorney is engaged by the Neighborhood Board to enforce the Governing Documents, the Neighborhood Association shall be entitled to recover from the adverse party to the controversy its attorneys fees and costs so incurred. In the event litigation is commenced to enforce the Governing Documents, the prevailing party shall be entitled to its attorneys fees and costs. Said costs and attorneys fees shall constitute a lien on the Lot which is enforceable pursuant to Article 5 herein. This Section shall also apply to attorneys fees incurred to collect any post-judgment costs.

15.10 **Variances.** The Neighborhood Board may authorize variances from compliance with any of the architectural or use provisions of the Restated Neighborhood Restrictions as follows:

- 15.10.1 Variances may be granted, without limitation, to restrictions upon use contained in Article 6, restrictions on repair and maintenance in Article 7, and architectural restrictions in Article 8, when circumstances such as topography, location, engineering, economy, hardship, aesthetic or environmental considerations warrant.
- 15.10.2 Variances shall be in writing and shall become effective upon final approval by the Neighborhood Board or an authorized committee.
- 15.10.3 When a variance is granted, no violation of the Restated Neighborhood Restrictions shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any of the terms and provisions of the Restated Neighborhood Restrictions for any purpose except as to the particular property and particular provision covered by the vari-

ance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of the premises, including, but not limited to, zoning ordinances and lot setback lines or requirements imposed by the County of San Diego or any other governmental authority.

15.10.4 The Neighborhood Association may charge a reasonable fee to cover any costs associated with the variance approval process, or for issuance of a variance.

15.10.5 The Neighborhood Board may enact additional rules and regulations regarding the variance approval process, the circumstances under which a variance may be granted, and may require the execution of indemnity or other agreements by the Owner as a condition to issuance of a variance.

**15.11 Governing Document Priorities.** In the event of a conflict between the Governing Documents, or any provision thereof, the following documents shall take precedence in the order given: (1) the Neighborhood Articles, (2) the Restated Neighborhood Restrictions, (3) the Neighborhood Bylaws, and (4) the Rules and Regulations.

**15.12 Conflict with Statutes.** Provided any federal, state or local statute, law or ordinance is inconsistent with any provision or provisions of the Governing Documents, and compliance with that statute, law or ordinance is mandatory, neither the Neighborhood Association, the Neighborhood Board nor any member thereof shall have any liability for complying with the federal, state or local statute, law or ordinance and not with the inconsistent provision or provisions of the Governing Documents.

IN WITNESS WHEREOF, the undersigneds have executed this Amended and Restated Declaration of Neighborhood Restrictions this 16TH day of SEPTEMBER, 1997.

FAIRWAY HEIGHTS II OWNERS' ASSOCIATION, INC.  
a California nonprofit mutual benefit corporation  
[a.k.a. PARVIEW ESTATES]

By: Charles White  
President

By: Susan Bennett  
Secretary

STATE OF CALIFORNIA )  
 )  
COUNTY OF SAN DIEGO )

On 09 16 97, before me, Beverly Search,  
Notary Public, personally appeared Susan I Bennett  
and Charles H. White,

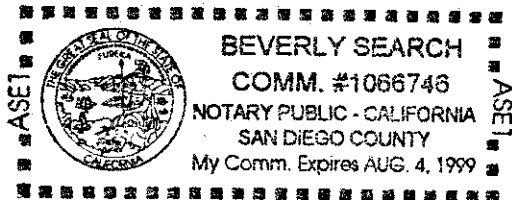
[ ] personally known to me  
- OR -

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.

WITNESS my hand and official seal.

Beverly Search  
Notary Public  
Beverly Search



IN WITNESS WHEREOF, the undersigned has executed this Amended and Restated Declaration of Neighborhood Restrictions this 16 day of September, 19 97.

COMMUNITY ASSOCIATION OF BERNARDO HEIGHTS,  
a California nonprofit mutual benefit corporation

By: Charles H. White  
President

STATE OF CALIFORNIA )  
  )  
COUNTY OF SAN DIEGO )

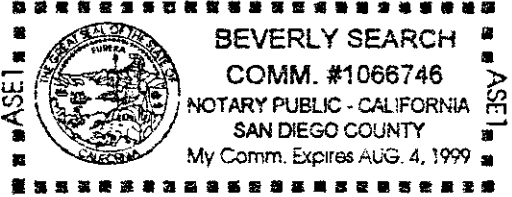
On 09 16 97, before me, Beverly Search,  
Notary Public, personally appeared Charles H. White  
and \_\_\_\_\_,

[ ] personally known to me  
  - OR -  
 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.

WITNESS my hand and official seal.

Beverly Search  
Notary Public  
Beverly Search



## EXHIBIT "A" - PROJECT LEGAL DESCRIPTION

Lots 7 through 108 inclusive, of BERNARDO HEIGHTS UNIT NO. 20, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 11099, filed in the Office of the County Recorder of San Diego County, California, December 6, 1984.

DEPARTMENT OF REAL ESTATE  
OF THE  
STATE OF CALIFORNIA  
(213) 620-2700

PLANNED DEVELOPMENT  
FINAL SUBDIVISION  
PUBLIC REPORT

In the matter of the application of  
W. WOLF PROPERTIES, INC.,  
A California Corporation

for a final Subdivision Public Report on  
BERNARDO HEIGHTS UNIT NO. 20  
"PARVIEW ESTATES" PHASE III  
SAN DIEGO COUNTY, CALIFORNIA

FILE NO.: 059747LA-F00

ISSUED: SEPTEMBER 18, 1986

EXPIRES: SEPTEMBER 17, 1991

**THIS REPORT IS NOT A RECOMMENDATION OR ENDORSEMENT OF THE  
SUBDIVISION BUT IS INFORMATIVE ONLY.**

**BUYER OR LESSEE MUST SIGN THAT HE HAS RECEIVED AND READ THIS REPORT**

N A copy of this subdivision public report along with a statement  
O advising that a copy of the public report may be obtained from the  
T owner, subdivider, or agent at any time, upon oral or written  
E request, must be posted in a conspicuous place at any office where  
sales or leases or offers to sell or lease lots within the  
subdivision are regularly made.  
[Reference B&P Code Section 11018.1(b)]

**This Report Expires on Date Shown Above. If There Has Been a Material  
Change in the Offering, an Amended Public Report Must be Obtained and  
Used in Lieu of This Report.**

Section 12920 of the California Government Code provides that the  
practice of discrimination because of race, color, religion, sex,  
marital status, national origin or ancestry in housing accommodations  
is against public policy.

Under Section 125.6 of the California Business and Professions Code,  
California real estate licensees are subject to disciplinary action by  
the Real Estate Commissioner if they make any discrimination,  
distinction or restriction in negotiating sale or lease of real  
property because of the race, color, sex, religion, ancestry or  
national origin of the prospective buyer. If any prospective buyer or  
lessee believes that a licensee is guilty of such conduct, he or she  
should contact the Department of Real Estate.

**Read the entire report on the following pages before contracting to  
purchase a lot in this subdivision.**

RE Form 618  
(Rev. 9/30/83)

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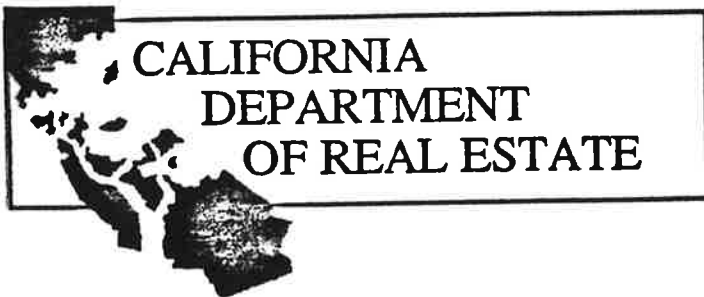
## COMMON INTEREST DEVELOPMENT GENERAL INFORMATION

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The project described in the attached Subdivision Public Report is known as a common-interest development. Read the Public Report carefully for more information about the type of development. The development includes common areas and facilities which will be owned and/or operated by an owners' association. Purchase of a lot or unit automatically entitles and obligates you as a member of the association and, in most cases, includes a beneficial interest in the areas and facilities. Since membership in the association is mandatory, you should be aware of the following information before you purchase:

Your ownership in this development and your rights and remedies as a member of its association will be controlled by governing instruments which generally include a Declaration of Restrictions (also known as CC&R's), Articles of Incorporation (or association) and bylaws. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law. Study these documents carefully before entering into a contract to purchase a subdivision interest.

In order to provide funds for operation and maintenance of the common facilities, the association will levy assessments against your lot or unit. If you are delinquent in the payment of assessments, the association may enforce payment through court proceedings or your lot or unit may be liened and sold through the exercise of a power of sale. The anticipated income and expenses of the association, including the amount that you may expect to pay through assessments, are outlined in the proposed budget. Ask to see a copy of the budget if the subdivider has not already made it available for your examination.



A homeowner association provides a vehicle for the ownership and use of recreational and other common facilities which were designed to attract you to buy in this development. The association also provides a means to accomplish architectural control and to provide a base for homeowner interaction on a variety of issues. The purchaser of an interest in a common-interest development should contemplate active participation in the affairs of the association. He or she should be willing to serve on the board of directors or on committees created by the board. In short, "they" in a common interest development is "you". Unless you serve as a member of the governing board or on a committee appointed by the board, your control of the operation of the common areas and facilities is limited to your vote as a member of the association. There are actions that can be taken by the governing body without a vote of the members of the association which can have a significant impact upon the quality of life for association members.

Until there is a sufficient number of purchasers of lots or units in a common interest development to elect a majority of the governing body, it is likely that the subdivider will effectively control the affairs of the association. It is frequently necessary and equitable that the subdivider do so during the early stages of development. It is vitally important to the owners of individual subdivision interests that the transition from subdivider to resident-owner control be accomplished in an orderly manner and in a spirit of cooperation.

When contemplating the purchase of a dwelling in a common interest development, you should consider factors beyond the attractiveness of the dwelling units themselves. Study the governing instruments and give careful thought to whether you will be able to exist happily in an atmosphere of cooperative living where the interests of the group must be taken into account as well as the interests of the individual. Remember that managing a common interest development is very much like governing a small community . . . the management can serve you well, but you will have to work for its success. [B & P Code Section 11018.1(c)]



SPECIAL NOTES

1. THIS REPORT COVERS ONLY LOTS 11 THROUGH 26 AND 91 THROUGH 108.
2. THIS PROJECT IS A COMMON-INTEREST SUBDIVISION OF THE TYPE REFERRED TO AS A "PLANNED DEVELOPMENT". IT WILL BE OPERATED BY AN INCORPORATED OWNERS ASSOCIATION.
3. THE ASSOCIATION HAS THE RIGHT TO LEVY ASSESSMENTS AGAINST YOU FOR MAINTENANCE OF THE COMMON AREAS AND OTHER PURPOSES. YOUR CONTROL OF OPERATIONS AND EXPENSES IS LIMITED TO THE RIGHT OF YOUR ELECTED REPRESENTATIVES TO VOTE ON CERTAIN PROVISIONS AT MEETINGS.
4. SINCE THE COMMON PROPERTY AND FACILITIES WILL BE MAINTAINED BY AN ASSOCIATION OF HOMEOWNERS, IT IS ESSENTIAL THAT THIS ASSOCIATION BE FORMED EARLY AND PROPERLY. THE HOMEOWNER ASSOCIATION MUST HOLD THE FIRST ELECTION OF THE ASSOCIATION'S GOVERNING BODY WITHIN 45 DAYS AFTER 51% SELL OUT OF THE INTERESTS AUTHORIZED FOR SALE UNDER THE FIRST PUBLIC REPORT FOR THE SUBDIVISION; OR, IN ANY EVENT, NO LATER THAN SIX MONTHS AFTER CLOSING THE FIRST SALE (REGULATIONS 2792.17 AND 2792.19); AND PREPARE AND DISTRIBUTE TO ALL HOMEOWNERS A BALANCE SHEET AND INCOME STATEMENT (REGULATION 2792.22).
5. THE SUBDIVIDER ADVISES THAT NO ESCROWS WILL CLOSE UNTIL ALL IMPROVEMENTS, AND LANDSCAPING HAVE BEEN COMPLETED; A NOTICE OF COMPLETION HAS BEEN FILED AND ALL CLAIM OF LIENS HAS EXPIRED, OR A TITLE POLICY ISSUED TO EACH PURCHASER CONTAINING AN INDORSEMENT AGAINST ALL CLAIM OF LIENS. (SECTION 11018.5 OF THE BUSINESS AND PROFESSIONS CODE).
6. THE SUBDIVIDER MUST PAY ALL THE MONTHLY ASSESSMENTS WHICH HE OWES TO THE HOMEOWNERS ASSOCIATION FOR UNSOLD LOTS -- THE PAYMENTS MUST COMMENCE ON THE FIRST DAY OF THE MONTH AFTER SUBDIVIDER CLOSES FIRST SALE. (REGULATIONS 2792.9 AND 2792.16).
7. THE SUBDIVIDER STATED THAT HE WILL PROVIDE YOU WITH A COPY OF THE ARTICLES OF INCORPORATION, RESTRICTIONS, AND BYLAWS, BY POSTING THEM IN A PROMINENT LOCATION IN THE SALES OFFICE AND FURNISHING YOU COPIES PRIOR TO CLOSE OF ESCROW. THESE DOCUMENTS CONTAIN NUMEROUS MATERIAL PROVISIONS THAT SUBSTANTIALLY AFFECT AND CONTROL YOUR RIGHTS, PRIVILEGES, USE, OBLIGATIONS, AND COSTS OF MAINTENANCE AND OPERATION. YOU SHOULD READ AND UNDERSTAND THESE DOCUMENTS BEFORE YOU OBLIGATE YOURSELF TO PURCHASE A LOT.
8. THE SUBDIVIDER STATED HE WILL NOT FURNISH THE CURRENT BOARD OF OFFICERS OF THE HOMEOWNERS ASSOCIATION THE BUILDING PLANS OF THE AREAS OF THE ASSOCIATION'S RESPONSIBILITY TO INCLUDE DIAGRAMS OF LOCATION OF MAJOR COMPONENTS, UTILITIES, AND RELATED DATA. THESE ITEMS WILL BE IMPORTANT TO THE BOARD OF OFFICERS OR THOSE WHO WILL MANAGE OR REPAIR COMMON FACILITIES IN THIS SUBDIVISION.

