

This instrument is certified to be a true and exact copy of the original instrument recorded on May 11, 1983 in the office of the Recorder of Deeds, County of San Diego, California, Book 83-155911, Page 30.

Recording Requested by:)
)
 Owner)
)
 When Recorded Mail to:)
 Genstar Development Inc.)
 (Penasquitos Properties)
 Division)
 c/o Jenkins & Perry)
 A Professional Corporation)
 1900 Central Federal Tower)
 225 Broadway)
 San Diego, California 92101)
)
 Attn: Arthur G. Peinado, Esq.)

By A. Brown
 By Authorized Signature

Space Above For Recorder's Use

FAIRWAY POINTE PLANNED DEVELOPMENT
 DECLARATION OF RESTRICTIONS

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DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS is made and executed by GENSTAR DEVELOPMENT INC., a New York corporation (PENASQUITOS PROPERTIES DIVISION), herein referred to as "Declarant" (more specifically defined in Article 1 hereof).

WITNESSETH THAT :

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

Lots 1 through 87, inclusive, of BERNARDO HEIGHTS UNIT NO. 9 RESUBDIVISION, according to Map thereof No. 10434, filed in the Office of the County Recorder of San Diego County, California, on July 19, 1982.

WHEREAS, Declarant will create, on the property described above, a Planned Development pursuant to California Business and Professions Code Section 11003.

WHEREAS, Declarant is about to sell and convey portions of the property described above and Declarant desires and intends to hereby subject said property to mutual, beneficial restrictions under a general plan or scheme of improvement for the benefit of said property and of the future owners thereof.

NOW, THEREFORE, Declarant hereby declares that all of the property described above is held by Declarant and shall be owned, held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and/or improved subject to the limitations, restrictions, conditions and covenants herein set forth, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of said property and are established and agreed upon for the purposes of enhancing and protecting the value, desirability and attractiveness of said property and every part thereof. All of the limitations, restrictions, conditions and covenants herein set forth shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in said property or any part thereof.

ARTICLE 1 - Definitions

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

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

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

1.1.3 "Building Area" shall mean, with reference to each Lot, that portion of such Lot upon which the Owner thereof may construct a dwelling and garage, subject to (i) all setback and other requirements of the City of San Diego and (ii) all of the requirements set forth in Article 6 of this Declaration. The Building Area as to each Lot is designated on Exhibit A attached hereto.

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

1.1.5 "Bylaws" shall mean the Bylaws of the Association as said Bylaws may from time to time be amended.

1.1.6 "Community" shall mean and refer to the Community of Bernardo Heights of which the Project is a constituent part, being all of the real property subject to the Community Declaration or annexed thereto.

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

1.1.8 "Community Articles" shall mean and refer to the Articles of Incorporation of the Community Association, as they may, from time to time, be restated and/or amended.

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

1.1.10 "Community Association" shall mean and refer to The Community Association of Bernardo Heights, a California nonprofit mutual benefit corporation, as established pursuant to the Community Articles and as described in the Community Declaration.

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

1.1.12 "Community Bylaws" shall mean and refer to the Bylaws of the Community Association as duly adopted by the Community Board and as the same may, from time to time, be amended.

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

1.1.14 "Community Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions for the Community of Bernardo Heights, recorded on September 30, 1980, Official Records of San Diego County, as File/Page No. 80-319018, that certain First Amendment to Declaration of Covenants, Conditions and Restrictions, recorded on July 31, 1981, Official Records of San Diego County, as File/Page No. 81-243645, and such further amendments thereto as shall from time to time be recorded.

1.1.15 "Community Member" shall mean and refer to any person holding membership in the Community Association.

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

1.1.17 "Declarant" shall mean (i) Genstar Development Inc., a New York corporation (Penasquitos Properties Division), and (ii) any successor in interest of Genstar Development Inc., a New York corporation (Penasquitos Properties Division), to whom all or any of the rights of Declarant under the Articles, Bylaws and this Declaration have been transferred and who is (a) a grantee under a deed executed and delivered prior to the conveyance of the first Lot (defined below) which conveys the entire Project (defined below) or (b) a grantee under a deed conveying two or more Lots. Notwithstanding the provisions of the Article hereof entitled "Amendment" to the contrary, this paragraph may not be amended without the approval of Declarant.

1.1.18 "Declaration" shall mean this instrument, as the same may from time to time be amended pursuant to the Article entitled "Amendment."

1.1.19 "Lots" shall mean all of Lots 1 through 22 and Lots 24 through 83, inclusive, described above; "Lot" shall mean any one of the Lots.

1.1.20 "Member" shall mean an Owner, as defined hereinbelow, entitled to membership in the Association. Membership

shall be appurtenant to and may not be separated from ownership of a Lot.

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

1.1.22 "Open Space" shall mean the common area and shall consist of (i) Lots 23, 84, 85, 86 and 87, described above, (ii) those certain easements affecting portions of Lots 24 and 76 through 83, inclusive, for purposes of slopes (including rights to maintain and landscape the same) in favor of the Association which easements are more particularly described in Exhibit B attached hereto and (iii) the perimeter wall described in Paragraph 5.1. Lots 84, 85, 86 and 87 are sometimes hereinafter collectively referred to as the "Private Street Lots."

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

1.1.24 "Project" shall mean the Fairway Pointe Planned Development, encompassing both the Lots and the Open Space.

ARTICLE 2 - Use

2.1 As to Lots 1 through 22 and Lots 24 through 83, inclusive, and each of them:

2.1.1 None of the Lots shall be used for other than single-family residential purposes; provided, however, that domestic employees may live thereon. No buildings or structures shall be erected, altered, placed or permitted to remain on any of the Lots other than (i) one single-family dwelling (hereinafter "dwelling"), (ii) a private garage for not fewer than two cars nor more than four cars and (iii) other customary appurtenances incidental to the residential use of a Lot. No commercial trade, activity or business shall be carried on upon any Lot.

2.1.2 No structure of a temporary character, trailer, basement, tent, garage or other outbuilding shall be used on any Lot, at any time as a residence, either temporarily or permanently; nor shall any prefabricated, preconstructed or used building be set or moved upon any Lot. 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 a dwelling on any Lot, provided that any such trailer, outbuilding or structure shall be removed forthwith upon the completion of any such dwelling.

2.1.3 No truck, truck "cab," tractor, camper, motor home, trailer, boat or sea-going vessel of any kind, or other multi-purpose engine-powered vehicle other than a standard passenger automobile or golf cart in good operating condition shall be parked on any Lot, without the prior written consent of the Architectural Control Committee, except (i) within the garage on such Lot, or (ii) temporarily and solely for the purpose of loading or unloading, without the prior written consent of the Architectural Control Committee. No vehicle or boat shall be constructed or repaired upon any Lot nor shall any inoperable vehicle be stored or allowed to remain on any Lot, except within a garage. Provided, further, 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 daylight hours.

2.1.4 No noxious or offensive activity shall be carried on upon any of the Lots, nor shall anything be done thereon which may be or may become an annoyance or nuisance to any Owner. For example, no external speakers, bells or horns shall be permitted on any Lot except burglar or fire alarms, nor shall any Owner store or permit to be stored upon its Lot such quantities of manure, composting materials and decaying vegetation matter in such quantities as to constitute a nuisance to any other Owner.

2.1.5 No sign of any kind, except that of a customary "For Sale" or "For Rent" sign of reasonable dimensions, shall be displayed to the public view on any of the Lots; provided, however, that any Owner displaying a "For Sale" or "For Rent" sign shall, in good faith and using its reasonable best efforts, endeavor to effect the sale or rental of its Lot, as the case may be. Notwithstanding the foregoing, Declarant may display or post any signs, flags, poles or other objects on any Lot(s) owned by it, which it, in its sole discretion, deems appropriate in connection with its sale of Lots within the Project until it has sold all of the Lots owned by it. Anything in the Article entitled "Amendment" to the contrary notwithstanding, this paragraph shall not be amended, modified or rescinded as long as Declarant is the Owner of any Lot without the (i) prior written consent of Declarant and (ii) recording of said written consent in the Office of the County Recorder of San Diego County, California.

2.1.6 All tools, equipment, refuse cans and other containers shall be kept screened and concealed from view from any of the Lots or the Open Space.

2.1.7 No rubbish, brush, weeds, undergrowth or debris of any kind or character shall be placed upon or be permitted to accumulate upon any Lot which create a fire hazard or unsanitary, unsightly, offensive or detrimental conditions upon that Lot or upon other property in the vicinity or which is unsightly,

offensive or detrimental to the occupants of any property in the vicinity. Should the provisions of this paragraph be violated, Declarant or the Association, after 30 days prior written notice to the Owner of the Lot to do so, may enter upon such Lot and remove such rubbish, brush, weeds, undergrowth and/or debris and assess said Owner for the cost of such removal.

2.1.8 No well, appliance or structure for the production of, or from which there is produced, oil or gas, shall be placed, maintained or operated upon any Lot. No drilling, mining or digging for any minerals or other subterranean substance shall be permitted on any Lot.

2.1.9 No Lot shall be subdivided or split into more than one lot or parcel. Nothing contained in the foregoing sentence shall be construed to preclude the Owners of adjoining Lots from adjusting, by lawful process, the common boundary between such Lots.

2.1.10 No Owner shall, except with the prior written approval of the Architectural Control Committee, in any way interfere with the established drainage pattern over such Owner's Lot from any adjacent or adjoining Lots, and each Owner will make adequate provisions and be responsible for any such approved change to the established drainage over such Owner's Lot. "Established drainage" shall mean the drainage pattern existing over the Lot at the time the Lot in question was conveyed by Declarant to the Owner thereof. The Owner of each Lot shall be responsible for reasonably maintaining any drainage channel, cut, swale, berm and control facilities situated on its Lot and shall otherwise be responsible for effecting proper drainage controls on its Lot.

2.1.11 No animals other than commonly accepted household pets in the numbers specified below may be kept, raised, or bred upon any Lot. Said household pets shall be limited to (i) any number of birds, (ii) any number of fish, (iii) two domesticated cats and (iv) two domesticated dogs. No animal may be kept on any Lot for commercial purposes. All permitted animals shall be housed and/or kept within appropriate cages, aquariums or fencing. No animal shall be permitted to go or wander onto any Lot other than the Lot owned by the person owning such animal. DATE

2.1.12 No lines, wires, antennae or other devices for the reception, communication or transmission of electric current or power, including telephone, television and radio signals, shall be constructed, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables constructed, placed or maintained underground or concealed in, under or on other approved structures or improvements. Nothing herein shall be deemed to forbid the erection and use of

temporary power or telephone services incident to the construction of approved structures or improvements.

2.1.13 Any exterior electrical, gas or other artificial lighting installed on any Lot shall be positioned, screened or otherwise directed or situated so that the filament, bulb, flame or other light source shall not be directly visible from any other Lot or from within any dwelling on any other Lot and shall be of such controlled focus and intensity so as not to unreasonably disturb the residents of any other Lot(s).

2.1.14 Each Owner shall maintain and keep in good condition and repair all improvements upon its Lots, including all landscaping. Provided, however, that the Association shall have the right and power to trim, repair and clean up the landscaping of an Owner's Lot at the sole expense of such Owner if, within 30 days after delivery to such Owner of the Architectural Control Committee's written demand that such Owner properly maintain, trim, repair and/or clean up its Lot, such Owner fails, refuses or neglects to comply with such demand. Each Owner shall maintain all graded slope banks located on such Owner's Lot so as to prevent erosion and to create a neat and attractive appearance, excepting therefrom any slope banks lying within the Open Space. No structure, landscaping or other material shall be placed or permitted to remain or other activities undertaken on any slope bank located on any Lot which may damage or interfere with established slope ratios, create erosion or sliding problems, or obstruct, retard or change the direction of the flow of water through drainage channels. Any portion of a Lot from which the natural vegetation is removed shall be landscaped by the Owner of the Lot, and said landscaping shall be maintained so as to prevent erosion and to create a neat and attractive appearance. The Architectural Control Committee shall determine compliance with the provisions of this paragraph, and each Owner shall promptly comply with all directives issued by the Architectural Control Committee in order to implement the provisions of this paragraph.

2.1.15 The Association, Declarant or both, shall have the right at all times to enter onto any Lot that is vacant and unlandscaped, after reasonable notice to the Owner thereof, and without charge to the Owner thereof, to (i) place landscaping within 20 feet of any Lot line and thereafter periodically maintain, remove or replace said landscaping and (ii) maintain, remove or replace any existing natural vegetation growing within 20 feet of any Lot line. Neither the Association nor Declarant nor any agent of either or both shall thereby be deemed guilty of any manner of trespass. If the Owner of a Lot so planted or maintained shall give written notice to the Association, Declarant or both (after the requisite approvals of the Architectural Control Committee have been obtained pursuant to Article 6) of its intention to commence construction of a residence

on the Lot, the Association, Declarant or both may, during the 30-day period following such notice and thereafter until such construction is commenced by the Owner, transplant, remove or dispose of any or all of the landscaping previously placed thereon by the Association, Declarant or both. If the Association or Declarant or an agent of either or both fails to so transplant, remove or dispose of such landscaping, such landscaping shall be and become, as of the end of such 30-day period (or the commencement of such construction if such commencement occurs after such 30-day period), the property of the Owner of such Lot which Owner may dispose of such landscaping in any way it deems appropriate.

2.1.16 The Association and Declarant, either separately or together, reserve the right to enter upon any Lot at any reasonable time to inspect for and control all landscaping for infection or disease, any infestation by insects or other pests. If, after reasonable notice to the Owner of a Lot by the Association, Declarant or both of the existence on the Lot of infected or diseased landscaping or infestation by insects or other pests, the Owner of the Lot fails to take such measures for the eradication or control of the same as the Association, Declarant or both deem(s) necessary, the Association, Declarant or both or its or their agent(s) may thereupon enter on the Lot and destroy or remove such landscaping, insects or other pests, or take such other measures as may be deemed necessary in the opinion of the Association, Declarant or both to protect the surrounding Lots from the spread of such infection, disease or infestation.

2.1.17 The doors of any garage located on any Lot shall be closed at all times other than when a vehicle is entering or leaving the garage.

2.1.18 No water softener, air-conditioning system or pool equipment shall be installed or maintained for use in any building or pool on any Lot, unless each, (i) discharges directly into the public sewage system and (ii) is appropriately screened from exterior view. The type of water softener, air-conditioner and pool equipment, and a plan for screening and for proper noise control of each shall first be approved by the Architectural Control Committee.

2.1.19 Nothing shall be done or kept on any Lot which would (i) increase the rate of insurance on any property insured by the Association without the prior written approval of the Board of Directors, (ii) result in the cancellation of insurance on any property insured by the Association or which would be in violation of any law, (iii) cause any structure in the Project to be uninsurable against loss by fire or the perils covered under the extended coverage policy(ies) of hazard insurance which each Owner is required to keep in force pursuant to the Article hereof

entitled "Destruction; Insurance," or (iv) cause any policy or policies representing such insurance to be cancelled or suspended or the company issuing the same to refuse the renewal thereof.

2.1.20 No outside clotheslines or other outside clothes drying or airing facilities shall be erected or maintained on any Lot so as to be visible from any of the Lots or the Open Space.

2.1.21 No screen or aluminum door shall be placed or maintained by any Owner over the front door of any Owner's dwelling nor shall any aluminum foil or aluminum or metal awnings be placed or maintained on top of or over any window or door by an Owner so as to be visible from any Lot or the Open Space.

2.1.22 No solar energy system, or any portion thereof, which will be situated on the exterior of a dwelling or elsewhere on a Lot so that it will be visible from any other Lot or the Open Space, shall be installed without the prior written approval of the Architectural Control Committee of plans and specifications for such system. The Architectural Control Committee may disapprove any such solar energy system or portion thereof which it, in its sole discretion, determines will be unsightly from any other Lot or the Open Space, provided that there are alternatives of comparable cost available to the Owner proposing such disapproved system.

2.1.23 No Owner shall lease or rent less than its entire Lot. No Owner shall lease or rent its Lot for a term of less than 30 days, except an Owner who is a lender in possession of a Lot following (i) a default in a first mortgage, (ii) a foreclosure proceeding or (iii) any deed or other arrangement in lieu of foreclosure. Other than the foregoing, there shall be no restriction on the right of any Owner to lease or rent its Lot. An Owner shall be responsible for any act(s) of any tenant or other occupant of such Owner's Lot which constitute(s) a breach of the provisions of the Articles, the Bylaws, this Declaration or rules and regulations issued by the Board of Directors.

2.1.24 An Owner whose dwelling has been damaged or destroyed by fire or other calamity shall promptly and diligently cause such dwelling to be repaired or restored. This obligation shall not extend to the installation of furniture and the like, but is for the purpose of preventing unsightliness caused by such damage or destruction and any resultant health or safety problems to other Owners within the Project and to the public.

2.1.25 The Association, the Architectural Control Committee and their agents have and shall have a nonexclusive easement over and across each Lot in order to enforce the provisions of this Article 2 and to bring any Lot into compliance with any provision of this Declaration. An Owner shall be liable,

pursuant to Paragraph 5.3, for any expenses incurred by the Architectural Control Committee in bringing such Owner's Lot into compliance.

2.2 As to the Open Space:

2.2.1 Open Space Lots 84, 85, 86 and 87 shall be improved as private streets and used only for (i) vehicular and pedestrian movement within the Project, including access to the Lots, (ii) vehicular parking in areas designated by the Board of Directors, (iii) construction, maintenance and repair of an automatic traffic gate and appurtenant machinery and/or guard house, (iv) construction, maintenance and repair of other security or emergency devices deemed necessary or desirable by Declarant or the Association, and (v) beautification of the Project and providing privacy to the residents thereof. Each Owner has and shall have a nonexclusive easement of reasonable dimensions (subject to the Architectural Control Committee's prior written approval) over the sidewalk and Parkway (defined in Subparagraph 2.2.3) portions of the Private Street Lot adjoining such Owner's Lot for the purposes of constructing and maintaining a driveway. In the course of the construction of a driveway for its Lot, each Owner shall (i) make or cause to be made necessary curb cuts and (ii) remove or cause to be removed portions of sidewalk and Parkway which will be replaced by such driveway. All of such construction and maintenance shall be at the respective Owner's sole cost. Any damage to sidewalks and Parkways (including landscaping thereon) not to be replaced by the driveway and caused by the act or omission of such Owner, its agents, employees, contractors or contractors' subcontractors, shall be repaired or replaced immediately by such Owner, at its cost to the satisfaction of the Architectural Control Committee. A non-exclusive easement upon and across said Private Street Lots for accepting and draining rainwater from each Lot is and shall be appurtenant to each Lot. The Private Street Lots shall be subject to such easements.

2.2.2 That portion of the Open Space designated as Lot 23 shall be used only for the beautification of the Project and pedestrian movement thereon by the residents of the Project, their guests and invitees. A nonexclusive easement over and across said Lot 23 for ingress and egress is and shall be appurtenant to each Lot; Lot 23 is and shall be subject to such easements.

2.2.3 The Association shall operate, control and maintain the Open Space. "Parkways" shall mean (i) where there are sidewalks adjacent to Lots, those portions of the Private Street Lots running roughly parallel to and between the sidewalks and the nearest curb of such streets and (ii) where there are no sidewalks adjacent to Lots, those portions of the Private Street Lots running roughly parallel to and between the nearest curb of

such streets and adjacent Lots. The Parkways, where there are sidewalks adjacent to Lots, shall be landscaped by Declarant. The Association shall maintain all sidewalks and the Parkways where there are sidewalks adjacent to Lots, except as hereinabove provided with respect to damage to Parkways or sidewalks caused by an Owner, its agents, employees contractors or contractors' subcontractors. The Association has and shall have a nonexclusive easement over each Lot for the purposes of maintaining sidewalks and Parkways adjacent to such Lot. The Parkways, where there are no sidewalks adjacent to Lots, shall be landscaped and maintained by the Owners of adjacent Lots so that each Owner of an adjacent Lot shall landscape and maintain that portion of such Parkways lying adjacent to such Owner's Lot and within the boundaries formed by such Owner's Lot line (which runs roughly parallel to the adjacent street), the nearest curb of such street and the prolongation of such Lot's side boundary lines to such curb, and each such Owner has and shall have a nonexclusive easement over such portion of such Parkways for the purposes of landscaping and maintaining the same. All such landscaping for which an Owner will be responsible shall be subject to all of the requirements set forth in Article 6 of this Declaration.

2.2.4 No activity shall be carried on in the Open Space which shall be contrary to rules and regulations adopted by the Board of Directors relating to use of and activity in the Open Space.

2.2.5 No portion of the Open Space shall be used for any purpose or in any manner which shall (i) increase the rate of insurance on any property insured by the Association, without the prior written approval of the Board of Directors, (ii) result in the cancellation of insurance of any property insured by the Association or which would be in violation of any law, (iii) cause any structure in the Project to be uninsurable against loss by fire or the perils covered under the extended coverage policy(ies) of hazard insurance which each Owner is required to keep in force pursuant to the Article hereof entitled "Destruction; Insurance," or (iv) cause any policy or policies representing such insurance to be cancelled or suspended or the company issuing the same to refuse renewal thereof.

2.2.6 No Owner shall make any alteration or improvement to the Open Space, or remove any landscaping, structure, personalty or other object therefrom except with the written consent of the Board of Directors or as provided herein.