SPECIAL NOTES: (Continued)

9. SINCE THE SUBDIVIDER STATES HE WILL NOT FURNISH THE SAID PLANS AND DIAGRAMS, THE BOARD OF OFFICERS OF THE HOMEOWNERS ASSOCIATION SHOULD TRY TO OBTAIN THEM FROM THE CONTRACTORS WHO WORKED ON THE PROJECT OR FROM THE CITY.
10. THE SUBDIVIDER OF THIS PROJECT HAS INDICATED THAT HE INTENDS TO SELL ALL OF THE UNITS IN THIS PROJECT; HOWEVER, ANY OWNER, INCLUDING THE SUBDIVIDER, HAS A LEGAL RIGHT TO LEASE THE UNITS. PROSPECTIVE PURCHASERS SHOULD CONSIDER POSSIBLE EFFECTS ON THE DEVELOPMENT IF A SUBSTANTIAL PORTION OF THE UNITS BECOME RENTAL PROPERTIES.
11. IF YOU PURCHASE FIVE OR MORE SUBDIVISION INTERESTS (LOTS/UNITS, OR MEMBERSHIPS) FROM THE SUBDIVIDER, HE/SHE IS REQUIRED TO NOTIFY THE REAL ESTATE COMMISSIONER OF THE SALE. IF YOU INTEND TO SELL YOUR INTERESTS OR LEASE THEM FOR MORE THAN ONE YEAR, YOU ARE REQUIRED TO OBTAIN AN AMENDED SUBDIVISION PUBLIC REPORT BEFORE YOU CAN OFFER THEM FOR SALE OR LEASE.
12. WARNING: WHEN YOU SELL YOUR LOT TO SOMEONE ELSE, YOU MUST GIVE THAT PERSON A COPY OF THE DECLARATION OF RESTRICTIONS, ARTICLES OF INCORPORATION, THE BYLAWS, AND A TRUE STATEMENT CONCERNING ANY DELINQUENT ASSESSMENTS, PENALTIES, ATTORNEY'S FEES OR OTHER CHARGES PROVIDED BY THE CC&R'S OR OTHER MANAGEMENT DOCUMENTS ON THE LOT OR UNIT AS OF THE DATE THE STATEMENT WAS ISSUED.

NOTE: IF YOU FORGET TO DO THIS, IT MAY COST YOU A PENALTY OF \$500.00 -- PLUS ATTORNEY'S FEES AND DAMAGES (SEE CIVIL CODE SECTION 1368).

THE SUBDIVIDER MUST MAKE AVAILABLE TO YOU, COPIES OF THE ASSOCIATION GOVERNING INSTRUMENTS, A STATEMENT CONCERNING ANY DELINQUENT ASSESSMENTS AND RELATED CHARGES AS PROVIDED BY THE GOVERNING INSTRUMENTS AND, IF AVAILABLE, A CURRENT FINANCIAL AND RELATED STATEMENTS (SEE BUSINESS AND PROFESSIONS CODE 11018.6).

INTERESTS TO BE CONVEYED: You will receive fee title to a specified lot, together with a membership in the "Fairway Heights II Owners' Association, Inc." and rights to use the common area.

LOCATION AND SIZE: This subdivision is located at Avenida Venusto within the city limits of San Diego and is serviced by the usual city utilities and services. Prospective purchasers should acquaint themselves with the kinds of city services available.

This is the third and final phase which consists of approximately 6.2 acres divided into 34 lots.

This phase is part of a total project which, if developed as proposed, will consist of a total of 3 phases and containing 102 lots within the overall projected development.

LOCATION AND SIZE: (Continued)

There is no assurance that the total project will be completed as proposed.

THE COMMUNITY OF BERNARDO HEIGHTS: This project, "Parview Estates" is a portion of the overall project called Bernardo Heights. The concept of Bernardo Heights is to establish a master planned residential-oriented community which will have a number of distinct neighborhoods ranging in size from approximately 50 dwelling units to 300 dwelling units. There may be as many as 27 such neighborhood developments, with product types ranging from low density single family detached homes to zero lot line patio homes and medium density townhomes and condominiums. Approximately 3,600 units are planned with a projected population of 9,000. Project sell-out is anticipated over a 7-year period. Approximately 70% of the residential units will be attached forms of housing. Additionally, there are 2 commercial areas designated on the master plan as well as 2 church sites, 3 school sites, 2 major community recreational areas and private recreational facilities.

There is no assurance that the total project will be completed as proposed.

COMMUNITY ASSOCIATION RECREATIONAL FACILITIES: Each purchaser of a subdivision interest in Bernardo Heights will, together with his or her purchase, acquire the right to use (pursuant to the Declaration of Covenants, Conditions and Restrictions of the Community of Bernardo Heights (the "Community Declaration") the recreation facilities of the Community of Bernardo Heights.

Such recreational facilities will consist of (1) a recreation center which will include 4 tennis courts, a swimming pool, spa, and clubhouse and (2) a neighborhood park with various recreational features including a jogging trail, picnic area and multi-use play fields. Pursuant to the provisions of the Community Declaration, the cost of maintaining such recreational facilities will be met through assessments which will be levied against all owners of subdivision interests within Bernardo Heights. Information on the amount of assessments attributable to subdivision interests within specific neighborhoods are available at the sales office for each neighborhood. Genstar Development, Inc., (Penasquitos Properties Division) has posted bonds in the amount of \$1,159,229.00 and \$310,000.00 in favor of the Community Association as security for its obligation to complete the development and construction of the above mentioned recreational facilities.

MANAGEMENT AND OPERATION: The "Fairway Heights II Owners' Association, Inc." which you must join, operates in accordance with the Restrictions, Articles of Incorporation and the Bylaws.

The overall management of the community will be undertaken by the community association established by the Community Declaration, Articles and Bylaws. Each of the neighborhood developments will have

MANAGEMENT AND OPERATION: (Continued)

a neighborhood association whether it is a planned development (town-house), condominium, or single family detached project. The day to day maintenance responsibility for the individual neighborhood will be undertaken by the neighborhood association. Some of the neighborhood associations will be responsible for neighborhood common areas, maintenance and upkeep of the residences in the neighborhood (unless for the single family residential projects the developer determines that this should be left to the individual homeowners) the maintenance and operation of the neighborhood, recreational facilities and the enforcement of neighborhood rules and restrictions. The community association will have responsibilities for the community common areas, which areas will be specifically designated and conveyed to the community association, the community recreational facilities which each owner in the community will be entitled to use as an appurtenance to their membership in the neighborhood association, maintenance and control of community open space and community slope control areas which have been established for protection of the open areas in the community and the community pedestrian and bicycle circulation areas which have been designated as an intergral portion of the community.

The government of the community association will be established by the election of a community board. The community board will be elected from the owners of property within the community association by the presidents of the neighborhood associations, which association shall constitute the membership of the community association. Because of the size of this overall community, it is not envisioned, except as set forth for specific specially held meetings, to have meetings of all of the potential 9,000 residents on any regular basis. There will be regular meetings at least annually of the presidents of the various neighborhood associations which presidents will act as electors and representatives of each member of their individual neighborhood project. By this representational government, each community owner will have a voice in the community association affairs and in the election of the community board. It is envisioned that at the outset the community board will consist of three members. As the project expands in size, the board will increase in size to 5 and then ultimately 7 members.

The Community Declaration provides for annexation procedures whereby additional property will be added subject to the regulations of the Department of Real Estate through the annexation process. The process envisions the filing of the usual Declarations of Annexation within time periods specified. Additionally, besides setting up the community association and specifying the membership rights, voting Declaration provides for establishing community funds and assessments. These assessments are established to pay the costs of the operation of the community association and are leveled against all lots, units or parcels which have been annexed into the community at any given

MANAGEMENT AND OPERATION: (Continued)

time. A reasonable subsidy arrangement will be established such that there will be no burden to those homeowners who buy into the project at its early stages. The community assessments will become a lien on all lots and parcels which are annexed into the property as they are assessed.

The Community Declaration then establishes certain property rights regarding the community common area which will be owned by the community association and certain neighborhood restriction rights and duties which pertain to each of the residential neighborhood developments.

There are established as well, specific property rights and responsibilities for commercial areas and the merchant builder who acquires property for development. Additionally, there are provisions regarding an architectural committee to be established for the community association regarding all properties in the community and the usual provisions regarding damage, destruction and condemnation of the community and neighborhood common areas. Rights regarding mortgages and the developer are also included.

MAINTENANCE AND OPERATIONAL EXPENSES: The subdivider has submitted budgets for the maintenance and operation of the common areas and for long term reserves. This budget was reviewed by the Department of Real Estate in July, 1985. You should obtain copies of this budget from the subdivider. Under this budget, the monthly assessment against each subdivision interest will be \$23.99 of which \$3.23 is a monthly contribution to long term reserves and is not to pay for current operating expenses.

COMMUNITY ASSESSMENTS: Each lot/unit in the subdivision constituting a part of the Community of Bernardo Heights development will be subject to assessments which will be levied against such lot/unit by the community association, in addition to the separate assessments which may be levied by the "Fairway Heights II Owners' Association". The assessments which will be levied by the community association shall be used for the maintenance and management of the above mentioned community common area and community recreational facilities. Genstar has submitted a budget for such maintenance and management obligations of the community association. You should obtain a copy of this budget from the subdivider. Under this budget, each lot/unit will be subjected to a monthly assessment payable to the community association.

In addition, Genstar has submitted a subsidy agreement pursuant to which Genstar agrees to subsidize a portion of the costs and expenses of such maintenance and management obligations of the community association, all as more particularly described in the subsidy agreement executed between Genstar and the community association. Genstar has posted a bond in the amount of \$1,500,000.00 as security for its obligation under the subsidy agreement, which obligation has been limited under the subsidy agreement to the amount of \$1,500,000.00.

COMMUNITY ASSESSMENTS: (Continued)

Under the built-out budget for the Bernardo Heights Community Association, the monthly assessment against each subdivision interest will be \$32.69. The association may or may not elect to use this budget when additional phases are annexed. Under the interim budget, the monthly assessment per unit will be \$37.72. Of these amounts, the monthly contributions toward long term reserves, which are not to be used to pay for current operating expenses are \$.48.

The community association assessments will commence as to lots/units in the subdivision on the first day of the month following the closing of the first sale of a lot/unit in the subdivision. From that time on the subdivider is required to pay assessments to the community association for each lot/unit in the subdivision which it owns. The subdivider has posted a bond in the amount of \$7,695.00 in favor of the Community Association as security for its obligations to pay such assessments to the community association. The board of directors of the community association should assure itself that the subdivider has satisfied its obligations to the community association with respect to the payment of assessments before agreeing to release or exonerate the security.

According to the subdivider, assessments under the interim budget should be sufficient for proper maintenance and operation of the common areas until the development is substantially completed at which time it may be anticipated that assessments will be adjusted.

IF THE BUDGET FURNISHED TO YOU BY THE DEVELOPER SHOWS A MONTHLY ASSESSMENT FIGURE WHICH IS AT LEAST 20% MORE OR AT LEAST 10% LESS THAN THE ASSESSMENT AMOUNT SHOWN IN THIS PUBLIC REPORT, YOU SHOULD CONTACT THE DEPARTMENT OF REAL ESTATE BEFORE ENTERING INTO AN AGREEMENT TO PURCHASE.

The association may increase or decrease assessments at any time in accordance with the procedure prescribed in the CC&R'S or Bylaws. In considering the advisability of a decrease (or a smaller increase) in assessments, care should be taken not to eliminate amounts attributable to reserves for replacement or major maintenance.

THE BUDGET INFORMATION INCLUDED IN THIS PUBLIC REPORT IS APPLICABLE AS OF THE DATE OF BUDGET REVIEW AS SHOWN ABOVE. EXPENSES OF OPERATION ARE DIFFICULT TO PREDICT ACCURATELY AND EVEN IF ACCURATELY ESTIMATED INITIALLY, MOST EXPENSES INCREASE WITH THE AGE OF FACILITIES AND WITH INCREASES IN THE COST OF LIVING.

Monthly assessments will commence on all lots in this phase on the first day of the month following the closing of the first sale of a lot.

MAINTENANCE AND OPERATIONAL EXPENSES: (Continued)

The remedies available to the association against owners who are delinquent in the payment of assessments are set forth in the CC&R'S. These remedies are available against the subdivider as well as against other owners.

The subdivider has posted a bond as partial security for his obligation to pay these assessments. The governing body of the association should assure itself that the subdivider has satisfied his obligations to the association with respect to the payment of assessments before agreeing to a release or exoneration of the security.

EASEMENTS: Easements for utilities and other purposes are shown on the Title Report and Subdivision Map recorded in the Office of the San Diego County Recorder on December 6, 1984 as Map No. 11099.

RESTRICTIONS: This subdivision is subject to Restrictions recorded in the Office of the San Diego County Recorder, December 28, 1984 as File No. 84-481819 and August 8, 1985 as File No. 85-285285, and a Declaration of Annexation recorded July 31, 1986 as File No. 86-323217.

COMMUNITY RESTRICTIONS: This subdivision is part of the Community of Bernardo Heights which is subject to the Declaration of Covenants, Conditions and Restrictions for the Community of Bernardo Heights, (the "Community Declaration"), recorded in the Office of the San Diego County Recorder September 30, 1980 as File No. 80-319018. Each lot/unit in this subdivision will be subject to the Covenants, Conditions, and Restrictions contained in the Community Declaration. The subdivider will provide you with a copy of the Community Declaration; you should therefore read and understand the Community Declaration before you obligate yourself to purchase a lot/unit in this subdivision.

THE COMMUNITY ARCHITECTURAL COMMITTEE: The Community Declaration also provides for the review by an architectural committee (acting on behalf of the community association) of certain kinds of improvements which may be contemplated by an owner of a lot or unit in the Community of Bernardo Heights. Such review by the Community Architectural Committee is in addition to any review by an architectural committee acting on behalf of "Fairway Heights II Owners' Association", which may have been provided for in the management documents for this subdivision.