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

2.2.8 No automobile, truck, truck "cab," tractor, bus, motorcycle, trailer (including any house trailer), recreational vehicle, van, camper, camper shell, motor home, mobile home, dune buggy, boat, sailboat, yacht or other vehicle, sea-going vessel or equipment of any kind shall be parked, stored, deposited, maintained, repaired or otherwise kept on or in the Open Space, and no dismantled or wrecked vehicle (including portions thereof), sea-going vessel or equipment shall be parked, stored, deposited, maintained, repaired or otherwise kept in the Open Space except as permitted by rules and regulations adopted by the Board of Directors. Nothing herein shall in any manner limit or prohibit the Board of Directors from adopting regulations allowing guest parking in the Open Space.

2.2.9 No sign of any nature shall be displayed or posted by an Owner in the Open Space. Notwithstanding the foregoing, Declarant may display or post any sign, flags, poles or other objects in the Open Space which Declarant in its sole discretion deems appropriate in connection with its sale of Lots, until Declarant has conveyed the last Lot in the Project. Anything in the Article entitled "Amendment" to the contrary notwithstanding, this paragraph shall not be amended, modified or rescinded prior to the conveyance by Declarant of the last Lot in the Project without the (i) prior written consent of Declarant and (ii) recording of said written consent in the Office of the County Recorder of San Diego County, California.

2.2.10 No radio or television antenna, or radio or television transmitter tower or facility of any kind shall be constructed, erected or otherwise placed in the Open Space, excepting therefrom any underground facility for cable television which may be contracted for in accordance with an agreement entered into between the Association (or the Declarant for the benefit of the Association) and a cable television company, provided such cable television services will be made available to each and every Lot.

2.3 If any portion of the roof of any dwelling on a Lot encroaches on any adjoining Lot or the Open Space, a valid easement for said encroachment (including, without limitation, the right of drainage of rainwater from said roof onto such Lot) and for the maintenance of same, so long as it stands, shall and does exist.

**ARTICLE 3 - Ownership of Open Space and of
Beneficial Interest in Common Personality**

3.1 The Association shall be and become the owner of the fee estate in and to Lots 23, 84, 85, 86 and 87 and of those certain easements for purposes of slopes more particularly described in attached Exhibit B, all prior to or concurrently with the first conveyance by Declarant of a Lot to an Owner.

3.2 Notwithstanding anything contained in this Declaration to the contrary, Declarant, for itself and its successors in interest, hereby reserves a nonexclusive easement over, under, upon and across the Open Space for common driveway purposes, drainage and encroachment purposes and for ingress and egress, all for Declarant's reasonable use in completing the improvements and performing necessary repair work within the Project, said reservation of easement becoming effective concurrently with the conveyance by Declarant to the Association of the Open Space without necessity of Declarant setting forth such reservation in the deed with respect to said conveyance. Said reservation of easement shall expire and be of no further force and effect ten years after the date on which this Declaration has been recorded. Notwithstanding the Article entitled "Amendment," no amendment, revocation or rescission of said reservation of easement may be had prior to the conveyance by Declarant (or its successor) of the last Lot without the (i) written consent of the Declarant and (ii) recording of such consent in the Office of the Recorder of San Diego County, California.

3.3 The 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. The transfer of such personal property by the Association pursuant to the Bylaws shall transfer title thereto free and clear of any claim on the part of any Owner.

ARTICLE 4 - Planned Development Character of Project

4.1 The Project is and has been developed as a planned development pursuant to California Business and Professions Code Section 11003.

4.2 The Open Space shall remain in the ownership and control of the Association and there shall be no judicial partition thereof. Nothing herein shall be deemed to prevent partition of a co-tenancy in a Lot other than the Open Space.

4.3 Except as set forth in this Article, neither the Owners nor the Association shall, by act or omission, without the prior written consent of at least two-thirds of all first Mortgagees (based upon one vote for each first mortgage or first deed of trust owned) be entitled to:

(i) Abandon or terminate the planned development character of the Project;

(ii) Partition, subdivide, encumber, sell or transfer the Open Space or the improvements thereon; provided, however, the granting of easements for public utilities or for other public purposes consistent with the intended use of the

Open Space shall not be a transfer within the meaning of this clause;

(iii) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

(iv) 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 maintenance and upkeep of the Open Space and the improvements thereon;

(v) Fail to maintain insurance coverage under an extended coverage hazard policy(ies) against loss by fire and perils with respect to all insurable improvements located in the Open Space and all insurable personalty owned by the Association in an amount not less than 100 percent of the insurable value (based on then current replacement costs) of said improvements and of said personalty as determined annually by an insurance carrier selected by the Board of Directors pursuant to this Declaration; or

(vi) Use hazard insurance proceeds for losses to said improvements located in the Open Space and/or said personalty owned by the Association for other than the repair, replacement or reconstruction of said improvements and/or personalty.

ARTICLE 5 - The Association

5.1 The Association is, effective upon the recordation hereof, the "management body" to provide for the management, control, maintenance, architectural control and preservation of the Project, all as more specifically set forth in this Declaration, the Articles, the Bylaws and the regulations from time to time adopted by the Board of Directors. The Association is hereby granted, a nonexclusive easement over, upon and across each of Lots 24 through 65, inclusive, and 67 through 83, inclusive, for the purposes of erecting, maintaining, repairing and, from time to time, rebuilding a perimeter wall to be constructed around the Project by Declarant (the right and license to construct and repair such wall being hereby reserved by Declarant). Said perimeter wall shall be, for all purposes under this Declaration and the Bylaws, part of the Open Space.

5.2 Each Owner shall be and become a Member of the Association contemporaneously with its acquisition of a Lot (whether such acquisition occurs by (i) conveyance of a Lot by Declarant, (ii) voluntary transfer, assignment or conveyance of a Lot or (iii) involuntary transfer of a Lot, including without limitation

by reason of the death of an Owner, or (iv) foreclosure [by trustee's power of sale or by judicial process] of a deed of trust or other lien on a Lot) without necessity of documentation or other action, of any kind, by any person. The Board of Directors may require that any person acquiring a Lot notify the Association in writing of such acquisition so as to facilitate accurate record keeping of the membership. Where two or more persons hold or own a Lot, as joint tenants or otherwise, they shall constitute a single Member.

5.3 In addition to all other rights, powers and duties possessed by and vested in the Board of Directors under this Declaration, the Articles and the Bylaws, the Board of Directors shall possess and be vested with the right and power to (i) impose reasonable monetary penalties, in such amounts as determined by the Board of Directors in its sole discretion, against an Owner and (ii) seek reimbursement for costs as follows:

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

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

5.4 The imposition of a monetary penalty pursuant to Paragraph 5.3 must be done in good faith and in a fair and reasonable manner. The Owner must be given 15 days' prior notice of the imposition of a monetary penalty. Said notice must set forth reasons for the imposition of the monetary penalty and may be given by any method reasonably calculated to provide actual notice. Any notice given by mail must be given by first-class, registered or certified mail sent to the last address of the Owner shown on the Association's records. The Owner must be provided an opportunity to be heard, orally or in writing, not less than five days before the effective date of the imposition of each monetary penalty by a properly convened meeting of the Board of Directors. Any such breach which is not remedied in the calendar month in which a monetary penalty is imposed against an Owner by reason thereof shall, until fully remedied, be deemed to constitute a new breach in each succeeding calendar month for

which the Board of Directors may in each such calendar month impose a new monetary penalty pursuant to this paragraph.

ARTICLE 6 - Construction of Dwelling and
Installation and Landscaping; Architectural Control

6.1 An Architectural Control Committee, consisting at all times, of three persons, shall be formed as set forth below and in the Bylaws, for the purposes of performing its duties as described in this Declaration and the Bylaws and as may be delegated to it, from time to time, by the Board of Directors. The original Architectural Control Committee shall be appointed by Declarant. Thereafter, the Architectural Control Committee shall be appointed in accordance with the Bylaws (subject to Declarant's rights herein reserved). Declarant hereby reserves to itself the power to appoint a majority of the members of the Architectural Control Committee until (i) 90 percent of the Lots have been sold by Declarant or (ii) the fifth anniversary of the original issuance by the California Department of Real Estate of a Final Subdivision Public Report for the Project, whichever first occurs. 1/21/16, 12/16/16

6.2 No building, fence, wall, structure or improvement of any type shall be constructed, erected, placed or painted, repainted, refurbished or altered nor shall any established drainage (as defined in Paragraph 2.1.10) be altered, until the building or alteration plans, specifications, location plat and color scheme thereof have been approved by the Architectural Control Committee. The Architectural Control Committee may provide guidelines for the preparation, submission and review of plans, specifications, plats and schemes, which guidelines may be amended by the Architectural Control Committee at any time. In preparing these guidelines and reviewing any such plans, specifications, plats and schemes the Architectural Control Committee may take into account (i) the quality of workmanship and materials to be used, (ii) harmony of external design with existing structures in the Project (iii) the interference, or potential for interference with the view from, or solar access to, any Lot by reason of the height, size and/or location of the proposed structure or improvements, and (iv) compliance with this Declaration. In the event the Architectural Control Committee fails to approve or disapprove any such plans, specifications, plats or schemes within 30 days after all documents and information requested by the Architectural Control Committee have been received by the Architectural Control Committee, the Owner requesting said approval may submit a written notice to the Architectural Control Committee advising the same of its failure to act. If the Architectural Control Committee fails to approve or disapprove any such plans, specifications, plats or schemes within 15 days after the receipt of said notice from such Owner, said plans, specifications, plats or schemes shall be incontrovertibly deemed to be approved.

6.3 Other than the landscaping installed pursuant to the plans approved by the Architectural Control Committee pursuant to Paragraph 6.5, no Owner shall plant or emplace any tree, bush or plant which at maturity, and without clipping or pruning thereof, would exceed the height of three feet until the plans and specifications for the placement of any such trees, bushes, shrubs or plants have been submitted to and approved in writing by the Architectural Control Committee. Said plans shall show in detail the proposed elevations and location of said trees, bushes, shrubs or plants, including the locations and elevations of the same in relation to other Lots. Said plans may be disapproved by the Architectural Control Committee if in the reasonable opinion of the Architectural Control Committee the view of any Lot would be substantially impaired by the height, size and/or location of such planting or in any other manner. The Architectural Control Committee shall have the right to require any Owner to remove, trim, top or prune any tree or shrub which in the reasonable belief of the Architectural Control Committee substantially impairs the view from any Lot. In the event the Architectural Control Committee fails to approve or disapprove any such landscaping plans within 30 days after all documents and information requested by the Architectural Control Committee have been received by the Architectural Control Committee, the Owner requesting said approval may submit a written notice to the Architectural Control Committee advising the same of its failure to act. If the Architectural Control Committee fails to approve or disapprove any such landscaping plans within 15 days after the receipt of said notice from such Owner, said landscaping plans shall be incontrovertibly deemed to be approved.