FOR INFORMATION AS TO YOUR OBLIGATIONS AND RIGHTS, YOU SHOULD READ THE RESTRICTIONS. THE SUBDIVIDER SHOULD MAKE THEM AVAILABLE TO YOU.

TAXES: The maximum amount of any tax on real property that can be collected annually by counties is 1% of the full cash value of the property. With the addition of interest and redemption charges on any indebtedness, approved by voters prior to July 1, 1978, the total property tax rate in most counties is approximately 1.25% of the full cash value. In some counties, the total tax rate could be well above 1.25% of the full cash value. For example, an issue of general obligation bonds previously approved by the voters and sold by a county water district, a sanitation district or other such district could increase the total tax.

For the purchaser of a lot or unit in this subdivision, the "full cash value" of the lot or unit will be the valuation, as reflected on the tax roll, determined by the county assessor as of the date of purchase of the lot or unit or as of the date of completion of an improvement on the lot if that occurs after the date of purchase.

PURCHASE MONEY HANDLING: The subdivider must impound all funds received from you in an escrow depository until legal title is delivered to you. (Refer to Sections 11013, and 11013.2(a) of the Business and Professions Code).

If the escrow has not closed on your lot within one (1) year of the date of your escrow opening, you may request return of your deposit.

NOTE: Section 2995 of the Civil Code provides that: "No real estate developer shall require as a condition precedent to the transfer of real property containing a single family residential dwelling that escrow services effectuating such transfer shall be provided by an escrow entity in which the developer . . . (owns or controls) 5% or more of the escrow entity".

The subdivider has no such interest in the escrow company which is to be used in connection with the sale or lease of lots in this subdivision.

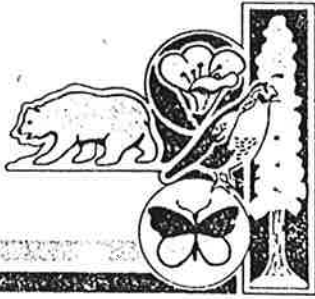
FILLED GROUND: Some lots will contain filled ground. The information concerning filled ground and soil conditions is available at: City of San Diego, Office of City Engineer, 1222 First Avenue, San Diego, California.

SOILS CONDITIONS: A Geologic Report is available at: City of San Diego, Office of City Engineer, 1222 First Avenue, San Diego, California.

For further information in regard to this subdivision, you may call (213) 620-2700 or examine the documents at the Department of Real Estate, 107 South Broadway, #7111, Los Angeles, California 90012.



Parview



# State of California

OFFICE OF THE SECRETARY OF STATE

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

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

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

AUG 15 1985



*March Fong Eu*

Secretary of State

1283307

ENDORSED  
FILED

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

AUG 14 1985

ARTICLES OF INCORPORATION  
OF  
FAIRWAY HEIGHTS II  
OWNERS' ASSOCIATION, INC.

MARCH FONG EU, Secretary of State  
Gloria J. Carroll  
Deputy

ARTICLE 1

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

ARTICLE 2

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

B. The specific and primary purpose of the Association is to act as the "management body" for the management, maintenance, preservation and control of the Fairway Heights II Planned Development Project (hereinafter referred to as the "Project") in San Diego, California, for the common benefit of owners of Lots within the Project. The Association shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific and primary purpose of the Association.

ARTICLE 3

The name and address in the State of California of the Association's initial agent for service of process are: Mr. James A. Bevan, Sr., 7860 Mission Center Court, Suite 200, San Diego, California 92108.

ARTICLE 4

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

<u>Name</u>	<u>Address</u>
James A. Bevan	7860 Mission Center Court Suite 200 San Diego, CA 92108

Walter E. Wolf

7860 Mission Center Court  
Suite 200  
San Diego, CA 92108

Elaine Huston

7860 Mission Center Court  
Suite 200  
San Diego, CA 92108

#### ARTICLE 5

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

#### ARTICLE 6

The Association shall have one class of members only, and the property and other rights, interests and privileges of each member in good standing shall be equal. Notwithstanding the foregoing, the members shall be divided into two classes for the purpose of voting, Class A and Class B. Class A member(s) shall be all owners of lots except Declarant and said Class A member(s) shall be entitled to one vote for each lot owned. The lone Class B member shall be Declarant, who shall be entitled to three votes for each lot owned. Declarant's Class B voting status shall cease and convert to Class A voting status on the earlier occurrence of one of the following: (i) when the total votes outstanding in Class A equal the total votes outstanding in Class B, (ii) on that certain date which is two years after the original issuance by the California Department of Real Estate of the most recent Final Subdivision Public Report for a phase of development of the Project or (iii) on that certain date which is four years after the original issuance by the California Department of Real Estate of a Final Subdivision Public Report with respect to the first phase of development of the Project. If record title to a lot is held in the name of more than one person, such persons shall collectively constitute a single member of the Association and there shall be only one vote attributable to such member (unless such member is Declarant, in which case, such member shall have the number of votes attributable to Declarant as set forth above). Each of such persons collectively constituting a single member shall otherwise be individually entitled to the benefits of membership in the Association. In addition to satisfying the requirements of Article 8 of these

Articles of Incorporation, any amendment to this Article 6 of these Articles of Incorporation must be approved by 51 percent (based upon one vote for each first mortgage or first deed of trust owned) of all holders (hereinafter referred to collectively as "Eligible Mortgage Holders") of a first mortgage or first deed of trust encumbering an estate in the Project as of the time such amendment is adopted, who have requested the Association, in writing, to notify such holders of any proposed action requiring the consent of a specified percentage of Eligible Mortgage Holders.

ARTICLE 7

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

ARTICLE 8

Except as otherwise specified in Article 6 of these Articles of Incorporation, amendments to these Articles of Incorporation may only be adopted by a vote of a majority of the directors of the Association and (i) by a vote or written ballot of members of the Association entitled to exercise a majority of the voting power in each of the two voting classes of the Association or (ii) upon cessation of one of the two voting classes, by a vote or written ballot of members entitled to exercise a majority of the voting power in the remaining voting class, provided that said vote or written ballot shall include the votes of a majority of the members other than Declarant. Amendments shall be reflected in the book containing the original Articles of Incorporation.

IN WITNESS WHEREOF, the undersigned, constituting the incorporator(s) of the Association and being the persons named hereinabove as the first directors of the Association, have executed these Articles of Incorporation this 1st day of August, 19 85.

James A. Bevan  
James A. Bevan

Walter E. Wolf  
Walter E. Wolf

Elaine M. Huston  
Elaine Huston

I hereby declare that I am the person who executed the foregoing ARTICLES OF INCORPORATION OF FAIRWAY HEIGHTS II OWNERS' ASSOCIATION, INC., which execution is my act and deed.

Executed on this 1st day of August, 1985, at San Diego, California.

[Signature]  
James A. Bevan

I hereby declare that I am the person who executed the foregoing ARTICLES OF INCORPORATION OF FAIRWAY HEIGHTS II OWNERS' ASSOCIATION, INC., which execution is my act and deed.

Executed on this 1st day of August, 1985, at San Diego, California.

[Signature]  
Walter E. Wolf

I hereby declare that I am the person who executed the foregoing ARTICLES OF INCORPORATION OF FAIRWAY HEIGHTS II OWNERS' ASSOCIATION, INC., which execution is my act and deed.

Executed on this 1st day of August, 1985, at San Diego, California.

[Signature]  
Elaine Huston

INSTRUCTIONS TO ESCROW DEPOSITORY  
UNDER REGULATION 2792.9 (FOR SINGLE  
PHASE SUBDIVISIONS)RECEIVED FOR  
FEB 11

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

Subdivider has transmitted herewith to HOME FEDERAL ESCROW  
(escrow depository) as trustee, a  surety bond  cash deposit in  
the amount of \$ 7,695.00

This bond or deposit is given in compliance with Section 2792.9,  
Chapter 6, Title 10, California Administrative Code, as security for  
the fulfillment of obligation of subdivider under Covenants, Conditions  
and Restrictions for the subdivision known as BERNARDO HEIGHTS UNIT NO. 20,  
(Name and/or Tract No.)

DRE File No. 057659LA-FOQ County of San Diego,  
to pay regular and special assessments allocable to lots and/or units  
(MASTER ASSOCIATION)  
in the aforesaid subdivision to BERNARDO HEIGHTS COMMUNITY Association.

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

In the event of a dispute between subdivider and the aforesaid  
association with respect to the question of satisfaction of the  
conditions for exoneration or release of the security, the issue or  
issues shall, at the request of either party, be submitted to  
arbitration in accordance with the Commercial Arbitration Rules of the  
American Arbitration Association (AAA) before an arbitrator selected  
Re Form 643 (Rev. 9/30/80)

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

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

W. WOLF PROPERTIES, A California corporation  
\_\_\_\_\_  
(Subdivider)

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

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

10515 Vista Sorrento Parkway  
\_\_\_\_\_  
(Address)

San Diego, California 92121  
\_\_\_\_\_  
(City and State)

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

BERNARDO HEIGHTS COMMUNITY ASSOCIATION  
(Owner's Association)  
\_\_\_\_\_

By: M. J. [Signature]  
\_\_\_\_\_

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

9404 Genesee Avenue, Suite 340  
\_\_\_\_\_  
(Address)

La Jolla, California 92037  
\_\_\_\_\_  
(City and State)

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

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

THIS BOND COVERS LOTS 11-26 and 91-108.

HOME FEDERAL ESCROW  
\_\_\_\_\_  
(Escrow Depository)

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

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

625 Broadway, Suite 215  
\_\_\_\_\_  
(Address)

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

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





described therein, including but not limited to, the property described above (the "Annexation Property").

WHEREAS, Declarant desires to effect said annexation and incorporation and to subject the Annexation Property to the Declaration of Restrictions in the manner provided for in the Declaration of Restrictions.

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

IN WITNESS WHEREOF, this Declaration of Annexation and Restrictions has been executed at San Diego, California, as of the 25<sup>th</sup> day of July, 1986.

W. WOLF INDUSTRIES, INC.,  
a California corporation

By: [Signature]  
President

By: Elaine M. Huston  
Secretary

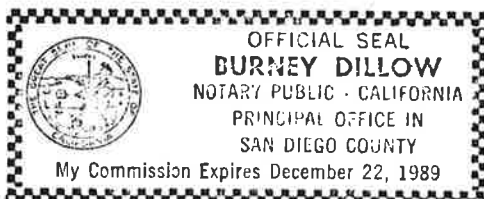
2045

STATE OF CALIFORNIA )  
 ) SS  
COUNTY OF SAN DIEGO )

On July 25, 1986, before me, the undersigned, a Notary Public in and for said State, personally appeared James Swan, personally known to me or proved to me on the basis of satisfactory evidence to be the President, and Belaine W. Austin personally known to me or proved to me on the basis of satisfactory evidence to be the Secretary of W. WOLF INDUSTRIES, INC., a California corporation, and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its Board of Directors.

WITNESS my hand and official seal.

Burney Dillow  
Notary Public in and for  
said County and State



SUBORDINATION TO DECLARATION OF  
ANNEXATION AND RESTRICTIONS

FOR GOOD, VALUABLE AND ADEQUATE CONSIDERATION, receipt of which is hereby acknowledged, HOME FEDERAL SAVINGS AND LOAN ASSOCIATION, a United States corporation, as beneficiary under that certain deed of trust and assignment of rents recorded April 26, 1985, at File/Page No. 85-143619, Official Records of San Diego County, California, hereby consents to the recordation of, and subordinates the lien and charge of said deed of trust and assignment of rents to, the foregoing Declaration of Restrictions.

Dated: 7/29, 1986

HOME FEDERAL SAVINGS AND LOAN ASSOCIATION, a United States corporation

By: [Signature]  
V.P. President

By: Mary Alice Norman  
Secretary

STATE OF CALIFORNIA )  
 ) SS  
COUNTY OF SAN DIEGO )

On July 29, 1986, before me, the undersigned, a Notary Public in and for said County and State, personally appeared R.L. Simerson, known to me to be the Vice President, and Mary Alice Norman, known to me to be the Vice Secretary of HOME FEDERAL SAVINGS AND LOAN ASSOCIATION, a United States corporation, and acknowledged to me that such association executed the within instrument pursuant to its bylaws or a resolution of its Board of Directors.

WITNESS my hand and official seal.



Fong Leong  
Notary Public in and for said  
County and State

RECEIVED SEP 11 1985

RECORDED IN OFFICIAL RECORDS OF SAN DIEGO COUNTY, CA

1985 AUG 16 AM 11:51

VERA L. LYLE COUNTY RECORDER

RECORDING REQUESTED BY:

OWNER

WHEN RECORDED MAIL TO:

W. WOLF PROPERTIES, INC.  
7860 Mission Center Ct., Ste. 200  
San Diego, California 92108

897533-12

XXXXXXXXXXXX

SPACE ABOVE FOR RECORDER'S USE

RF	12
AR	6
TLR	
MG	2

DECLARATION OF ANNEXATION AND RESTRICTIONS

THIS DECLARATION OF ANNEXATION AND RESTRICTIONS, made and executed by W. WOLF PROPERTIES, INC., a California corporation, herein referred to as "Declarant,"

WITNESSETH THAT:

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

Lots 27 through 39, inclusive, and Lots 70 through 90, inclusive, of BERNARDO HEIGHTS UNIT NO. 20, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 11099, filed in the Office of the County Recorder of San Diego County, California, December 6, 1984.

WHEREAS, Declarant has caused to be executed, acknowledged and recorded a Declaration of Neighborhood Restrictions for Fairway Heights II Planned Development, recorded August 8, 1985, File/Page No. 85-285285, Official Records of San Diego County, California (the "Declaration of Restrictions").

WHEREAS, the Declaration of Restrictions provides, inter alia, for the annexation and incorporation into the Project described in the Declaration of Restrictions of certain property described therein, including but not limited to, the property described above (the "Annexation Property").

WHEREAS, Declarant desires to effect said annexation and incorporation and to subject the Annexation Property to the

Declaration of Restrictions in the manner provided for in the Declaration of Restrictions.

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

IN WITNESS WHEREOF, this Declaration of Annexation and Restrictions has been executed at San Diego, California, as of the 29 day of July, 1985.

W. WOLF PROPERTIES, INC., a California corporation

By: James A. Bevan Vice President

STATE OF CALIFORNIA San Diego ss. COUNTY OF

On July 29, 1985 before me, the undersigned, a Notary Public in and for said State, personally appeared James A. Bevan and

personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons who executed the within instrument as Vice President and Secretary, on behalf of

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

WITNESS my hand and official seal.



Signature Elaine M. Huston

(This area for official notarial seal)

undersigned, Edward EDWARD the basis of W. WOLF acknowledged to pursuant

and for date

3002 (6/82) - (Corporation) First American Title Insurance Company

SUBORDINATION TO DECLARATION OF ANNEXATION AND RESTRICTIONS

FOR GOOD, VALUABLE AND ADEQUATE CONSIDERATION, receipt of which is hereby acknowledged, HOME FEDERAL SAVINGS AND LOAN ASSOCIATION, a United States corporation, as beneficiary under that certain deed of trust and assignment of rents recorded April 26, 1985, at File/Page No. 85-143619 Official Records of San Diego County, California, hereby consents to the recordation of, and subordinates the lien and charge of said deed of trust and assignment of rents to, the foregoing Declaration of Annexation and Restrictions.

Dated: July 18, 1985

HOME FEDERAL SAVINGS AND LOAN ASSOCIATION, a United States corporation

By: [Signature]  
President

By: [Signature]  
Secretary

STATE OF CALIFORNIA )  
 ) SS  
COUNTY OF SAN DIEGO )

On July 18, 1985, before me, the undersigned, a Notary Public in and for said County and State, personally appeared B.T. Abdalla, known to me to be the Major Loan Officer Vice President, and Kenneth M. Shook, known to me to be the Secretary of HOME FEDERAL SAVINGS AND LOAN ASSOCIATION, a United States corporation, and acknowledged to me that such association executed the within instrument pursuant to its bylaws or a resolution of its Board of Directors.

WITNESS my hand and official seal.



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

SUBORDINATION TO DECLARATION OF ANNEXATION AND RESTRICTIONS

FOR GOOD, VALUABLE AND ADEQUATE CONSIDERATION, receipt of which is hereby acknowledged, HOME FEDERAL SAVINGS AND LOAN ASSOCIATION, a United States corporation, as beneficiary under that certain deed of trust and assignment of rents recorded April 26, 1985, at File/Page No. 85-143619 Official Records of San Diego County, California, hereby consents to the recordation of, and subordinates the lien and charge of said deed of trust and assignment of rents to, the foregoing Declaration of Annexation and Restrictions.

Dated: July 30, 1985

HOME FEDERAL SAVINGS AND LOAN ASSOCIATION, a United States corporation

By: [Signature] President

By: [Signature] Secretary

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

On July 30, 1985, before me, the undersigned, a Notary Public in and for said County and State, personally appeared [Signature], known to me to be the Vice President, and [Signature], known to me to be the Vice Pres. Secretary of HOME FEDERAL SAVINGS AND LOAN ASSOCIATION, a United States corporation, and acknowledged to me that such association executed the within instrument pursuant to its bylaws or a resolution of its Board of Directors.

WITNESS my hand and official seal.



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

**GENSTAR**

*George*  
**Genstar Southwest Development**  
9404 Genesee Avenue, Suite 340  
La Jolla, CA 92037  
Telephone 619-455-1230

Mailing Address: Post Office Box 85034, San Diego, CA 92138

---

January 16, 1986

Donna May  
Attorney at Law  
Hyatt & Rhoads  
1725 Central Savings Tower  
225 Broadway  
San Diego, California 92101

Re: The Community Association  
of Bernardo Heights

Dear Donna:

We are enclosing a copy of a letter from Larry Dougherty regarding Parview Estates (Unit 20 of Bernardo Heights) supposed "error" regarding annexations for their three phases. The builder, Wolf Industries, changed the building schedule after having supplied annexation information to Genstar. The Phase III annexation was at a direct request by their attorney and was originally questioned by us.

If it is possible to file amendments to Declarations of Annexations, we will most certainly be under fire from three other developers who have been paying assessments for years on unbuilt (and still not projected) units because an "error" was made in annexing 154 to 209 units at a time and not providing for reasonable phasing.

We need a defensible position on this matter as we may be dealing with lawsuits for large cash refunds, etc. if we allow an "amendment" to be recorded.

Attached map suggests builder has an administrative matter that will be difficult but not impossible.

Sincerely,

GENSTAR SOUTHWEST DEVELOPMENT

*M. R. Scott*  
M. R. Scott  
Vice President, Operations  
Bernardo Heights

MRS:mm

Enclosure



LAW OFFICES  
JENKINS & PERRY  
A PROFESSIONAL CORPORATION  
1900 CENTRAL FEDERAL TOWER  
225 BROADWAY  
SAN DIEGO, CALIFORNIA 92101  
(619) 231-2500

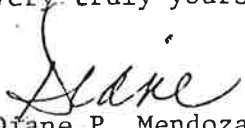
January 10, 1986

Ms. Mim Scott  
Genstar Development Inc.  
9404 Genesee Avenue, Suite 340  
La Jolla, California 92037

Dear Mim:

Enclosed is a letter we received from Larry Dougherty with regard to Parview Estates. Please review and call Mr. Peinado with your comments.

Very truly yours,

  
Diane P. Mendoza  
Secretary to Arthur G. Peinado

Encl. **RECEIVED**

JAN 13 1986

GENSTAR DEVELOPMENT

LAW OFFICES OF  
STERNBERG, EGGERS, KIDDER & FOX  
A PROFESSIONAL CORPORATION

ELEANOR L. BLAIS  
LAWRENCE T. DOUGHERTY  
JEROME E. EGGERS  
JAMES HENRY FOX  
TONI MARIE GIBRAN  
DONALD L. KIDDER  
ANN M. McMENOMY  
MICHAEL B. POYNOR  
F. GREGORY PYKE  
RAND K. SHOTWELL  
R. GENE STEINECKERT  
JAMES R. STERNBERG

1900 CENTRAL SAVINGS TOWER  
225 BROADWAY  
SAN DIEGO, CA 92101-5040

January 8, 1986

(619) 231-2599

Arthur G. Peinado, Esq.  
Jenkins and Perry  
2020 Central Savings Tower  
225 Broadway  
San Diego, CA 92101

Re: Parview Estates

Dear Art:

My records reflect that we spoke on December 16, 1985, and that you advised me that you would be contacting Mim Scott at Genstar regarding the problem with the imposition of assessments against Lots in Phase III of the Parview Estates Project. I have not heard further from either you or Mim. However I have recently reviewed this matter in more detail than I have at any previous time and I have determined the following:

1. On December 17, 1984 Lots 75 through 108 were annexed into the Community Association for Bernardo Heights. Some of those Lots (i.e. Lots 70 through 90) are actually in Phase II of the Parview Estates Project and others (i.e. 91 through 108) are in Phase III.
2. On April 25, 1985 all of the Lots in Phase I of the Parview Estates Project (i.e. Lots 7 through 10 and Lots 40 through 69) were annexed into the Community.
3. On November 8, 1985 some lots in Phase II (i.e. Lots 27 through 39 and 70 through 74) were annexed into the Community and some lots in Phase III (i.e. Lots 11 through 26) were annexed into the Community.

The developer is presently in the process of selling units in Phases I and II. I think that it is clear that a mistake occurred when Lots in Phase II and III were annexed before any lots in Phase I, or, indeed, that any Lots in Phase III have been annexed into the Community at all. I hope that you can agree with me that it is not necessary to determine the actual causes for the mistake and that it is sufficient to agree that a mistake has occurred.


Arthur G. Peinado, Esq.  
January 8, 1986  
Page Two

On that basis, I believe that it is possible to correct the mistake and reform the annexation documents to correct the error. I have done only some cursory research and can point you to numerous cases allowing the reformation of grant deeds containing mistaken legal descriptions. I think that our situation is analogous and that a reformation of the annexation declarations is appropriate and necessary.

I am enclosing a proposed Amended Declaration of Annexation. Would you please review the proposed document and, if you find it acceptable, recommend it to your client for execution. I am certainly open to alternate suggestions for a means of documenting the fact that Wolf Industries is not obligated to pay assessments on Lots in Phase III of the Project until such time as the sale of Lots in that phase actually commences.

As always, thank you very much for your attention to this matter.

Yours very truly,

  
Lawrence T. Dougherty  
STERNBERG, EGGERS, KIDDER & FOX  
A Professional Corporation

LTD:jg  
Enc.

3975.25

cc w/enc: Kevin Darnall

RECORDING REQUESTED BY:

Declarant

WHEN RECORDED MAIL TO::

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

X  
X  
X  
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X

SPACE ABOVE FOR RECORDER'S  
USE

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

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

R E C I T A L S

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

A. Heretofore Declarant caused (i) that certain Declaration of Annexation and Supplemental Restrictions for the Community of Bernardo Heights dated December 17, 1984, to be recorded in the Office of the County Recorder of San Diego County on December 28, 1984 at File/Page No. 84-481820 (the "December 17, 1984 Declaration of Annexation") and (ii) that certain Declaration of Annexation and Supplemental Restrictions for the Community of Bernardo Heights dated November 8, 1985, to be recorded in the Office of the County Recorder of San Diego County on November 13, 1985, at File/Page No. 85-426674 (the "November 8, 1985 Declaration of Annexation").

B. The December 17, 1984 Declaration of Annexation purported to annex the following described property into the Community of Bernardo Heights (the "Community"), to wit:

Lots 75 through 108, inclusive, of BERNARDO  
HEIGHTS UNIT NO. 20, in the City of San

Diego, County of San Diego, State of California, according to Map thereof No. 11099, filed in the Office of the County Recorder of San Diego County, December 6, 1984.

C. The November 8, 1985 Declaration of Annexation purported to annex the following described property into the Community, to wit:

Lots 11 through 39, inclusive, and Lots 70 through 74, inclusive, of BERNARDO HEIGHTS UNIT NO. 20, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 11099, filed in the Office of the County Recorder of San Diego County, California, December 6, 1984.

D. Certain of the Lots described in the December 17, 1984 Declaration of Annexation and certain of the Lots described in the November 8, 1985 Declaration of Annexation were described therein as a result of a mistake and the Declarant, by this Amended Declaration of Annexation desires and intends to correct that mistake and reform the December 17, 1984 Declaration of Annexation and the November 8, 1985 Declaration of Annexation.

E. But for the mistake alluded to above, the Declarant would have annexed only the following described property into the Community, instead of the property described in the December 17, 1984 Declaration of Annexation and the November 8, 1985 Declaration of Annexation, to wit:

Lots 27 through 39, inclusive, and Lots 70 through 90, inclusive, of BERNARDO HEIGHTS UNIT NO. 20, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 11099, filed in the Office of the County Recorder of San Diego County, California, December 6, 1984.

The property described in this recital paragraph shall hereinafter be referred to as the "Corrected Annexation Property."

NOW, THEREFORE, Declarant declares the following:

1. To the extent that the December 17, 1984 Declaration of Annexation and the November 8, 1985 Declaration of Annexation describe property other than the Corrected Annexation Property, the December 17, 1984 Declaration of Annexation and the November 8, 1985 Declaration of Annexation are hereby amended and reformed and shall hereinafter be deemed to describe only the

Corrected Annexation Property and any Lots not within the Corrected Annexation Property and described in either the December 17, 1984 Declaration of Annexation or the November 8, 1985 Declaration of Annexation are hereby declared not to be part of the Community.

2. Nothing herein shall prevent any of the Lots hereby declared to be not a part of the Community to be annexed into and made a part of the Community by subsequent recordation of a proper document effecting such annexation.

3. This Amended Declaration is hereby declared to be amendatory and reformatory of the December 17, 1984 Declaration of Annexation and the November 8, 1985 Declaration of Annexation and to the extent that the December 17, 1984 Declaration of Annexation and the November 8, 1985 Declaration of Annexation describe and annex the Corrected Annexation Property into the Community, the December 17, 1984 Declaration of Annexation and the November 8, 1985 Declaration of Annexation are hereby ratified and confirmed.

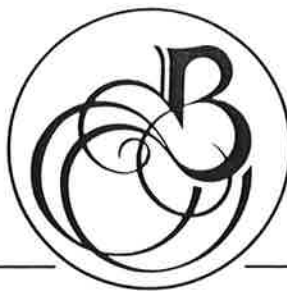
Declarant has executed this Amended Declaration of Annexation at San Diego, California, on \_\_\_\_\_, 198\_\_.

GENSTAR DEVELOPMENT INC.,  
a New York corporation

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

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





---

## THE COMMUNITY ASSOCIATION OF BERNARDO HEIGHTS

April 18, 1997

Ms. Nancy Hunt, Manager  
Fairway Heights II HOA  
c/o PMC  
11770 Bernardo Plaza Ct., Ste. 463  
San Diego, CA 92128

Dear Ms. Hunt,

This letter is to advise that the CABH Board of Directors has approved the revised CC&R's and the ByLaws of Fairway Heights II a.k.a. Parview Estates Association.

To complete our records, please advise when the membership has approved these revisions.