6.4 Within three years immediately following the close of escrow on the purchase of a Lot from Declarant, the Owner of such Lot shall submit to the Architectural Committee, plans and specifications for the construction of a dwelling upon the Lot. Said construction shall commence within 90 days after the approval of said plans by the Architectural Control Committee, be diligently prosecuted from the commencement thereof and be completed within ten months. The Architectural Control Committee, in its sole and absolute discretion, may extend the period during which the construction of the dwelling must be completed.

6.5 Within 60 days immediately following the completion of the dwelling by such Owner, the Owner thereof shall submit to the Architectural Control Committee, landscaping plans for its Lot and, where appropriate, that portion of the Parkways adjacent to such Lot. With respect to any Lot which abuts or is adjacent to the perimeter wall described in Paragraph 5.1 above, the landscaping plans for such Lot shall provide for the installation of appropriate landscaping up to the base of said perimeter wall. The fair market value of the landscaping which such Owner proposes for all yard areas, exclusive of the cost of preparing such landscaping plans, shall be not less than \$15,000 for the

calendar year in which this Declaration is recorded. The landscaping of such Lot shall commence immediately upon the approval of the landscaping plans by the Architectural Control Committee, be diligently prosecuted from commencement, and be completed within 45 days. The Architectural Control Committee, in its sole and absolute discretion, may (i) extend the period during which said landscaping must be completed and (ii) in each calendar year following the calendar year in which this Declaration is recorded, increase the minimum requirement with respect to the fair market value of the landscaping for all yard areas of a Lot set forth above to a minimum amount which shall not exceed the minimum amount applicable in the immediately preceding calendar year by more than 20 percent.

6.6 All plans submitted to the Architectural Control Committee pursuant to Paragraphs 6.2, 6.4 or 6.5 shall be accompanied by a nonrefundable cash fee of \$200 which may be used and expended by the Architectural Control Committee as it, in its sole and absolute discretion, deems appropriate.

6.7 Any Owner proposing to construct improvements requiring the prior approval of the Architectural Control Committee shall first apply to the Architectural Control Committee for preliminary approval by submission of preliminary drawings of proposed improvements. The purpose of the preliminary approval procedure is to allow an Owner proposing to make substantial improvements an opportunity to obtain guidance concerning design considerations before expending substantial sums for plans and other exhibits required to apply for final approval. Applications for preliminary approval shall be considered and disposed of as follows:

6.7.1 Within 30 days after proper application for preliminary approval, the Architectural Control Committee shall consider and act upon such request. The Architectural Control Committee shall grant the approval only if the proposed improvement, to the extent its nature and characteristics are shown by the application, would be entitled to a final approval on the basis of a full and complete application. In the event the Architectural Control Committee fails to approve or disapprove any such preliminary plans within 15 days after all documents and information requested by the Architectural Control Committee have been received by it, the Owner requesting said approval may submit a written notice to the Architectural Control Committee advising the same of its failure to act. If the Architectural Control Committee fails to approve or disapprove any such preliminary plans within 15 days after the receipt of said notice from such Owner, said preliminary plans shall be incontrovertibly deemed approved. In granting or denying approval, the Architectural Control Committee may give the applicant directions concerning the form and substance of the final application for

approval as it may deem proper or desirable for the guidance of the applicant.

6.7.2 The giving of any preliminary approval shall not (i) affect the right of the Architectural Control Committee to deny approval of any final plans which are in substantial conformity with the approved preliminary plans or (ii) alter the time period within which plans and specifications must be submitted pursuant to Paragraph 6.4.

6.7.3 In no event shall any preliminary approval be deemed to be an approval authorizing construction of the subject improvement.

6.8 All plans and specifications for submittal to the Architectural Control Committee shall comply with the following requirements:

6.8.1 The floor area of any dwelling located on any Lot, exclusive of porches, patios, exterior stairways and garages, shall not be less than 1,800 square feet on the ground floor of a one story building, nor less than a total of 2,500 square feet for a building of two stories. No dwelling shall exceed two stories. Said square footage shall be determined by measuring from exterior walls. Cellars, basements, patios, porches and garages shall be excluded from such determination of minimum square footage.

6.8.2 The dwelling and garage constructed by an Owner on its Lot shall be located solely within the Building Area shown for such Lot on Exhibit A, except that (i) the roof or eaves of such dwelling may overhang or otherwise encroach upon a setback area and/or rear yard, provided that such overhang shall not exceed three feet in width and shall not have a total linear length in excess of 65 percent of the perimeter of the Building Area of such Lot and (ii) up to two chimneys projecting not more than three feet into a setback area and/or rear yard at each such location. Any proposed garage shall be attached to the proposed dwelling to be constructed by an Owner on its Lot.

6.8.3 Patio covers, fences, walls or other improvements accessory to the dwelling (except garage) shall be permitted on any portion of the Lot, provided all the other provisions of this Declaration are satisfied.

6.8.4 No secondhand material, except stone, brick, ornamental beams and/or similar ornamental material shall be used in the construction of any building or any structure upon any Lot. No used lumber shall be used in the construction of any building or fence on any Lot. Unless prefinished materials have been specifically approved by the Architectural Control

Committee, all buildings shall, upon completion, be painted with at least two coats of paint.

6.9 The Architectural Control Committee may authorize variances from compliance with any of the architectural provisions of this Declaration, including, without limitation, restrictions upon height, size, floor area or placement of structures or improvements or other similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances may be evidenced in writing, must be signed by at least two members of the Architectural Control Committee, and shall become effective upon recordation in the Office of The County Recorder of San Diego County. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting its use of the premises, including, but not limited to, zoning ordinances and lot setback lines or requirements imposed by the City of San Diego, California, or any other governmental authority.

6.10 The application by an Owner for review and approval by the Architectural Control Committee of any proposals, plans or other submittals by such Owner shall in no way be deemed to be satisfaction of compliance with any applicable statute, ordinance, governmental rule or regulation or public utility requirement (hereinafter collectively referred to as "additional requirements"). Provided, however, if the additional requirements are less restrictive than the provisions of this Declaration, the provisions of this Declaration shall nonetheless apply.

6.11 Prior to the commencement of any work of improvement upon any Lot, the Owner of said Lot shall deliver to the Architectural Control Committee a deposit of \$500 to guarantee that the construction site during the course of construction will be maintained reasonably free of debris at the end of each working day and that the construction will be completed and the lot drainage swales and structures will correctly drain surplus water to the street or other approved locations, all as shown on the plans and specifications submitted to the Architectural Control Committee for approval.

6.12 Inspection of work and correction of defects therein shall proceed as follows:

6.12.1 The Architectural Control Committee or its duly authorized representative may enter onto any Lot, from time to time, during the course of construction of any improvements or installation of any landscaping thereon for the purpose of inspecting such construction and/or installation. If the Architectural Control Committee determines that such construction and/or installation is not being done in substantial compliance with the approved plans, it shall notify the Owner of the subject Lot of such noncompliance. The Architectural Control Committee may not enter into a dwelling on a Lot without obtaining the prior permission of the Owner or occupant of such Lot; provided, however, that such prior permission shall not be unreasonably withheld and shall be given for entry by the Architectural Control Committee during the daylight hours within 30 days after such work is completed.

6.12.2 Immediately upon the completion of any work for which approved plans, specifications, plats or schemes are required under this Article, the Owner shall give written notice of completion to the Architectural Control Committee.

6.12.3 Within 30 days after such notification of completion, the Architectural Control Committee or its duly authorized representative, may inspect such improvement. If the Architectural Control Committee finds that such work was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such noncompliance within such 30-day period, specifying the particulars of noncompliance, and shall require the Owner to remedy the same.

6.12.4 If, upon the expiration of 30 days from the date of such notification of noncompliance, the Owner shall have failed to remedy such noncompliance, the Architectural Control Committee shall notify the Board of Directors in writing of such failure. After affording such Owner notice and hearing, the Board of Directors shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than 30 days from the date of announcement of the Board of Directors ruling. If the Owner does not comply with the Board of Directors ruling within such period, the Board of Directors, at its option, may either remove the noncomplying improvement or remedy the noncompliance, and the Owner shall reimburse the Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board of Directors shall levy a special assessment against such Owner for reimbursement.

6.12.5 If for any reason the Architectural Control Committee fails to notify the Owner of any noncompliance within 30 days after receipt of said written notice of completion from

the Owner, the improvement shall be deemed to be in accordance with said approved plans.

6.13 All questions of interpretation or construction of any of the terms or conditions herein shall be resolved by the Architectural Control Committee, and its decision shall be final, binding and conclusive on all of the parties affected.

6.14 The approval of the Architectural Control Committee of any proposals, plans, specifications, drawings, plats or schemes for any work done or proposed or in connection with any other matter requiring the approval or consent of the Architectural Control Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans, specifications, drawings, plats, schemes or any other matter subsequently or additionally submitted for approval or consent.

6.15 The members of the Architectural Control Committee shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred by them in the performance of their duties hereunder. The Architectural Control Committee shall have the right to hire any engineer or other consultant the opinion of which the Architectural Control Committee deems necessary in connection with its review of any plans submitted by any Owner and such Owner shall be liable for payment of such engineer and/or consultant's fee.

6.16 Neither Declarant nor the Architectural Control Committee, nor any member thereof, nor their duly authorized Architectural Control Committee representatives shall be liable to the Association, or to the Owner, for any loss, damage or injury arising out of or in any way connected with the performance of the Architectural Control Committee's duties hereunder, including without limitation, the execution of the estoppel certificate described in Paragraph 6.17 unless due to the willful misconduct or bad faith of the Architectural Control Committee. The Architectural Control Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes. Neither Declarant, the Association, nor the Architectural Control Committee makes any representations whatsoever concerning the view, if any, that a particular Lot, the dwelling or other improvements constructed thereon will enjoy by reason of the promulgation and/or enforcement of this Declaration and/or the rules and regulations of the Architectural Control Committee, or by any action of the Architectural Control Committee.

6.17 Within 30 days after written demand is delivered to the Architectural Control Committee by an Owner, and upon payment to the Association of a reasonable fee (as fixed from time to

time by the Association), the Architectural Control Committee shall deliver to such Owner an estoppel certificate, executed and acknowledged by any two of its members, certifying, with respect to any Lot of said Owner that as of the date thereof either: (i) all improvements made and other work done thereupon or within said Lot comply with this Declaration, or (ii) such improvements or work do not so comply in which event the certificate shall also identify the noncomplying improvements or work and set forth with particularity the basis of such noncompliance. Any purchaser from the Owner or from anyone deriving any interest in said Lot through it, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association and all Owners and such persons deriving any interest through them.

6.18 Nothing contained in this Declaration shall in any way affect any Owner's responsibilities and obligations pursuant to the Community Declaration including, without limitation, those with respect to Community Architectural Committee requirements and standards. The rulings and decisions of the Community Architectural Committee shall have precedence over and shall supersede any decisions or rulings of the Architectural Control Committee. To facilitate the coordination of the Architectural Control Committee and the Community Architectural Committee, the Community Architectural Committee shall have the right and authority, but not the obligation, to delegate all or any part of its responsibilities and duties under the Community Declaration to the Architectural Control Committee.

6.19 In the event of a violation of any of the provisions of this Article 6 by any Owner including, without limitation, failure of any Owner to comply with a written directive or order from the Architectural Control Committee, the Architectural Control Committee shall have the right and authority to perform the subject matter of such directive including, if necessary, the right to enter upon the Lot where a violation of these restrictions exists, and the cost of such performance shall be charged to the Owner of the Lot in question. Such costs shall be due within five days after receipt of written demand therefore, and shall bear interest at the rate of 10 percent per annum commencing on the sixth day after receipt of such written demand until paid. Said costs may be recovered by the Architectural Control Committee together with such interest and reasonable attorneys' fees and costs in an action at law against such Owner. Any deposit paid by an Owner pursuant to Paragraph 6.11, will be applied to any costs incurred by the Architectural Control Committee in curing a violation of said Paragraph 6.11, first, and thereafter against the costs of the Association in curing any other violations of this Article 6. Said deposit or any part thereof remaining in the hands of the Architectural Control Committee at the completion of the construction work and not applied towards such costs, shall be returned by the

Architectural Control Committee to the Owner who made the deposit. As an alternative to correcting such violation and charging the Owner for the costs of such correction, the Architectural Control Committee may take any other appropriate action at law or equity, including recommending to the Board of Directors that a monetary penalty be imposed upon a noncomplying Owner pursuant to Paragraph 5.3.

6.20 The Architectural Control Committee may, from time to time, and at its sole discretion, adopt, amend and repeal, by unanimous vote, rules and regulations to be known as "Architectural Control Committee Rules." The Architectural Control Committees Rules shall interpret and implement the provisions of Article 2 and this Article 6 by setting forth the standards and procedures for Architectural Control Committee review 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, the Architectural Control Committees Rules shall not be in derogation of the minimum standards required by this Declaration, the Community Declaration, or any rules and regulations promulgated by the Community Architectural Committee.

6.21 Notwithstanding Paragraph 15.1, no amendment, revocation or rescission of this Article 6 may be had, nor shall Declarant, or any successor thereof, be prohibited from completing the construction and development of the Project prior to the conveyance by Declarant (or its successor) of the last Lot without the (i) written consent of Declarant and (ii) recording of such consent in the office of the Recorder of San Diego County, California. Such written consent shall not be required after the conveyance by Declarant (or its successor) of all the Lots.

ARTICLE 7 - Community Association

7.1 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, the Community Rules and the rules and regulations of the Community Architectural Committee.

7.2 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.

7.3 Declarant, for each Lot which it owns hereby covenants, and each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, does and is hereby

deemed to covenant and agree to pay to the Community Association the Community Assessments imposed upon such Lots pursuant to the Community Declaration. The Community Assessments shall be levied and collected as provided in the Community Declaration. The Community Association, in its sole and absolute discretion, may elect to require the Association to administer, levy, collect and enforce the Community Assessments imposed upon Lots. All such funds collected by the Association shall be held in trust by the Association for the benefit of the Community Association, and such funds shall be disbursed to the Community Association as provided in the Community Declaration. The Community Association, in its sole and absolute discretion, may elect to administer, levy, collect and enforce the assessments provided for under this Declaration. All such funds collected by the Community Association shall be utilized in the manner and for the purposes specified in this Declaration, the Community Declaration, the Community Bylaws, the Community Articles and the rules and regulations of the Community Board and the Community Architectural Committee.

7.4 Breach of any of the limitations, restrictions, conditions and covenants set forth in this Declaration, or the continuation thereof, may be enjoined, abated or remedied by appropriate legal proceedings by the Community Association. The Community Association shall be deemed to be a person who may enforce the provisions of this Declaration pursuant to Article 11 hereof. The failure of the Community Association to enforce any of said limitations, restrictions, conditions or covenants shall not constitute a waiver of the right to enforce the same thereafter. No liability shall be imposed on, or incurred by, the Community Association as a result of such failure. The prevailing party in any action at law or in equity instituted by the Community Association to enforce or interpret said limitations, restrictions, conditions or covenants, shall be entitled to all costs incurred in connection therewith, including, without limitation, reasonable attorneys' fees.

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

7.6 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.

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

ARTICLE 8 - Assessments

8.1 The Board of Directors has and shall have the right and power to make, from time to time, reasonable assessments upon the Lots to meet anticipated authorized expenditures of the Association (which shall include the establishment of an adequate reserve fund for replacement of all facilities and improvements in and to the Open Space and all personalty owned by the Association) and to change from time to time the amount, installments and/or frequency of payment of assessments.

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

8.1.2 Separate written notices of the making of such assessment (including in such notice the amount thereof and the frequency of payment) shall be deposited into the United States mail, postage prepaid, directed to the attention of each Owner, bearing the address of the Lot owned by such Owner (or such other address as such Owner shall supply to the Association for purposes of delivery of such notices), at least 60 days prior to the beginning of a fiscal year; such assessment upon a Lot shall be a debt of the Owner thereof at the time such assessment is made. The amount of any such assessment together with any late payment penalty, costs and reasonable attorneys' fees in the event enforcement is commenced shall be and become a lien upon any Lot assessed when the Board of Directors causes to be recorded in the Office of the County Recorder of San Diego County, California, a notice of assessment, which shall state the amount of such assessment and the aforesaid interest, costs and attorneys' fees, a description of the Lot against which the same has been assessed

and the name of the record Owner thereof. Upon payment of said assessment and charges in connection with which such notice has been so recorded, or other satisfaction thereof, the Board of Directors shall cause to be recorded a further notice stating the satisfaction and the release of the lien thereof. Unless sooner satisfied and released or the enforcement thereof initiated as herein provided, such lien shall expire and be of no further force or effect one year after the date of recordation of said notice of assessment; provided, however, that said one-year period may be extended by the Board of Directors for not more than one additional year by recording a written extension thereof.

8.1.3 Such lien may be enforced by sale of the Lot by the Board of Directors, on behalf of the Association, its attorney or other person authorized by the Board of Directors to conduct the same after failure of the Owner to pay such an assessment in accordance with its terms; such sale shall be conducted in accordance with the provisions of California Civil Code Sections 2924, 2924b, 2924c, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. The Board of Directors, on behalf of the Association, shall have the right to (i) bid at any foreclosure sale of a Lot, (ii) a credit, in any such bidding, in the amount of the aggregate of the unpaid assessment(s), said interest and charges and (iii) hold, lease, mortgage and/or convey said Lot in the name of the Association. Nothing herein shall prohibit the Board of Directors from instituting legal proceedings against an Owner to collect the debt of an assessment(s) owed by such Owner.

8.2 The Board of Directors may also levy and collect special assessment(s) for capital improvements or other purposes in the same manner as regular assessments are levied and collected as described in Paragraph 8.1. The amount of any such special assessment, together with any late payment penalty incurred pursuant to this Article, costs and reasonable attorneys' fees in the event enforcement is commenced, shall be and become a lien upon any Lot in the same manner as regular assessments become a lien. Provided, however, no such special assessment exceeding, in the aggregate, 5 percent of the budgeted gross expenses of the Association for the then current fiscal year of the Association may be levied without the vote or written ballot of (i) the Owners entitled to exercise a majority of the total voting power in each of the two voting classes as provided in the Article of the Bylaws entitled "Voting Rights" or (ii) upon cessation of one of the two voting classes, the Owners entitled to exercise a majority of the total voting power in the remaining voting class, provided that such vote or written ballot shall include the votes of a majority of the Owners other than Declarant. The provisions of the preceding sentence shall not apply (i) to special assessment(s) for repair, or the like,

described in the Article entitled "Destruction; Insurance" or (ii) in the case where the special assessment against an Owner is a remedy utilized by the Board of Directors to reimburse the Association for costs incurred in bringing the Owner into compliance with the provisions of the Articles, Bylaws or this Declaration.

8.3 In the event the Association does not receive an Owner's payment of the entire amount of a regular or special assessment imposed upon its Lot pursuant to this Article within 30 days after the due date thereof, a late payment penalty by way of damages shall be immediately due and payable by such Owner. Each of the Owners recognizes and acknowledges that the late payment of assessments will cause the Association to incur additional costs and expenses in connection with its management, architectural control and preservation of the Project. In the event of any such late payment, the Association shall be entitled to damages for the detriment caused thereby, but it is extremely difficult and impractical to ascertain the extent of such damages. Accordingly, each Owner shall pay to the Association a late payment penalty equal to \$10 for any late payment as liquidated damages for all such costs and expenses (other than attorneys' fees, court costs and other costs incurred by the Association in connection with the creation and/or foreclosure of a lien for delinquent regular or special assessments). The Board of Directors may, from time to time, increase the amount of such late payment penalty; provided, however, that the amount of such increased late-payment penalty shall not exceed the maximum permitted by California Civil Code Section 1725, as the same may be from time to time amended, or any other applicable laws. The Board of Directors shall advise the Owners in writing of any increase in such late payment penalty not less than 30 days prior to the effective date of any such increase. The Association and each of the Owners agree that such late payment penalty represents a fair and reasonable estimate of the costs and expenses (other than attorneys' fees, court costs and other costs incurred by the Association in connection with the creation and/or foreclosure of a lien for delinquent regular or special assessments) which the Association will incur by reason of such late payment. Acceptance of any such late payment penalty by the Association shall in no event constitute a waiver of such Owner's default with respect to the late payment (i.e., the overdue amount), nor prevent the Association from exercising any of its other rights and remedies hereunder or at law. In addition to the late payment penalty described above, each Owner shall pay to the Association the amount of reasonable attorneys' fees, court costs and other costs incurred by the Association in connection with the creation and/or foreclosure of a lien for delinquent regular or special assessments.

8.4 Until such time as the Board of Directors shall change the same pursuant to Paragraph 8.1, such assessments shall be due

and payable monthly on the first day of each calendar month, commencing, as to all Lots, on the first day of the calendar month next following the first conveyance by Declarant of a Lot. Recordation of this Declaration shall not constitute a "notice of assessment" under Paragraph 8.1, but shall be the equivalent of "separate written notice of the making of such assessment" described in Paragraph 8.1. Declarant shall be absolutely liable for the monthly installment of any assessment, and any special assessment, constituting a lien on any Lot and accruing prior to the conveyance thereof by Declarant.