Sincerely,

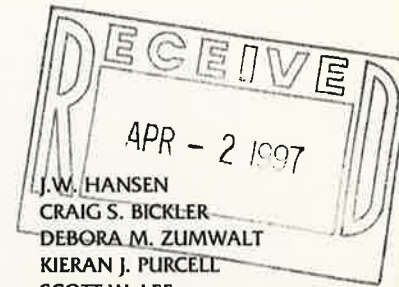
Paulette Hawley, CCAM  
General Manager

cc: Charles White, President ✓



**EPSTEN & GRINNELL**  
A PROFESSIONAL LAW CORPORATION

555 WEST BEECH STREET, SUITE 500  
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DUANE E. SHINNICK  
SUSAN HAWKS McCLINTIC  
MARY GOODHUE DEUTSCH  
THOMAS S. GATLIN  
SHANA L. BALLMER

OTHER OFFICE LOCATIONS:  
RANCHO BERNARDO  
TEMECULA  
EL CENTRO  
RANCHO CUCAMONGA

March 28, 1997

VIA FACSIMILE AND FIRST CLASS MAIL

Community Association of Bernardo Heights  
Board of Directors  
c/o Ms. Paulette Hawley  
16150 Bernardo Heights Parkway  
San Diego, CA 92128

Re: Fairway Heights II OA, a.k.a. Parview Estates  
Our File No. 7320.01

Dear Members of the Board:

We are writing at the request of the Board of Directors of Parview Estates. We represent Parview Estates with regard to the matters stated herein, and we assisted in the preparation of the proposed Amended and Restated Declaration of Neighborhood Restrictions and the proposed Amended and Restated Bylaws for Parview Estates (collectively, "Amended Documents") which you have received for review. This letter states our opinion regarding whether the Amended Documents are consistent with the governing documents of the Community Association of Bernardo Heights ("Community Association.") As we are not the Community Association's legal counsel, our opinion stated in this letter does not constitute legal advice given to the Community Association. For legal advice on this matter, please contact the Community Association's legal counsel.

It is our opinion that the above-referenced Amended Documents for Parview Estates are consistent with the governing documents of the Community Association. If you have any further questions, please contact the Board of Directors of Parview Estates.

Very truly yours,

EPSTEN & GRINNELL, APC

Scott W. Lee

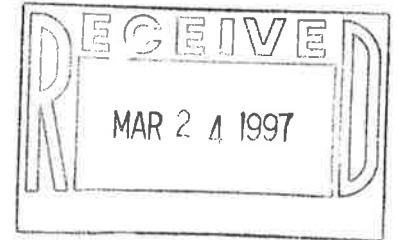
SWL:slm

cc: Board of Directors, Parview Estates



**FAIRWAY HEIGHTS II HOMEOWNERS' ASSOCIATION**

**a/k/a**  
**PARVIEW ESTATES**



March 21, 1997

Ms. Paulette Hawley  
General Manager  
The Community Association of Bernardo Heights  
16150 Bernardo Heights Parkway  
San Diego, CA 92128

Dear Ms. Hawley:

This letter is written on behalf of the Fairway Heights II Board of Directors, a/k/a, Parview Estates.

Enclosed please find restated and amended documents, CC&Rs, and the Bylaws. These documents have been approved by the Board of Directors and are being sent to CABH for the Master Association's approval.

If you have any questions do not hesitate to contact me at our Rancho Bernardo Office, 485-9811.

Sincerely,

Nancy B. Hunt  
Association Manager

cc: Board of Directors  
Encl. CC&Rs and Bylaws

1996 AMENDED AND RESTATED

BYLAWS OF

FAIRWAY HEIGHTS II OWNERS' ASSOCIATION, INC.  
[A.K.A. PARVIEW ESTATES]  
*A Residential Planned Development Project*

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1996 AMENDED AND RESTATED

BYLAWS OF

FAIRWAY HEIGHTS II OWNERS' ASSOCIATION, INC.

[a.k.a. PARVIEW ESTATES]

ARTICLE 1 - NAME; LOCATION AND APPLICABILITY

1.1 **Name.** The name of the corporation is FAIRWAY HEIGHTS II OWNERS' Neighborhood Association, INC. ("Neighborhood Association").

1.2 **Principal Office.** The principal office of the Neighborhood Association is located in San Diego, California. The Board of Directors of the Neighborhood Association ("Neighborhood Board") shall have the full power and authority to change the principal office of the Neighborhood Association from one location to another in the County of San Diego, California. Any such change shall be adopted by a resolution of the Neighborhood Board and noted in the meeting minutes.

1.3 **Application.** These Amended and Restated Bylaws ("Restated Neighborhood Bylaws") are applicable to the residential planned development Project known as FAIRWAY HEIGHTS II OWNERS' ASSOCIATION, INC. ("Project"), located in the City of San Diego, County of San Diego, State of California, as more particularly described in Exhibit "A," attached hereto and made a part hereof. These Restated Neighborhood Bylaws are also applicable to all Members of the Neighborhood Association and all residents, tenants, employees, and other persons who use the facilities of the Project in any manner.

1.4 **Documents Being Replaced; Approvals.** These Restated Neighborhood Bylaws amend and restate, in their entirety, the Bylaws of FAIRWAY HEIGHTS II OWNERS' ASSOCIATION, INC., approved August 15, 1985 ("Original Neighborhood Bylaws"), and the Amendment thereto approved February 15, 1994. In accordance with Section 11.1 of Article 11 of the Original Neighborhood Bylaws, these Restated Neighborhood Bylaws have received the approval of at least a majority of the voting power of the Neighborhood Association.

1.5 **Definitions.** Unless otherwise specified in these Restated Neighborhood Bylaws, the definitions set forth in Article 1 of the Restated Declaration of Restrictions for FAIRWAY HEIGHTS II OWNERS' Neighborhood Association, INC., recorded on \_\_\_\_\_, 19\_\_\_\_ as File/Page No. \_\_\_\_\_ of Official Records of the County Recorder of San Diego County ("Restated

Neighborhood Restrictions"), apply to these Restated Neighborhood Bylaws.

1.6 **Membership Rights.** The qualifications for membership are set forth in Article 3 of the Restated Neighborhood Restrictions and are hereby incorporated by reference.

## ARTICLE 2 - MEETINGS OF MEMBERS

2.1 **Place of Meetings; Conduct.** All meetings of the Members shall be held at a place designated by the Neighborhood Board. This meeting place shall be within the Project or as close to it as reasonably possible. If no meeting place is designated, the meetings shall be held at the principal office of the Neighborhood Association. No meeting of the Members shall, unless unusual conditions exist, be held outside of San Diego County, California. Meetings of Members shall be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Neighborhood Board may adopt by resolution.

2.2 **Annual Meetings.** The annual meeting of the Members shall be held on a date and time established by the Neighborhood Board, so long as the annual meeting is held within the anniversary month of December, provided that adjournments of such meetings for lack of quorum or otherwise may be held as soon thereafter as practical.

2.3 **Special Meetings.** Special meetings of the Members may be called for any lawful purpose by a majority of a quorum of the Neighborhood Board, the President of the Neighborhood Association, or by a written request signed by Members representing at least five percent (5%) of the total voting power of the Neighborhood Association. If the special meeting is requested by the Members, it shall be held not less than thirty-five (35) nor more than ninety (90) days after receipt of the request by an officer of the Neighborhood Association. Only that business stated in the notice of meeting given pursuant to Section 2.4 of these Restated Neighborhood Bylaws shall be transacted at the special meeting.

2.4 **Notice of Meetings.** The Secretary of the Neighborhood Association shall give written notice of any Members' meeting to each Member of record in accordance with the following:

2.4.1 Except as otherwise provided in this Article, the notice shall be given at least ten (10) but not more than ninety (90) days before the meeting, by first class mail or by personal delivery.

- 2.4.2 The Neighborhood Board may fix, in advance, a record date or dates for the purpose of determining the Owners who are entitled to receive notice of meetings. The record date for eligibility to receive notice shall not be fixed more than ninety (90) nor less than ten (10) days before the date of the meeting. If no record date is fixed, all Members as of the business day preceding the day on which notice is given are entitled to receive notice of the meeting.
- 2.4.3 The notice shall be addressed to the Member at the address appearing on the books of the Neighborhood Association, or the address supplied by the Member to the Neighborhood Association for this purpose. If there is no such address, notice shall be given at the principal office of the Neighborhood Association or by publication at least once in a newspaper of general circulation in San Diego County. Each Member shall provide the Neighborhood Board with Member's most recent mailing address, whether or not Member resides within the Project.
- 2.4.4 The notice shall state the place, date, and time of the meeting. If directors are to be elected at the meeting, the notice shall include the names of all those who are nominees at the time the notice is given. The notice shall also state those matters that the Neighborhood Board, at the time the notice is given, intends to present for action by the Members.
- 2.4.5 In the case of a special meeting which is called by Members, pursuant to Section 2.3 of the Restated Neighborhood Bylaws, the notice shall be given within twenty (20) days after receipt of the request for the meeting. If that twenty (20) day requirement is not satisfied, the Members who called the meeting may give the notice.
- 2.4.6 Any approval of the Members required for those items specified in Section 7511(f) of the Corporations Code, other than unanimous approval by those entitled to vote, shall be valid only if the general nature of the matter to be voted upon was stated in the notice of meeting or any written waiver of notice.



2.4.7 An affidavit of the mailing or other means of giving any notice of any Members' meeting may be executed by the Secretary, and if so executed, shall be filed with the corporate records or made a part of the minutes of the meeting. Such affidavit shall constitute prima facie evidence of the giving of notice.

**2.5 Waiver of Notice or Consent of Absentees.** The transactions of any meeting of Members, however called and noticed, shall be as valid as though taken at a duly called, noticed, and held meeting, if:

2.5.1 A quorum is present either in person or by proxy, and

2.5.2 Before or after the meeting, each of the Members not present in person or by proxy signs a written waiver of notice, or a consent to the holding of the meeting, or an approval of the minutes of the meeting.

Any such waiver, consent, or approval shall be filed with the corporate records or made a part of the minutes of the meeting.

Attendance by a Member or proxyholder for a Member at a meeting shall also constitute a waiver of notice of that meeting, except when the Member or proxyholder objects at the beginning of the meeting to the transaction of any business due to the inadequacy or illegality of the notice. Attendance at a meeting is not a waiver of any right to object to the consideration of matters not included in the notice of the meeting which are required to be described therein if that objection is expressly made at the meeting.

**2.6 Voting Rights.** Members shall have the power to exercise their voting rights as set forth in Article 3 of the Restated Neighborhood Restrictions, subject to the following provisions:

2.6.1 Fractional votes shall not be allowed. When there is more than one (1) record Owner of a Lot (co-owners), all of the co-owners shall be Members, but only one (1) of them shall be entitled to cast the single vote attributable to the Lot. Co-owners may designate in writing one (1) of the co-owners to vote. If no such designation is made or if it is revoked, the co-owners shall decide among themselves, by majority vote, how that Lot's vote is to be cast. Unless the Neigh-

borhood Board receives a written objection in advance from a co-owner, it shall be conclusively presumed that the voting co-owner is acting with the consent of his or her co-owners. No vote shall be cast for the Lot on a particular matter if a majority of the co-owners present in person or by proxy cannot agree on a vote.

2.6.2 Any provision of the Governing Documents that requires the approval of a specified percentage of the voting power of the Neighborhood Association shall require the approval of the specified percentage of the voting power of the membership. If no percentage of the voting power is specified in the Governing Documents or by California law, the approval of a majority of a quorum shall be required.

2.6.3 The Neighborhood Board may fix, in advance, a record date or dates for the purpose of determining the Owners who are entitled to exercise voting rights:

(a) The record date for eligibility to vote shall not be fixed more than sixty (60) days before the date of the meeting. If no record date is fixed, all Members who are otherwise eligible to vote as of the day of the meeting may vote.

(b) The record date for eligibility to vote by written ballots shall not be fixed more than sixty (60) days before the day on which the first written ballot is mailed or solicited. If no record date is fixed, all Members who are otherwise eligible to vote as of the day of mailing or soliciting the written ballot shall be eligible to vote by written ballot.

2.6.4 A Members' voting rights may be suspended by the Neighborhood Board in accordance with the provisions of Section 3.11 hereinbelow.

2.7 **Quorum.** At any meeting, the presence either in person or by proxy of Members entitled to cast votes equal to at least fifty-one percent (51%) of the total voting power of the Neighborhood Association shall constitute a quorum for any action except as otherwise provided in the Governing Documents or by law. The Members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment

notwithstanding the withdrawal of enough Members to leave less than a quorum, if the action taken, other than adjournment, is approved by at least a majority of Members required to constitute a quorum. If a quorum is not present at a duly called meeting, a majority of those Members present 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 meeting date, but no other business may be transacted. Provided that the date, time and place of the adjourned meeting is announced at the original meeting, the adjourned meeting may be held without additional written notice. If no such announcement is made, or if the selected date is changed after adjournment, notice of the time and place shall be given to Members in the manner provided in Section 2.4 of the Restated Neighborhood Bylaws. The quorum for any adjourned meeting shall be twenty-five percent (25%) of the total voting power.

**2.8 Adjustment of Voting Power and Quorum.** For purposes of establishing a quorum and determining the total voting power of the Neighborhood Association, if a Members' voting rights are suspended as provided in the Governing Documents, the total voting power of the Neighborhood Association shall be reduced for the period of time for which the suspension is in effect by an amount equal to the number of Lots for which membership voting rights have been suspended.

**2.9 Voting by Proxy.** At all meeting of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary of the Neighborhood Association. A proxy shall be deemed signed if the Member's name is placed on the proxy, as provided in Section 5069 of the California Corporations Code, by the Member or the Member's attorney in fact. Every proxy shall be revocable and shall automatically cease upon conveyance of its maker's membership, or upon receipt of written notice by the Secretary of the maker's death or judicially declared incapacity. No proxy shall be valid after the expiration of eleven (11) months from its date of execution, unless otherwise provided in the proxy, but in no event may the maximum term of any proxy exceed three (3) years from its date of execution. The maker of a proxy may revoke it by delivering a written revocation to the Neighborhood Association, by executing a subsequent proxy and presenting it to the meeting, or by attending any meeting and voting in person.

Any revocable proxy, even though in effect and otherwise valid, may not be used to cast a vote on the matters specified in Section 7613(g) of the Corporations Code unless it sets forth the general nature of the matter to be voted upon.

**2.10 Form and Content of Proxies.** A proxy distributed to Members shall set forth all items to be voted upon which are known at the time the proxy is prepared. Any form of proxy distributed

by any person or entity to more than one Member shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted on. The proxy shall provide that, when the Member specifies a choice, the vote shall be cast in accordance with that choice.