ARTICLE 9 - Destruction; Insurance

9.1 The Board of Directors shall keep insured against loss by fire and perils (i) all buildings, if any, and other insurable improvements in the Open Space and (ii) all personalty owned by the Association, under one, master extended coverage hazard policy(ies) for the interest of all Owners. The amount of coverage of such insurance shall be not less than 100 percent of the insurable value (based on then current replacement cost) of said buildings and fair market value of personalty as determined annually by an insurance carrier selected by the Board of Directors. The name of the insured under each policy of such insurance shall be substantially "Fairway Pointe Owners' Association, Inc., a California nonprofit corporation, for use and benefit of individual owners," followed, if desired by either the Association or the insurance carrier(s), by the designation of the Owners. Authority to adjust losses covered by the Association's policy(ies) shall be vested in the Board of Directors, and insurance proceeds shall be payable to the Association or to Mortgagees, as their interests appear.

9.2 If, within the Open Space a steam boiler is in operation, the Board of Directors shall keep in force boiler explosion insurance evidenced by a standard form of boiler and machinery insurance policy and providing coverage as a minimum, \$100,000 per accident per location. If a steam boiler is in operation upon a Lot, the Owner of said Lot shall provide such insurance. If the Project is or becomes located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, a "blanket" policy of flood insurance on the Project must be maintained in the amount of the lesser of (i) the outstanding principal balances of mortgage loans on all Lots or (ii) the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended. The name of the insured under each such policy of insurance shall be as set forth in Paragraph 9.1 above.

9.3 In the event of any loss, damage or destruction so insured against, the Board of Directors shall cause the same to be replaced, repaired or rebuilt. In the event the cost of such replacement, repair or rebuilding exceeds the hazard insurance

proceeds received therefor, the Board of Directors shall levy and collect a special assessment in an equal amount from each Owner in the Project. In any event, all such hazard insurance proceeds received for such loss, damage or destruction shall be used for such replacement, repair or rebuilding.

9.4 The Board of Directors shall procure and keep in force during the term hereof insurance (containing a "severability of interest" clause or endorsement) in the name of the Association and the Owners against any liability to the public (including the Owners) resulting from any occurrence in or about the Open Space with coverage in the amount of at least \$1,000,000 per occurrence, for personal injury and/or property damage. The policy(ies) of such insurance shall contain a waiver of subrogation by the insurer(s) against (i) the Association, (ii) each of the directors serving from time to time on the Board of Directors, and (iii) the Owners.

9.5 The Board of Directors shall procure and keep in force during the term hereof insurance in the name of the Association against dishonest acts on the part of the Board of Directors, volunteers and other persons responsible for handling funds belonging to or administered by the Association; such insurance or, in lieu thereof, fidelity bond, shall (i) be written in an amount not less than one and one-half times the Association's estimated annual operating expenses and reserves, (ii) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression and (iii) provide that it may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days prior written notice to the loan servicer, if any, on behalf of the Federal National Mortgage Association.

9.6 Each Owner shall keep all buildings and other insurable improvements on such Owner's Lot insured for the interest of such Owner and such Owner's mortgagees, as their interests may appear. Such insurance shall provide, as a minimum, fire and extended coverage, with waiver of any fall of building clause, on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance percentage stipulated in such insurance policy. The amount of coverage of such insurance shall be such that in the event of any damage or loss to the improvements so insured the insurance proceeds shall provide at least the lesser of (i) compensation equal to the full amount of damage or loss or (ii) compensation to such Owner's first Mortgagee equal to the full amount of the unpaid balance of said first Mortgagee's mortgage on such Owner's Lot. In lieu of the insurance to be maintained by each Owner pursuant to this Paragraph 9.6, the Association may procure and maintain a blanket policy of hazard insurance with the same coverage as described above in this Paragraph 9.6, insuring the single-family

residential structure on each Owner's Lot. Any such blanket policy of insurance must name the Association as the insured for the benefit of the Owners. The premiums for any such blanket insurance policy shall be an expense of the Association and included in the assessments described in Paragraph 8.1. By taking title to a Lot, each Owner agrees to and does thereby hold harmless the Association for damages to person or property occurring on or about the Open Space as a result of the act or omission of such Owner, it's guests, invitees, licensees or agents.

9.7 Each of said fire and extended coverage hazard policies shall be issued by an insurance carrier which (i) has a financial rating by Best's Insurance Reports of B/VI or better and (ii) is authorized to transact business within the State of California.

9.8 In the event of any loss, damage or destruction to any improvements in the Open Space or personalty owned by the Association not insured against under the policy(ies) of insurance required of the Association hereunder, the Board of Directors shall undertake to cause the same to be replaced, repaired or rebuilt. The cost of such replacement, repair or rebuilding shall be assessed equally to all of the Owners in the Project.

9.9 Copies of all such insurance policies (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Association and open for inspection by the Owners at any reasonable time(s). All such insurance policies shall (i) provide that they shall not be reducible or cancellable by the insurer, without first giving at least ten days' prior notice in writing to the Association and all first Mortgagees, (ii) contain a waiver of subrogation by the insurer(s) against the Association, the Board of Directors and the Owners, and (iii) contain or have attached a standard mortgagee clause or endorsement in favor of all first Mortgagees, together with 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 the county in which the Project is located.

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

ARTICLE 10 - Condemnation

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

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

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

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

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

10.3 The Board of Directors are hereby irrevocably appointed as the agent for every Owner to (i) negotiate with any Condemnor for settlement of an Award for any Appropriation, (ii) defend any action brought for an Appropriation, and to engage and compensate counsel and expert witnesses therefor or to aid the Board of Directors in the exercise of any of its powers under this Article, (iii) conduct, arrange or supervise an independent appraisal to determine the value of the Open Space affected by any Appropriation, (iv) receive in the name of the Association any Award and to retain the same, pending its disbursement, in a noninterest-bearing bank account in the name of the Association and (v) disburse or retain the same, pursuant to the following paragraphs of this Article.

10.4 If an Award affecting all or a portion of the Open Space is not apportioned among the Owners by court judgment or by agreement between the Condemnor and the Board of Directors as the Owners' agent, and after the value of the Open Space affected by any Appropriation has been determined by independent appraisal, as soon as may be practicable after the receipt by the Association of any Award, the Board of Directors will disburse the same pursuant to the following:

10.4.1 First, to contractors, subcontractors, materialmen and others for the costs of the repair or restoration of damage or destruction to the Open Space caused by an Appropriation, or to the Association in reimbursement for such costs; the balance of the award is hereinafter referred to as "Award Balance."

10.4.2 Second, the Award Balance to the Association. In the event that the entire Open Space is appropriated, the Award Balance shall be distributed to the Owners in equal shares. In the event that the Open Space is appropriated only in part, the Award Balance shall be retained by the Association or

disbursed to the Owners in whole or in part as determined by the Board of Directors.

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

ARTICLE 11 - Accounting

11.1 The Board of Directors shall maintain books of account of all its receipts and expenditures and shall cause such books to be examined annually as of the close of each fiscal year and a report to be made thereon to the Association. The Board of Directors shall deliver a copy of such report to the Owner of each Lot within 120 days after the end of such year. Each Owner (or its duly appointed representative) and each first Mortgagee shall be entitled at reasonable times to inspect the books and records of the Association, to have such books and records examined at said Owner's or first Mortgagee's expense by an attorney or accountant representing such Owner or first Mortgagee and to make excerpts or copies of such books and records or portions thereof, and each such Owner (or its duly appointed representative) or first Mortgagee, at his own expense, shall have the right to have such books and records independently audited by an accountant.

ARTICLE 12 - Scope; Enforcement

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

12.2 Notwithstanding the provisions of the Articles hereof entitled "Partition and Severance" and "Amendment" to the contrary, at any time, 65 years after the date of recordation of this Declaration, this Declaration and each and every limitation, restriction, condition and covenant contained herein may be terminated and extinguished upon execution and filing for record in the Office of the County Recorder of San Diego County, California, of a written instrument which (i) declares that the provisions of this Declaration are thereby terminated and extinguished, (ii) is signed and acknowledged by the Owners entitled to exercise a majority of the total voting power of the

Association and (iii) bears, or has attached thereto, the consent of two-thirds of all first Mortgagees as of the time of recordation of said written instrument.

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

12.4 The result of or condition caused by a violation of any of said limitations, restrictions, conditions or covenants, other than the payment of assessment(s), is and shall be a nuisance, and every remedy in law or equity now or hereafter available against a public or private nuisance may be exercised by any Enforcing Person.

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

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

ARTICLE 13 - Rights of Mortgagees

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

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

13.3 Each and every lien created by or pursuant to this Declaration, including but not limited to, the assessment liens described in the Article entitled "Assessments" is and shall be subordinate, inferior and subject to the lien and charge of any

(i) real property first mortgage or first deed of trust of record prior to the date of said assessment lien encumbering any Lot and given for value and (ii) blanket construction (including acquisition) mortgage(s) or deed(s) of trust encumbering all or any part of the Project which mortgage(s) or deed(s) of trust may have been subordinated to this Declaration.

13.3.1 Any person who acquires title to any Lot by purchasing the same at a foreclosure or trustee's sale of a first mortgage or first deed of trust, shall take title to such Lot free of any (i) claims by or on behalf of the Association for unpaid assessments accruing prior to the time such purchaser takes title to such Lot and (ii) assessment lien then encumbering any such Lot. Such unpaid assessments shall be reallocated among the Owners (other than said purchaser).

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

13.4 In the event of any breach or default hereunder by any Owner, and in the further event such breach or default is not cured within 60 days after its occurrence, the Board of Directors shall, if any first Mortgagee shall have so requested of the Association, immediately notify, in writing, such first Mortgagee of such Owner's Lot of said default; provided, however, failure to give such notice shall in nowise affect any right or remedy of any enforcing person under the Article entitled "Scope; Enforcement."

13.5 Each first Mortgagee shall be entitled, upon request, to (i) receive notice of any and all meetings of the Association and (ii) designate a representative to attend such meetings on its behalf.

13.6 The Association shall, upon the request of any first Mortgagee, enter into an agreement with such first Mortgagee which agreement shall include the substance of the following provisions and/or any other reasonable requirements of the Federal Home Loan Mortgage Corporation: (i) that the Association will pay when due all premiums on all insurance policies insuring

the Open Space and taxes, assessments or other charges which may become a lien on the Open Space, (ii) that if the Association should fail to make a payment as described in clause (i) above that such Mortgagee by itself or in combination with other holders of mortgages encumbering Lots within the Project may, but shall not be required to, pay such taxes, assessments or charges and any such insurance premiums, (iii) that should any policies of insurance insuring the Open Space lapse because of the Association's failure to pay such premium that such Mortgagee may by itself or in combination with any other holders of mortgages encumbering Lots, but shall not be required to, secure new policies of insurance as it may deem necessary and (iv) that Association shall promptly reimburse such Mortgagee for any and all payments made by it pursuant to clauses (ii) and (iii).