**2.11 Voting by Written Ballot.** Any action that may be taken at a meeting of the Members, except for the election of directors, may be taken without a meeting provided the following ballot requirements are satisfied:

2.11.1 The Neighborhood Association shall distribute a written ballot to every Member entitled to vote on the matter as provided in Section 2.6.3. The ballot shall be solicited in the same manner as provided in Section 2.4 of the Restated Neighborhood Bylaws for the giving of notice of meetings of Members.

2.11.2 The ballot shall (1) set forth all items to be voted upon which are intended and known at the time the ballot is prepared; (2) provide an opportunity to specify approval or disapproval of any proposal, including confirmation that, if the Member specifies a choice, the vote shall be cast in accordance with that Member's choice; (3) provide a reasonable time within which to return the ballot; (4) indicate the number of responses needed to meet the quorum requirement; and (5) state the percentage of approvals necessary to pass the measure submitted.

2.11.3 The proposed action shall be considered approved if:

(a) The number of votes cast by ballot within the specified time period equals or exceeds the quorum required to be present at a meeting authorizing the action; and

(b) The number of approvals equals or exceeds the number of votes that would be required for approval at a meeting at which the total number of votes cast was the same as the number of ballots received in response to the ballot solicitation.

2.11.4 No written ballot may be revoked.

- 2.11.5 Any deadline stated for return of the ballots may be extended for successive reasonable periods with the approval of a majority of the Neighborhood Board. Notice of any extension must be sent to the Members within thirty (30) days of the previously noticed deadline date.

### ARTICLE 3 - BOARD OF DIRECTORS

3.1 **Number; Qualification.** The affairs of this Neighborhood Association shall be managed and its duties and obligations performed by an elected Neighborhood Board of Directors, consisting of five (5) persons. Members of the Neighborhood Board must be Members of the Neighborhood Association.

3.2 **Nomination.** Nominations for election to the Neighborhood Board of Directors may be made by any of the following:

- 3.2.1 A nominating committee appointed by the Neighborhood Board at least ninety (90) days prior to an annual meeting of Members, provided the Neighborhood Board receives the committee's nomination or nominations at least sixty (60) days prior to the annual meeting of Members.
- 3.2.2 A written petition signed within eleven (11) months preceding the annual meeting by Members representing at least fifteen percent (15%) of the voting power of the Neighborhood Association. The petition shall identify the nominee, contain that person's written consent to serve as a director, and be delivered to the Secretary of the Neighborhood Association at least sixty (60) days prior to the annual meeting.
- 3.2.3 Any Member who is present in person or by proxy, who makes the nomination from the floor at the annual meeting of Members at which the director is to be elected.
- 3.2.4 The Neighborhood Board, which may make nominations at any time.

3.3 **Qualifications of Candidates for Election.** Candidates for election must be Members in good standing. Good standing shall mean that all assessments must be current and the candidate's membership must not be subject to any suspension of membership rights arising out of any violations of the Neighborhood Association's Governing Documents or nonpayment of assessments.

3.4 **Election.** At each annual meeting of the Neighborhood Association, the Members shall fill, by election, all positions on the Neighborhood Board held by directors whose terms are then expiring and all vacant positions, if any. However, if an annual meeting is not held or does not include an election, the election may be held at a special meeting of Members called for that purpose. Voting for directors shall be by secret written ballot. At an election, the Member or the Member's proxyholder may give a single candidate a number of votes equal to the number of directors to be elected multiplied by the number of Lots owned by the Member, or the Member may distribute the Member's cumulated votes among any two or more candidates as the Member desires. The persons receiving the highest number of votes shall be elected.

3.5 **Term.** The terms of office of all members of the Neighborhood Board shall be staggered two year terms, with two terms expiring in even-numbered years, and three terms expiring in odd-numbered years. There shall be no limit to the number of consecutive terms to which a director may be reelected. Each director shall hold office until the election of his or her successor or until the director's death, resignation or removal. Directors shall be elected at each annual meeting to fill (i) those positions of directors whose terms are due to expire, and (ii) any other vacant positions on the Neighborhood Board.

3.6 **Removal.** Directors may be removed as follows:

3.6.1 The Neighborhood Board may declare vacant the office of a director on the occurrence of any of the following events:

- (a) The director is declared of unsound mind by a final order of Court.
- (b) The director is convicted of a felony.
- (c) The director has failed to attend three (3) consecutive regular meetings of the Neighborhood Board.

3.6.2 One (1) or more directors may be removed prior to the expiration of their terms, without cause, at an annual or special meeting of the Members. Any removal without cause shall be approved by the vote of Members representing a majority of a quorum of the membership. Notwithstanding the foregoing, unless the entire Neighborhood Board is removed from office by the vote of the Members, an individual director shall not be removed prior to the expiration of his or her term of

office if the number of votes cast against the removal, or not consenting in writing to the removal, would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes were cast (or, if the action is taken by written ballot, all memberships entitled to vote were voted) and the entire number of directors authorized at the time of the director's most recent election were then being elected.

**3.7 Filling Vacancies.** The remaining directors shall fill any vacancy on the Neighborhood Board caused by the death, removal or resignation of a director unless the vacancy is created by the removal of a director by the Members. The Members shall vote to fill any vacancy on the Neighborhood Board created by the removal of a director by the Members. A successor director shall serve for the unexpired term of the director he or she replaces.

**3.8 Compensation.** No director shall receive any compensation for any service he or she may render to the Neighborhood Association; provided, however, that a director may be reimbursed for actual out-of-pocket expenses incurred by the director in the performance of his or her duties.

**3.9 Powers and Duties.** The Neighborhood Board shall exercise for the Neighborhood Association all powers and duties vested in or delegated to the Neighborhood Board or the Neighborhood Association by the Governing Documents and applicable law. Said powers and duties shall include, but not be limited to, the following:

- 3.9.1 Formulating Rules and Regulations for the use and operation of the Lots, Dwellings, and Common Property owned or controlled by the Neighborhood Association pursuant to Section 3.7.2 of the Restated Neighborhood Restrictions.
- 3.9.2 Enforcing the applicable provisions of the Governing Documents and any other instruments governing the ownership, management, and control of the Project.
- 3.9.3 Initiating and executing disciplinary proceedings against Members for violations of provisions of the Governing Documents in accordance with procedures set forth in Section 3.12 herein.
- 3.9.4 Paying taxes and assessments that are, or could become, a lien on all or a portion of the Common Property.

- 3.9.5 Fixing and establishing the fiscal year for the Neighborhood Association, including the power to modify the fiscal year.
- 3.9.6 Contracting for casualty, liability, and other insurance on behalf of the Neighborhood Association.
- 3.9.7 Subject to the limitations set forth in Section 3.9 herein, contracting for goods and services for the operation of the Neighborhood Association pursuant to the obligations imposed by the Restated Neighborhood Restrictions, and borrowing money, incurring indebtedness and executing promissory notes or other evidences of debt for the Neighborhood Association.
- 3.9.8 Creating committees pursuant to resolution adopted by a majority of the Neighborhood Board; provided that if a committee will exercise any power or authority of the Neighborhood Board, it shall consist of two (2) or more directors, and as many other Members as the Neighborhood Board may designate, to serve at the pleasure of the Neighborhood Board. No directors need serve on any committee which does not exercise any power or authority of the Neighborhood Board (e.g. social committees).
- 3.9.9 Delegating its authority, duties, and responsibilities to its officers, employees, committees, or agents, including a professional management agent. The term of any agreement with a manager shall not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods, and shall provide for termination by either party for cause with no more than thirty (30) days' written notice, or without cause and without payment of a termination fee or penalty with no more than ninety (90) days' written notice. Any agreement with a manager which is duly executed and in force at the time of the execution of these Neighborhood Bylaws shall not be subject to this Section 3.8.9 with regard to the requirements for termination of the agreement.



- 3.9.10 Authorizing the withdrawal of moneys from the Neighborhood Association's reserve accounts, upon the signatures of both the President and the Chief Financial Officer.
- 3.9.11 Entering any Lot to perform necessary construction, maintenance, or emergency repair work required by the obligations imposed by the provisions of the Restated Neighborhood Restrictions for the benefit of the Neighborhood Association.
- 3.9.12 Filling vacancies on the Neighborhood Board, except for a vacancy created by the removal of a director by Members.
- 3.9.13 Extending the time for return of ballots when an action is taken without a meeting pursuant to Section 2.11 herein.
- 3.9.14 Providing any Owner with the following documents within ten (10) days of the mailing or delivery of a written request therefor and receipt of the costs to prepare and reproduce said documents:
  - (a) A copy of the Governing Documents.
  - (b) A copy of the most recent financial statement.
  - (c) A written statement from an authorized representative of the Neighborhood Association specifying (i) the amount of the Neighborhood Association's current regular, special or other assessments and fees; (ii) the amount of any assessments levied on the Owner's Lot that are unpaid as of the date of the statement; and (iii) the amount of late charges, interest, and costs of collection that, as of the date of the statement, are or may be made a lien on the Owner's Lot pursuant to the Restated Neighborhood Restrictions.
  - (d) A statement noting any change in the Neighborhood Association's current assessments and fees which have been approved by the Neighborhood Board, but which have not become due and payable as of the date disclosure is provided pursuant to this Section.

3.10 *Limitations on Powers*. Notwithstanding the provisions of Section 3.9, the Neighborhood Board shall be prohibited from taking any of the following actions, except with the vote or written assent of a majority of the total voting power of the Neighborhood Association:

3.10.1 Entering into a contract with a third person under which the third person will furnish goods or services for the Neighborhood Association for a term longer than one (1) year with the following exceptions:

- (a) A contract with a public utility if the rates charged are regulated by the Public Utilities Commission, provided that the term shall not exceed the shortest term for which the utility will contract at the regulated rate.
- (b) Prepaid casualty and liability insurance of not more than three (3) years duration, provided that the policy provides for short rate cancellation by the insured.
- (c) Agreements for cable television services and equipment or other similar television services and equipment not exceeding five (5) years in duration.
- (d) Agreements for the sale or lease of burglar alarm and fire alarm equipment, installation, and services not exceeding five (5) years' duration.
- (e) A contract for a term not exceeding three (3) years that is terminable by the Neighborhood Association after no longer than one (1) year without cause, penalty, or other obligation upon thirty (30) days written notice of termination to the other party.

3.10.2 Selling during any fiscal year property of the Neighborhood Association having an aggregate fair market value in excess of five percent (5%) of the budgeted gross expenses of the Neighborhood Association for that fiscal year.

3.10.3 Borrowing money, incurring indebtedness and executing therefore promissory notes or other evidences of debt for the Neighborhood Associa-

tion in excess of five percent (5%) of the budgeted gross expenses of the Neighborhood Association for that fiscal year.

**3.11 Financial Documentation; Preparation, Reporting and Review Responsibilities.** With regard to the preparation, reporting and review of the Neighborhood Association's financial documentation, the Neighborhood Board shall have the following responsibilities:

3.11.1 Preparing a pro forma operating budget for each fiscal year, and distributing a copy thereof to each Owner not less than forty-five (45) and not more than sixty (60) days prior to the beginning of the fiscal year. The budget shall contain at least the following:

(a) The estimated revenue and expenses on an accrual basis.

(b) A summary of the Neighborhood Association's reserves based upon the most recent review or study conducted pursuant to Section 1365.5 of the California Civil Code, which shall be printed in bold type and include all of the following:

(i) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component.

(ii) As of the end of the fiscal year for which the study is prepared: (1) the current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components, and (2) the current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain those major components.

(iii) The percentage that the amount determined for purposes of clause (2) of subparagraph (ii), above, is of the amount determined for purposes of clause (1) of subparagraph (ii), above. [For example: if (ii)(1), the estimated reserves needed, is \$100,000.00, and (ii)(2), actual re-

serves set aside, is \$75,000.00, then (iii) is a statement that 75% of the necessary estimated reserves have actually been set aside. The foregoing example is for illustration only and is not intended to reflect the Neighborhood Association's actual reserves or estimated reserves needed].

The summary of the Neighborhood Association's reserves disclosed pursuant to this Section shall not be admissible in evidence to show improper financial management of the Neighborhood Association, provided that other relevant and competent evidence of the financial condition of the Neighborhood Association is not made inadmissible by this provision.

- (c) A statement as to whether the Neighborhood Board has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor.
- (d) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that the Neighborhood Association is obligated to maintain, or other components identified by the Neighborhood Board.
- (e) In lieu of the distribution of the pro forma budget, the Neighborhood Board may elect to distribute a summary of the statement to each Owner with a written notice that the statement is available at the business office of the Neighborhood Association or designated location and that copies will be provided upon written request and at the expense of the Neighborhood Association. The Neighborhood Association shall provide the copy to the Owner within five (5) working days of the receipt of the Owner's written request.

3.11.2 Preparing and distributing an annual report, within one hundred twenty (120) days after the close of each fiscal year, consisting of the following:

- (a) A balance sheet as of the end of the fiscal year.
- (b) An operating (income) statement for the fiscal year.
- (c) A statement of changes in financial position for the fiscal year.
- (d) For any fiscal year in which the gross income to the Neighborhood Association exceeds \$75,000.00, a copy of the review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Neighborhood Board of Accountancy. If this report is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Neighborhood Association that the statement was prepared without independent audit or review from the books and records of the Neighborhood Association.

3.11.3 Preparing and distributing to the Owners, within sixty (60) days before the beginning of each fiscal year, a statement describing the Neighborhood Association's policies and practices in enforcing lien rights or other legal remedies for default in payment of its assessments against Owners.