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

ARTICLE 14 - Declarant's Security for its Obligations

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

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

14.1.2 If the Board of Directors fails to consider and vote on the question of action to be taken by the Association to enforce the obligations under the Bond or should the Board of Directors decide not to initiate action to enforce said obligations, a special meeting of Members shall be held to consider and vote on such action if Members having at least five percent of

the voting power of the Association sign and submit to the Board of Directors a petition demanding such meeting. Such meeting shall be held not less than 35 days nor more than 45 days after receipt by the Board of Directors of said petition. At such special meeting, all Members other than Declarant shall be entitled to vote.

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

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

14.2 If Declarant posts a surety bond or deposits funds (pursuant to Section 2792.9, Article 12, Chapter 6, Title 10, California Administrative Code) for the benefit of the Association, to assure the fulfillment by Declarant of its obligations to pay assessments, the exoneration or release of such bond or funds being subject to the conditions set forth in said Section 2792.9, and a dispute arises between Declarant and the Association with respect to the question of satisfaction of such conditions for exoneration or release, then, in such event, such dispute shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof. The fee payable to the American Arbitration Association to initiate such arbitration shall be remitted by Declarant; however, the costs of

such arbitration shall ultimately be borne as determined by the Arbitrator(s) under the aforesaid Commercial Arbitration Rules.

ARTICLE 15 - Amendment

15.1 This Declaration may be amended only by written instrument (or counterparts thereof) (i) signed and acknowledged (a) by the Owners entitled to exercise 75 percent of the total voting power in each of the two voting classes of the Association, as provided in the Article of the Bylaws entitled "Voting Rights" or (b) upon cessation of one of the two voting classes, by the Owners entitled to exercise 75 percent of the total voting power in the remaining voting class, provided that such signatures include the signatures of not less than a majority of the Owners other than Declarant and (ii) filed for record in the Office of the County Recorder of San Diego County, California. Any written instrument amending this Declaration shall bear, or have attached thereto, the written consent of two-thirds of all first Mortgagees as of the time of recording such amendment (based upon one vote for each first mortgage or deed of trust owned) if such amendment would affect to any degree the rights, powers, privileges, interests or security of said first Mortgagees as set forth in the Articles hereof entitled "Ownership of Open Space And of Beneficial Interest in Common Personalty," "Planned Development Character of the Project," "Assessments," "Destruction; Insurance," "Condemnation," "Accounting," "Scope; Enforcement," "Rights of Mortgagees" and the following paragraphs hereof: 1.1.22, 2.1.1, 2.2.1, 2.2.5, 5.1, 5.2 and 15.1.

15.2 Each such amendment to this instrument shall become effective only upon being filed for record as hereinabove provided and shall, from and after its effective date, be as effective as this instrument as to all (i) the Open Space, (ii) the Lots, (iii) the Project and (iv) the Owners (as of the effective date) and their successors in interest.

15.3 Anything contained in this Declaration to the contrary notwithstanding, this Declaration shall not be amended, modified or rescinded (i) at any time prior to September 30, 1990, without the prior written consent of Genstar Development Inc., a New York corporation (Penasquitos Properties Division), (ii) without the prior written consent of the Community Board and (iii) without the recording of said written consent or consents, as appropriate in the Office of the County Recorder of San Diego County, California.

ARTICLE 16 - General Provisions

16.1 Notices required by the Declaration, or desired, to be given shall be conclusively deemed served (i) if personally

served, at the time of such service, and (ii) if mailed, 48 hours after deposit thereof in the United States mail, postage prepaid, addressed to the person(s) to whom such notice is to be given at the last known address of such person(s).

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

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

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

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

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

IN WITNESS WHEREOF, this Declaration has been executed as of the 4 day of May, 1983.

GENSTAR DEVELOPMENT INC., a
New York corporation
(Penasquitos Properties
Division)

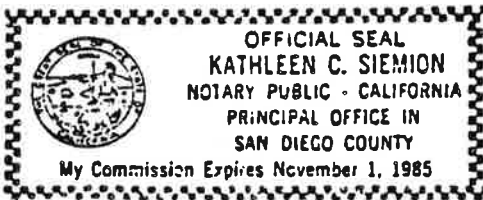
By [Signature]
Vice President

By [Signature]
Asst. Secretary

STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO) SS

On May 4, 1983, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Robert B. McLeod personally known to me (or proved to me on the basis of satisfactory evidence) to be the Vice President, and James M. Delhamer, known to me to be Assistant Secretary of GENSTAR DEVELOPMENT INC., a New York 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.



Kathleen C. Siemion
Notary Public in and for
said County and State

BYLAWS
OF
FAIRWAY POINTE
OWNERS' ASSOCIATION, INC.

ARTICLE 1 - Definitions

1.1 Articles.

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

1.2 Association.

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

1.3 Board of Directors.

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

1.4 Bylaws.

1.4.1 "Bylaws" shall mean this instrument as the same may from time to time be amended.

1.5 Community.

1.5.1 "Community" shall mean and refer to the Community of Bernardo Heights of which the Project is a constituent part, being all of the real property subject to the Community Declaration or annexed thereto.

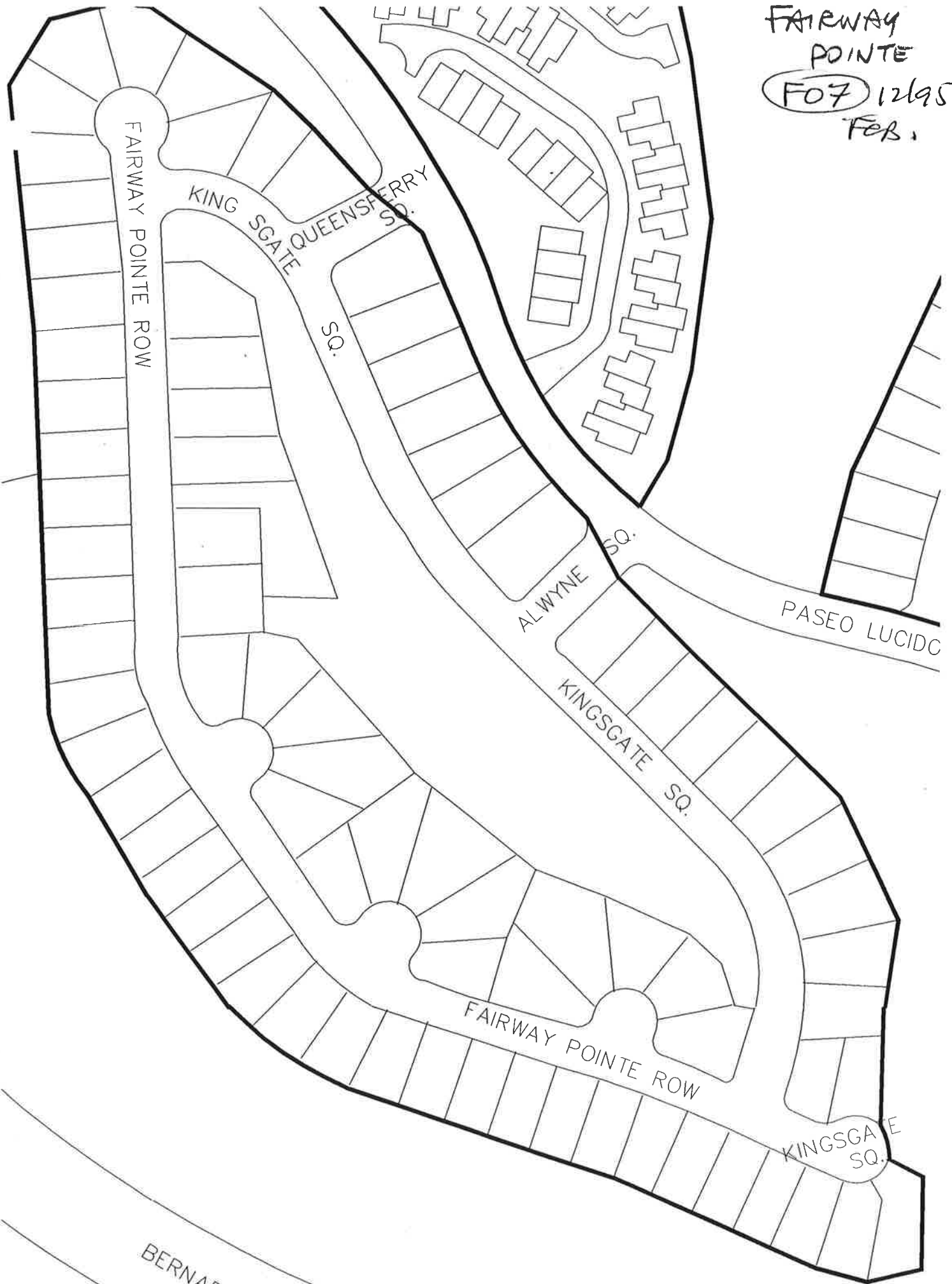
1.6 Community Architectural Committee.

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

1.7 Community Association.

1.7.1 "Community Association" shall mean and refer to The Community Association of Bernardo Heights, a California nonprofit

FAIRWAY
POINTE
FO7 12695
FEB.



BERNARD

NOTICE OF DETERMINATION

pursuant to
The California Environmental Quality Act and State EIR Guidelines

TO: Secretary for Resources
1416 Ninth Street, Room 1311
Sacramento, CA 95814

 County Clerk
County of San Diego
220 W. Broadway
San Diego, CA 92101

FROM:
City of San Diego
City Administration Building
202 "C" Street
San Diego, CA 92101

PROJECT TITLE: PARCEL MAP TM 83-0562 SB 3697

STATE CLEARINGHOUSE NUMBER:

CONTACT PERSON: Tyrone Rogers TELEPHONE: (714) 619-236-5570

PROJECT LOCATION:
Located on the south side of Lomica Road btw. I-15 and Pomerado Road.

PROJECT DESCRIPTION:
a 2-parcel map of Bernardo Heights Phase III Map 9573, 9955, 9562, 9604, 9610
9706, 9647, 9716, 10434, 9857, and parcel map no. 12461, 11717 and 11588.

This is to advise that The City of San Diego Subdivision Board
(Name of Decision-making Body)

has made the following determinations regarding the above described project:

- The project has been approved disapproved by the Lead Agency.
- The project, in its approved form, will, will not, have a significant effect on the environment.
- An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA, and was certified as required by Section 15085(g).
 A Negative Declaration was prepared for this project pursuant to the provisions of CEQA,
- Mitigation measures were were not made a condition of the approval of the project.
↳ on previous certification of EIR.
- A Statement of Overriding Considerations was, was not, adopted for this project.

The EIR or Negative Declaration and record of project approval may be examined at the Environmental Quality Division, City Administration Building, 202 "C" Street, 5th Floor, San Diego, CA 92101.