3.11.4 Causing to be conducted, at least once every three (3) years, a reasonably competent and diligent visual inspection of the accessible areas of the major components which the Neighborhood Association is obligated to repair, replace, restore or maintain, as part of a study of the reserve account requirements of the Project if the current replacement value of the major components is equal to or greater than one-half (1/2) of the gross budget of the Neighborhood Association, excluding the Neighborhood Association's reserve accounts, for that period. The Neighborhood Board shall review this study annually and

shall consider and implement necessary adjustments to the Neighborhood Board's analysis of the reserve account requirements as a result of that review. This study shall, at a minimum, include:

- (a) Identification of the major components which the Neighborhood Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years.
- (b) Identification of the probable remaining useful life of the components identified in (a), above, as of the date of the study.
- (c) An estimate of the cost of repair, replacement, restoration or maintenance of the components identified in (a), above, during and at the end of their useful life.
- (d) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain the components identified in (a), above, during and at the end of their useful life, after subtracting total reserve funds as of the date of the study. (e.g. If a component costs \$100,000 to replace, \$50,000 is currently set aside in the reserves for its replacement, and it has an estimated 10 years of remaining life, then the estimate of the total annual contribution to reserves for this component should be \$5000).

As used herein, the term "reserve account requirements" means the estimated funds which the Neighborhood Board has determined are required to be available at a specified point in time to repair, replace, or restore those major components which the Neighborhood Association is obligated to maintain.

3.11.5 Reviewing the following on at least a quarterly basis:

- (a) A current reconciliation of the operating and reserve accounts of the Neighborhood Association.

- (b) The actual reserve revenues and expenses for the current year compared to the budget for the current year.
- (c) An income and expense statement for the operating and reserve accounts of the Neighborhood Association.
- (d) The most current account statements prepared by the financial institution where the Neighborhood Association has its operating and reserve accounts.

**3.12 Disciplinary Actions Against Owners.** In connection with the general power of enforcement, the Neighborhood Association may discipline Owners for violation of any of the provisions of the Governing Documents by one or more of the following: (1) suspending the Member's membership rights, including the Member's voting rights, (2) imposing monetary fines, and (3) recording of a notice of noncompliance encumbering the Lot of the Owner, subject to the following limitations:

- 3.12.1 The accused Owner shall be given at least fifteen (15) days prior written notice of the intention of the Neighborhood Board to meet and consider imposition of a suspension, monetary fine, notice of noncompliance or any combination of these, with respect to any alleged violation.
- 3.12.2 At the Neighborhood Board meeting, the accused Owner shall be given an opportunity to be heard, orally or in writing.
- 3.12.3 Notwithstanding the foregoing, under circumstances involving conduct that constitutes (a) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of neighboring Owners; (b) a traffic or fire hazard; (c) a threat of material damage to, or destruction of, the Common Property; or (d) a violation of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether a violation has occurred (i.e. delinquent assessment payment or parking violations), the Neighborhood Board or its agents may undertake immediate corrective or disciplinary action and conduct a hearing as soon thereafter as reasonably possible, if either (1) requested by the offending Owner within five (5) days following the Neigh-

borhood Association's actions, or (2) on its own initiative.

- 3.12.4 The amount of any monetary penalties shall be established from time to time by the Neighborhood Board, and a schedule thereof shall be distributed to the Members by personal delivery or first class mail. Distribution of additional schedules is not required unless there are any changes to an existing schedule.
- 3.12.5 An Owner's membership privileges may be suspended (i) for up to thirty (30) days for any violation of the Governing Documents, and (ii) during any period of time that the Owner is delinquent in the payment of assessments. Suspension of membership privileges shall include suspension of the right of a Member to vote at meetings of the Neighborhood Association.
- 3.12.6 Any notice of noncompliance shall identify the subject Lot, describe the nonconforming use, and specify the provision of the Governing Documents that is being violated. Upon the elimination of any nonconforming use, the Neighborhood Association shall execute and record a document which shall reference any previously recorded notice of noncompliance, rescind said notice and confirm that the Lot is in compliance with all applicable Governing Documents provisions referenced in the notice of noncompliance.
- 3.12.7 Except as provided in Article 5 of the Restated Neighborhood Restrictions relating to foreclosure for failure to pay assessments, or as a result of the judgment of a court or a decision arising out of arbitration, the Neighborhood Association shall in no way abridge the right of any Owner to the full use and enjoyment of his or her Lot.

3.13 **Expending Reserve Funds.** The Neighborhood Board may not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement or maintenance of, or litigation involving the repair, restoration, replacement or maintenance of, major components which the Neighborhood Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established except as allowed by (i) Section 1365.5(c) of the Civil Code, (ii) any other applicable statute or law, or (iii) any successor statute or law.



## ARTICLE 4 - MEETINGS OF DIRECTORS

4.1 **Regular Meetings.** Regular meetings of the Neighborhood Board of Directors shall be held monthly at a time and place within the Project fixed by resolution of the Neighborhood Board. The meeting place shall ordinarily be within the Project unless, in the judgment of the Neighborhood Board, a larger meeting room is required than exists within the Project. Any larger meeting room selected by the Neighborhood Board shall be as close as possible to the Project. Notice of the time and place of the meeting shall be communicated to the directors not less than four (4) days prior to the meeting; provided, however, that notice need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

4.2 **Special Meetings.** Special meetings of the Neighborhood Board shall be held when called by written notice signed by the President of the Neighborhood Association or by any two (2) directors other than the President. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. Notice of any special meeting shall be noted in the manner provided for notice of regular meetings and shall be sent to all directors not less than four (4) days prior to the meeting; provided, however, that notice need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

4.3 **Organizational Meeting.** Immediately after the annual meeting, described in Section 2.2, herein, or as soon thereafter as reasonably practicable, the Neighborhood Board shall meet to elect the officers of the Neighborhood Association and conduct any other business of the Neighborhood Association as the Neighborhood Board, in its discretion, shall determine is necessary.

4.4 **Emergency Meetings.** An emergency meeting of the Neighborhood Board may be called by the President, or by any two Neighborhood Board members if there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the Neighborhood Board, and which of necessity make it impracticable to provide notice as required herein.

4.5 **Executive Session.** The Neighborhood Board may, with the approval of a majority of a quorum of the Neighborhood Board, adjourn a meeting and reconvene in executive session to meet with its legal counsel, or discuss and vote upon (a) litigation in which the Neighborhood Association is or may become involved, (b) matters that relate to the formation of contracts with third parties, (c) personnel matters, and (d) orders of business of a similar nature. The nature of any and all business to be considered in executive

session shall first be announced in open session. In the event the executive session does not follow an open session, the Neighborhood Board may conduct an executive session if the nature of any and all business considered in such executive session is announced at the next regularly scheduled Neighborhood Board meeting. Nothing herein contained shall be construed to obligate the Neighborhood Board to first call an open meeting before meeting in executive session. An executive session which does not follow an open meeting may be called and noticed in the same manner as a special meeting. Any matter discussed in executive session shall be generally noted in the Neighborhood Association minutes.

**4.6 Quorum.** A majority of the Neighborhood Board shall constitute a quorum and if a quorum is present, the decision of a majority of the directors present shall be the act of the Neighborhood Board.

**4.7 Adjournment.** A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than twenty-four (24) hours, notice of the adjournment shall be given, prior to the time of the adjourned meeting, to the directors who were not present at the time of the adjournment.

**4.8 Owner Attendance at Neighborhood Board Meetings; Notice.** Any Member of the Neighborhood Association may attend meetings of the Neighborhood Board except when the Neighborhood Board adjourns to executive session as provided in Section 4.5 herein; provided, however, that Members who are not on the Neighborhood Board may not participate in any deliberation or discussion unless expressly authorized to do so by the vote of the majority of a quorum of the Neighborhood Board, or the decision of the President or presiding officer conducting the meeting. Notice of the time and place of a Neighborhood Board meeting, except for emergency meetings and executive sessions, shall be communicated to Members not less than four (4) days prior to the meeting. Notice may be given by posting the notice in a prominent place or places, by mail, by delivery to all Lots in the Project, or by newsletter or similar means of communication. As used in this Section, the term "meeting" includes any congregation of a majority of the members of the Neighborhood Board at the same time and place to hear, discuss or deliberate upon any item of business scheduled to be heard by the Neighborhood Board, except those matters that may be discussed in executive session.

**4.9 Action Without a Meeting.** Any action required or permitted to be taken by the Neighborhood Board may be taken without a meeting, if all members of the Neighborhood 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 Neighborhood Board. Such written consent or consents shall be filed with the minutes of the proceedings of the Neighborhood Board. An explanation of the action taken shall be communicated to the Members by any means the Neighborhood Board deems appropriate.

**4.10 Neighborhood Board Deliberation Regarding Member Discipline.** In any matter relating to the disciplining of a Member, the Neighborhood Board shall meet in executive session if requested by that Member, and the Member shall be entitled to attend that portion of the executive session in which the Neighborhood Board discusses the discipline of that Member.

**4.11 Meeting Minutes; Availability to Owners.** The Neighborhood Board shall keep accurate written minutes of its meetings, and shall retain them in the permanent records of the Neighborhood Association. The minutes, proposed minutes (minutes proposed for adoption that are marked to indicate draft status), or a summary of the minutes, of any Neighborhood Board meeting, other than executive session, shall be available to Members within thirty (30) days of the meeting. The minutes, proposed minutes, or summary minutes shall be distributed to any Member upon request and upon reimbursement for the costs in making that distribution. Members shall be notified in writing at the time that the budget is distributed, or at the time of any general mailing to the entire membership, of their right to have copies of the minutes of meetings of the Neighborhood Board, and how and where those minutes may be obtained.

## ARTICLE 5 - OFFICERS

**5.1 Enumeration of Officers.** The officers of this Neighborhood Association shall be a President, a Vice-President, a Secretary, and a Chief Financial Officer. The Neighborhood Board may appoint such additional officers as it may, in its sole discretion, determine necessary or desirable. Any number of offices may be held by the same person except for the offices of President and Secretary or the offices of President and Chief Financial Officer.

**5.2 Appointment and Term.** The officers shall be elected annually by the Neighborhood Board. Any vacancies shall be filled by the Neighborhood Board. Each officer shall hold his or her office at the pleasure of the Neighborhood Board.

**5.3 Duties.** Unless otherwise delegated by the Neighborhood Board, the duties of each officer shall be as follows:

5.3.1 President. The President shall be the general manager and the chief executive officer of the Neighborhood Association and, subject to the control of the Neighborhood Board of Directors, shall have the general power to supervise, direct and control the business and officers of the Neighborhood Association. The President shall:

- (a) Preside at all meetings of the Members and at all meetings of the Neighborhood Board.
- (b) Be an ex officio member of all standing committees.
- (c) Represent the Neighborhood Association at meetings of the Community Association. In those instances in which specific provision is made for the matter regarding which the President shall cast a vote(s) at meetings of the Community Association by either the Community Declaration, the Restated Neighborhood Restrictions or these Bylaws, the President shall cast such vote(s) as so provided.
- (d) Sign as President all deeds, contracts, and other written instruments that have been approved by the Neighborhood Board, unless the Neighborhood Board, by duly adopted resolution, authorizes the signature of a lesser officer.
- (e) Call meetings of the Neighborhood Board whenever he or she deems it necessary, in accordance with any rules and notice requirements imposed by the Neighborhood Board and the Governing Documents.
- (f) Have, subject to the approval of the Neighborhood Board, general supervision, direction, and control of the affairs of the Neighborhood Association.
- (g) Discharge any other duties required of him or her by the Neighborhood Board.

5.3.2 Vice President. The Vice President shall:

- (a) Act in the place and in the stead of the President in the event of his or her absence, inability, or refusal to act.
- (b) Exercise and discharge any other duties required of him or her by the Neighborhood Board. In con-

nection with any such additional duties, the Vice-President shall be responsible to the President.

5.3.3 Secretary. The Secretary shall:

- (a) Keep a book of minutes of all meetings of the Neighborhood Board and Members showing (i) the date, time and place of holding; (ii) whether regular or special, and if special, how authorized; (iii) the notice thereof given; (iv) the names of those present at the Neighborhood Board meetings; (v) the number of Members present or represented at the Members' meetings; and (vi) the proceedings thereof.
- (b) Keep a membership book showing the names and addresses of the Members and the date on which membership ceased.
- (c) Keep the seal of the Neighborhood Association, if any, and affix it on all papers requiring the seal.
- (d) Serve all required notices of meetings of the Neighborhood Board and the Members.
- (e) Sign as Secretary all deeds, contracts, and other written instruments that have been approved by the Neighborhood Board, if the instruments that have been approved by the Neighborhood Board and signed by the President require a second Neighborhood Association signature and the Neighborhood Board has not passed a resolution authorizing another officer to sign in the place and stead of the Secretary.

5.3.4 Treasurer. The Treasurer shall:

- (a) Be responsible for and supervise the maintenance of books and records to account for Neighborhood Association funds and other Neighborhood Association assets.
- (b) Disburse and withdraw Neighborhood Association funds in the manner specified by the Neighborhood Board.

- (c) Receive and deposit all of the funds of the Neighborhood Association in any bank or banks selected by the Neighborhood Board.
- (d) Prepare and distribute the financial statements for the Neighborhood Association required by the Restated Neighborhood Restrictions and the Restated Bylaws.
- (e) Render to the President and Neighborhood Board, whenever they request it, an account of all transactions by the Treasurer and of the financial condition of the Neighborhood Association, and shall have such other powers and perform such other duties as may be prescribed by the Neighborhood Board or these Bylaws.
- (f) If required by the Neighborhood Board, the Treasurer shall give the Neighborhood Association a bond in such sum and with such surety or sureties as shall be satisfactory to the Neighborhood Board for (i) the faithful performance of the duties of the Treasurer's office and (ii) the restoration to the Neighborhood Association of all books, papers, vouchers, money and other property, of whatever kind belonging to the Neighborhood Association and in the possession or under control of the Treasurer upon the death, resignation or removal from office of the Treasurer.

**5.4 Resignation and Removal.** The Neighborhood Board may remove any officer from office either with or without cause. An officer may resign at any time by giving written notice to the Neighborhood Board, the President or the Secretary. The resignation shall take effect at the date of receipt of the notice or at any later time specified in the notice. Unless otherwise specified in the notice, acceptance of the resignation by the Neighborhood Board shall not be necessary to make it effective.

**5.5 Return of Neighborhood Association Materials.** Upon resignation, removal or expiration of term, officers shall return to the Neighborhood Association those Neighborhood Association materials in their possession.

**5.6 Compensation.** An officer shall not receive any compensation for any service he or she may render to the Neighborhood Association; provided, however, that any officer may be reimbursed for actual out-of-pocket expenses incurred by the officer in the performance of his or her duties.

5.7 **Delegation.** With Neighborhood Board approval, an officer may delegate his or her powers and duties to any committee, employee or agent of the Neighborhood Association, including, but not limited to a community association manager.

## ARTICLE 6 - BOOKS AND RECORDS; INSPECTION RIGHTS

6.1 **Required Books and Records.** The Neighborhood Association shall maintain at its principal office, or at such other place as may be designated by the Neighborhood Board from time to time:

- 6.1.1 Copies of the Governing Documents as last amended.
- 6.1.2 Adequate and correct books and records of account.
- 6.1.3 Written minutes of the proceedings of its Members, of its Neighborhood Board, and of committees of its Neighborhood Board.
- 6.1.4 A membership register containing each Member's name, mailing address and voting rights.

6.2 **Member Inspection of Accounting Records and Minutes.** In accordance with Corporations Code Section 8333, the accounting books and records and minutes of proceedings of the Members, the Neighborhood Board and its committees, with the exception of minutes of executive meetings, shall be open to inspection upon the written demand on the Neighborhood Association by any Member at any reasonable time, for a purpose reasonably related to such Person's interests as a Member. Members may not inspect the minutes of executive meetings.

6.3 **Member Inspection of Membership Register.** Subject to Section 6.4 and applicable law, Members may inspect the membership register as follows:

- 6.3.1 Members may inspect and copy the membership register at reasonable times, upon not less than five (5) business days' prior written demand upon the Neighborhood Association. The written demand must state the purpose for which the inspection rights are requested.
- 6.3.2 Members may obtain copies of the membership register upon a written demand and payment of a reasonable charge. The demand shall state the purpose for which the list is requested.

6.4 **Denial of Inspection Request.** In accordance with Section 8338 of the Corporations Code, the membership register is a corporate asset. The Neighborhood Association may deny a Member access to the membership register, including copies thereof, where the Neighborhood Association reasonably believes that the information will be used for a purpose not reasonably related to the Members' interest as a Member, or where the Neighborhood Association provides a reasonable alternative method of achieving the purpose identified in the written demand from the Member in accordance with Section 8330(c) of the Corporations Code.

6.5 **Director Inspection of All Neighborhood Association Records.** Subject to any limitations imposed by law, every director of the Neighborhood Association and the Community Association shall have the right to inspect all Neighborhood Association records and the physical properties owned or controlled by the Neighborhood Association at any reasonable time as provided by Section 8334 of the Corporations Code.

6.6 **Removal of Records.** No Member or director may remove the Neighborhood Association's copies of the Governing Documents, books and records of account, minutes, the membership register, or other records or documents from the Neighborhood Association's office or designated depository without the prior consent of the Neighborhood Board.

## ARTICLE 7 - NONLIABILITY AND INDEMNIFICATION

7.1 **Limitation on Liability of Neighborhood Association's Directors and Officers.** No directors or officers of the Neighborhood Association (collectively and individually referred to as the "Released Party") shall be responsible to any Owner, any member of an Owners' family, any of the Owners' tenants, guests, servants, employees, licensees, invitees, or any other person for:

- 7.1.1 Any error or omission in the discharge of their duties and responsibilities or for their failure to provide any service required by the Governing Documents, provided that such Released Party has, upon the basis of such information as may be possessed by the Released Party, acted in good faith, in a manner that such person believes to be in the best interests of the Neighborhood Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. Without limiting the generality of the foregoing, this standard of care and limitation of liability shall extend to such matters as the



establishment of the Neighborhood Association's annual financial budget, the decision whether to purchase insurance, the funding of Neighborhood Association capital replacement and reserve accounts, repair and maintenance of Common Property, and enforcement of the Governing Documents.

- 7.1.2 Any loss or damage suffered by reason of theft or otherwise of any article, vehicle or other item of personal property which may be stored by such Owner or other person within any Lot or for any injury to or death of any person or loss or damage to the property of any person caused by fire, explosion, the elements or any other Owner or person within the Project, or by any other cause, unless the same is attributable to his or her own willful or wanton act or gross negligence. It is the intent of this Section to provide volunteer directors and officers with protection from liability to the full extent permitted by California Civil Code Section 1365.7, or comparable superseding statute, and to the extent this provision is inconsistent with said section, the Civil Code shall prevail.

**7.2 Indemnification of Neighborhood Association.** Each Owner shall be liable to the Neighborhood Association for any damage to the Common Property caused by the negligence or willful misconduct of the Owner or his or her family, guests, invitees or lessees. Each Owner shall indemnify, hold harmless, and pay any costs of defense of each other Owner from claims for personal injury or property damage occurring within any Lot owned by the indemnitor, provided that this protection shall not extend to any indemnitee whose gross negligence or willful misconduct caused or contributed to the injury or damage. This Section is not intended to be for the benefit of any insurer and shall not affect nor limit the duty of any insurer to pay any claim which would be payable by said insurer but for this Section.

**7.3 Indemnification by Neighborhood Association of Directors, Officers, Employees and Other Agents.** To the fullest extent permitted by law, the Neighborhood Association shall indemnify its directors, officers, employees, and other agents described in Corporations Code Section 7237, including persons formerly occupying any such positions, against all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by them in connection with any "proceeding" as that term is used in Corporations Code Section 7237 and including an action by or in the right of the Neighborhood Association, by reason of the fact that such person is or was a person described by that

Section. "Expenses," as used in this Section, shall have the same meaning as in Corporations Code Section 7237(a).

**7.4 Approval of Indemnity by Neighborhood Association.** On written request to the Neighborhood Board by any person seeking indemnification hereunder, the Neighborhood Board shall promptly determine in accordance with Corporations Code Section 7237(e), whether the applicable standard of conduct set forth in Corporations Code Section 7237(b) or Section 7237(c) has been met, and if it has, the Neighborhood Board shall authorize indemnification. If the Neighborhood Board cannot authorize indemnification because the number of Directors who are parties to the proceeding with respect to which indemnification is sought prevents the formation of a quorum of Directors who are not parties to the proceeding, the Neighborhood Board shall promptly call a meeting of Members. At that meeting, the Members shall determine under Corporations Code Section 7237(e) whether the applicable standard of conduct set forth in Corporations Code Section 7237(b) or Section 7237(c) has been met, and if it has, the Members present at the meeting in person or by proxy shall authorize indemnification.

**7.5 Advancement of Expenses.** To the fullest extent permitted by law and except as is otherwise determined by the Neighborhood Board in a specific instance, expenses incurred by a director, officer, employee or agent seeking indemnification under Sections 7.1.2, 7.2, 7.2 and 7.3, 7.3 of this Article in defending any proceeding covered by those Sections shall be advanced by the Neighborhood Association before final disposition of the proceeding, on receipt by the Neighborhood Association of an undertaking by or on behalf of that person that the advance will be repaid unless it is ultimately determined that the person is entitled to be indemnified by the Neighborhood Association for those expenses.

**7.6 Insurance.** The Neighborhood Association shall have the power to purchase and maintain insurance on behalf of its directors, officers, employees or other agents against other liability asserted against or incurred by any director, officer, employee or agent in such capacity or arising out of the director's, officer's, employee's or agent's status as such.

## ARTICLE 8 - AMENDMENTS

**8.1 Bylaws.** These Bylaws may be amended by the vote or written consent of a majority of the voting power of the Neighborhood Association.

8.1.1 Notwithstanding the foregoing, the percentage of a quorum or of the voting power of the Neighborhood Association necessary to amend a specific

clause or provision in these Bylaws shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause or provision.

- 8.1.2 Anything herein stated to the contrary notwithstanding, no amendment described in Section 14.2 of the Restated Neighborhood Restrictions ("material amendment") may be made to these Bylaws without the prior written consent of Eligible Lenders who represent at least fifty-one percent (51%) of the votes of Lots which are subject to mortgages held by such Eligible Lenders.
- 8.1.3 An addition or amendment to this document shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only.
- 8.1.4 An Eligible Lender who receives a written request to consent to additions or amendments requiring consent under this provision who does not deliver or post to the requesting party a negative response within thirty (30) days after such receipt shall be deemed to have consented to such request, provided that notice was delivered by certified or registered mail, with a "return receipt" requested to the address provided by such Eligible Lender. No Lender may charge a fee in connection with reviewing a request for a response. Any response from a Lender which only requests a fee for review shall not be deemed a "negative response" for the purposes of determining Lender consent within the meaning of this Section.

**8.2 Articles.** Except as hereinafter provided, amendments to the Articles may only be adopted by a majority vote of the Neighborhood Board and a vote of the Members entitled to exercise a majority of the voting power of the Neighborhood Association (which vote may be taken at a meeting of the Members or by written ballot), except that amendments to Article 6 of the Articles shall also require the written consent of a majority of all First Lenders, as of the time of recording such amendment, who have requested, in writing, that the Neighborhood Association notify such First Lenders of any proposed action that requires the consent of a specified percentage of such First Lenders. The Secretary of the Neighborhood Association shall cause any such amendments to be filed with the Office of the Secretary of State for the State of California.

**ARTICLE 9 - CORPORATE SEAL**

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

**CERTIFICATION OF SECRETARY OF FAIRWAY HEIGHTS II OWNERS' ASSOCIATION, INC., a California Nonprofit Mutual Benefit Corporation**

I, the undersigned, do hereby certify that I am the duly elected Secretary of FAIRWAY HEIGHTS II OWNERS' ASSOCIATION, INC., a California non-profit mutual benefit corporation, also known as PARVIEW ESTATES. The foregoing Amended and Restated Bylaws of said Neighborhood Association constitute the fully amended and restated Bylaws as approved by the membership of the Neighborhood Association.

DATED: \_\_\_\_\_

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

**EXHIBIT "A" - LEGAL DESCRIPTION**

Lots 7 through 108 inclusive, of BERNARDO HEIGHTS UNIT NO. 20, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 11099, filed in the Office of the County Recorder of San Diego County, California, December 6, 1984.



BERNARDO HEIGHTS - UNIT NO. 20 11099

BASIS OF BEARINGS OF LOTS OF MAP NO. 448 SHOWING ON A

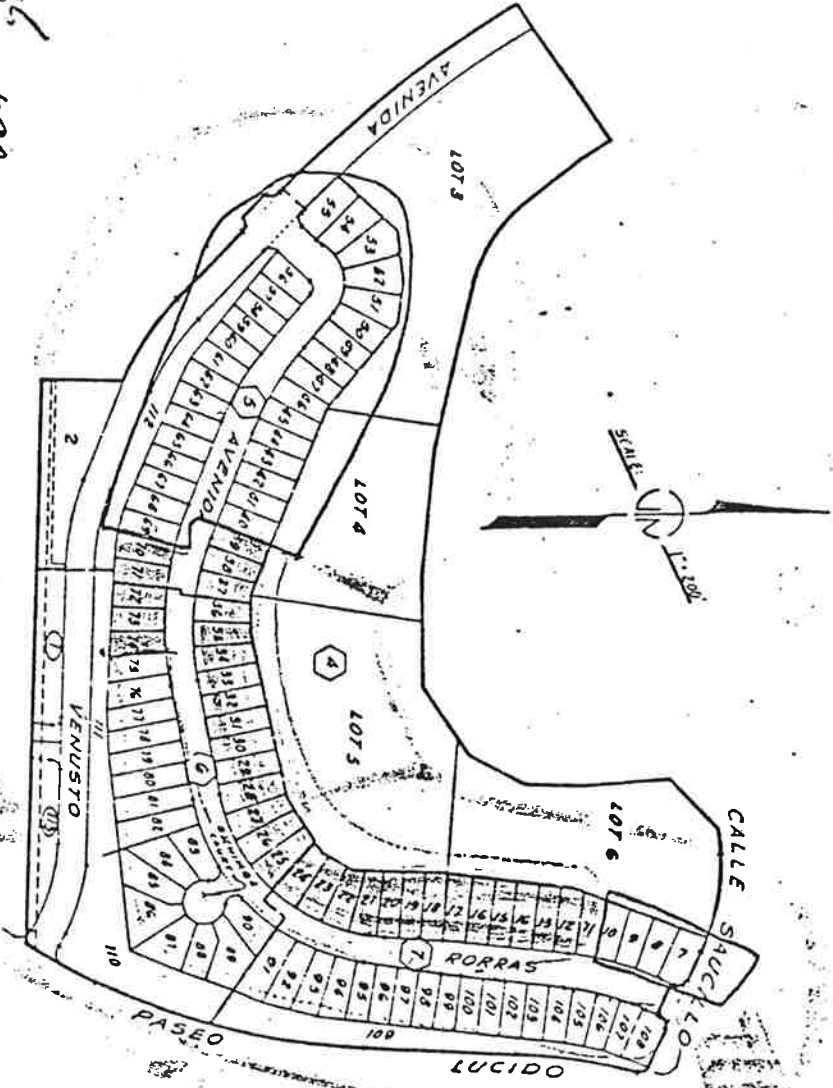
Building & Neighborhood Organization

LE 711N

#10-69

7-26 & 91-108

27-39 & 70-90



SHEET INDEX  
④ INDICATES SHEET NUMBER  
--- INDICATES SHEET LIMITS

3/25/85

to GA  
disseminated clear of Easements  
12/84

Phase I 75-108

Phase I

Phase II

lots 75-108 as #84-181820 @ 12/25/84

lots 40-69 as 7-10 as #85-142684 @ 4/25/85

lots 70-74 as 11-39 as #85-426674 @ 11/13/85

NOTES

1. ALL LOTS ARE 50' x 100'.
2. ALL LOTS ARE 50' x 100'.
3. ALL LOTS ARE 50' x 100'.
4. ALL LOTS ARE 50' x 100'.
5. ALL LOTS ARE 50' x 100'.
6. ALL LOTS ARE 50' x 100'.
7. ALL LOTS ARE 50' x 100'.
8. ALL LOTS ARE 50' x 100'.
9. ALL LOTS ARE 50' x 100'.
10. ALL LOTS ARE 50' x 100'.

Approved  
Planning Dept  
# of 34

34

34

102