DATE RECEIVED FOR FILING:

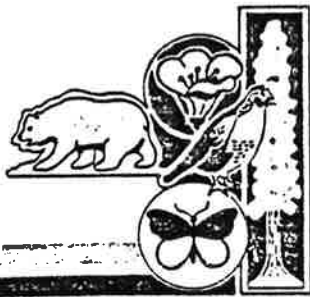
AUTHORIZED BY:

James Herrick 10-28-31
SIGNATURE DATE

DISTRIBUTION:

EQD File NO. EQD 78-02-19S2EIR

James Herrick, Principal Planner
TITLE



State of California

OFFICE OF THE SECRETARY OF STATE

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

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

IN WITNESS WHEREOF, I execute
this certificate and affix the Great
Seal of the State of California this
MAY 6 1983



March Fong Eu

Secretary of State

1140937

ARTICLES OF INCORPORATION
OF
FAIRWAY POINTE
OWNERS' ASSOCIATION, INC.

**ENDORSED
FILED**
In the office of the Secretary of State
of the State of California

MAY 6 - 1983

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

ARTICLE 1

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

ARTICLE 2

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

B. The specific and primary purpose of the Association is to own the Open Space within the Fairway Pointe Planned Development Project (hereinafter referred to as the "Project") in San Diego, California, and to act as a "management body" for the preservation, maintenance, improvement and architectural control of 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 of the corporation's initial agent for service of process is: GENSTAR DEVELOPMENT INC., a New York corporation (Penasquitos Properties Division).

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>
Robert B. McLeod	9404 Genesee Avenue, Suite 340 La Jolla, California 92037
James Delhamer	9404 Genesee Avenue, Suite 340 La Jolla, California 92037
Gary S. Kashing	9404 Genesee Avenue, Suite 340 La Jolla, California 92037

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 or (ii) on that certain date which is two years after the original issuance by the California Department of Real Estate of a Final Subdivision Public Report with respect to 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.

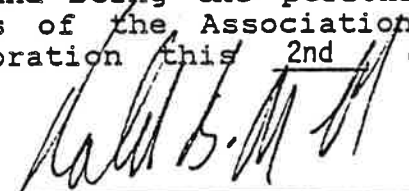
ARTICLE 7

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

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.

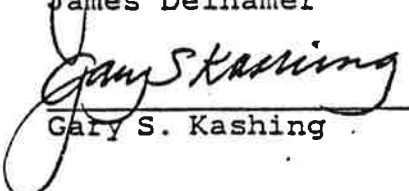
IN WITNESS WHEREOF, the undersigned, constituting the incorporator(s) of the Association and being the persons named hereinabove as the first directors of the Association, have executed these Articles of Incorporation this 2nd day of May, 1983.



Robert B. McLeod



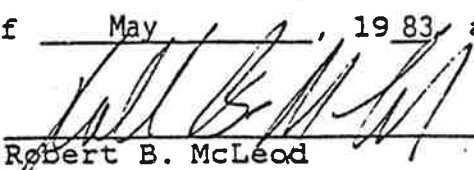
James Delhamer



Gary S. Kashing

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


Executed on this 2nd day of May, 1983, at San Diego, California.



Robert B. McLeod

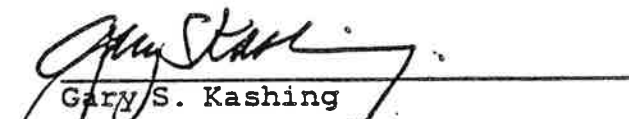
I hereby declare that I am the person who executed the foregoing Articles of Incorporation of Fairway Pointe Owners' Association, Inc., which execution is my act and deed.

Executed on this 2nd day of May, 1983, at San Diego, California.


James Delhamer

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

Executed on this 2nd day of May, 1983, at San Diego, California.


Gary S. Kashing

BYLAWS OF
FAIRWAY POINTE
OWNERS' ASSOCIATION, INC.
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BYLAWS
OF
FAIRWAY POINTE
OWNERS' ASSOCIATION, INC.

ARTICLE 1 - Definitions

1.1 Articles.

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

1.2 Association.

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

1.3 Board of Directors.

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

1.4 Bylaws.

1.4.1 "Bylaws" shall mean this instrument as the same may from time to time be amended.

1.5 Community.

1.5.1 "Community" shall mean and refer to the Community of Bernardo Heights of which the Project is a constituent part, being all of the real property subject to the Community Declaration or annexed thereto.

1.6 Community Architectural Committee.

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

1.7 Community Association.

1.7.1 "Community Association" shall mean and refer to The Community Association of Bernardo Heights, a California nonprofit

mutual benefit corporation, as established pursuant to the Community Articles and as described in the Community Declaration.

1.8 Community Board.

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

1.9 Community Declaration.

1.9.1 "Community Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions for the Community of Bernardo Heights, recorded on September 30, 1980, Official Records of San Diego County, as File/Page No. 80-319018, that certain First Amendment to Declaration of Covenants, Conditions and Restrictions, recorded on July 31, 1981, Official Records of San Diego County, as File/Page No. 81-243645, and such further amendments thereto as shall from time to time be recorded.

1.10 Declarant.

1.10.1 "Declarant" shall mean (i) GENSTAR DEVELOPMENT INC., a New York corporation (Pensaquitos Properties Division), which constitutes the Declarant under the Declaration (defined below) and (ii) any successor in interest of GENSTAR DEVELOPMENT INC., a New York corporation (Pensaquitos Properties Division), to whom all or any of the rights of Declarant under the Articles, Declaration and these Bylaws have been transferred and who is (a) a grantee under a deed executed and delivered prior to the conveyance of the first Lot (defined below) which conveys the entire Project (defined below) or (b) a grantee under a deed conveying two or more Lots. Notwithstanding the provisions of the Article hereof entitled "Amendments to Bylaws" to the contrary, this Paragraph may not be amended without the approval of Declarant.

1.11 Declaration.

1.11.1 "Declaration" shall mean that certain Declaration of Restrictions recorded _____, 19__, File/Page No. _____, Official Records of San Diego County, California, as such Declaration of Restrictions may from time to time be amended.

1.12 Lots; Lot.

1.12.1 "Lots" shall mean all of Lots 1 through 22 and Lots 24 through 83, inclusive, as more particularly described in the Declaration; "Lot" shall mean any one of the Lots.

1.13 Member.

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

1.14 Open Space.

1.14.1 "Open Space" shall mean the common area and shall consist of (i) Lots 23, 84, 85, 86 and 87 as more particularly described in the Declaration, (ii) those certain easements affecting portions of Lots 24 and 76 through 83, inclusive, for purposes of slopes as more particularly described in the Declaration and (iii) the perimeter wall described in Paragraph 5.1 of the Declaration.

1.15 Owner.

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

1.16 Project.

1.16.1 "Project" shall mean the Fairway Pointe Planned Development, encompassing both the Lots and the Open Space.

ARTICLE 2 - Functions of the Association

2.1 Purpose.

2.1.1 The Association shall own the Open Space and shall act as a "management body" for the management, preservation, maintenance, architectural control and improvement of the Project. The Association is subject to the limitations, covenants, conditions, restrictions, terms and provisions of the Declaration.

2.2 Assessments.

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

ARTICLE 3 - Membership

3.1 Members.

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

3.2 Transfer of Membership.

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

3.2.2 The Association shall, within a reasonable time after the Association is first notified of a proposed transfer and before the membership is transferred on the books and records of the Association, give notice to the transferee that a copy of restrictions upon the transferability of membership is on file with the secretary of the Association and is open for inspection by a Member on the same basis as the records of the Association.

ARTICLE 4 - Meetings of Members

4.1 Place of Meetings.

4.1.1 All meetings of Members shall be held within the Project or at such other place in San Diego County, California, in reasonable proximity to the Project, as may be designated for that purpose from time to time by the Board of Directors. Unless

unusual conditions exist, as determined solely by the Board of Directors, Members' meetings shall not be held outside of said county.

4.2 Annual (Regular) Meetings.

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

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

4.3 Special Meetings.

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

4.3.2 Notwithstanding the provisions of Paragraph 4.4.1 to the contrary, whenever a special meeting of Members is called by Members representing at least five percent of the total voting power of the Association, upon request in writing signed by Members entitled to call a meeting of Members and delivered by first class, registered or certified mail to the Board of Directors at the principal office of the Association, or delivered to the Board of Directors in person, it shall be the duty of the Board of Directors forthwith to cause notice to be given to the Members that a meeting will be held at a time fixed by the Board of Directors not less than 35 nor more than 90 days after the receipt of the request; provided, however, if a special meeting is called to enforce the obligations under a bond obtained to secure completion of improvements in and to the Common Area, pursuant to Section 2792.4 of Title 10 of the California Administrative Code, a meeting will be held at a time fixed by the

Board of Directors not less than 35 nor more than 45 days after receipt of the request. If said notice is not given within 20 days after receipt of the request, the Members entitled to call the meeting may fix the date and time of the meeting and give notice thereof in the manner provided by these Bylaws. The date of any meeting fixed by Members as hereinabove provided shall be at such time in the future as will permit adherence to the notice requirements set forth in Paragraph 4.4.

4.4 Notice of Meetings.

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

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

4.4.3 When a Members' meeting, either annual or special, is adjourned to another time or place, notice of the adjourned meeting need not be given if the time and place thereof are announced at the meeting which is adjourned. A meeting adjourned

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

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

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

4.6 Action by Written Ballot.

4.6.1 Any action which may be taken at any regular or special meeting of Members, except for an election in which positions on the Board of Directors are to be filled, may be taken without a meeting if the Association distributes a written ballot to every Member entitled to vote on the matter. Such ballot shall (i) set forth the proposed action, (ii) indicate the number of responses needed to meet the quorum requirement, (iii) provide an opportunity to specify approval or disapproval of any proposal (iv) state the percentage of approvals necessary to pass the proposal, (v) provide that where the Member solicited specifies a choice with respect to the proposal the vote shall be cast in accordance therewith and (vi) provide a reasonable time within which to return the ballot to the Association. Approval by written ballot pursuant to this paragraph shall be valid only when the number of votes cast by ballot within the time period specified equals or exceeds the quorum required to be present at a meeting authorizing the action and the number of approvals

equals or exceeds the number of votes that would be required to approve at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. A written ballot may not be revoked.

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

4.7 Quorum.

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

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

ARTICLE 5 - Voting Rights

5.1 Members' Right to Vote.

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

5.2 Classes of Voting Members.

5.2.1 Members shall be divided into two classes for the purposes of voting, Class A and Class B. Class A Member(s) shall be all Owners 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 or (ii) on that certain date which is two years after the original issuance by the California Department of Real Estate of the Final Subdivision Public Report for 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 and there shall be only one vote attributable to such Member (unless such Member is Declarant, in which case such Member shall have the number of votes attributable to Declarant as set forth in this paragraph). Each of such persons collectively constituting a single Member shall otherwise be individually entitled to the benefits of membership in the Association. The manner of casting and counting such vote shall be controlled by the provisions of the paragraph of these Bylaws entitled "Voting Rights; Required Vote; Cumulative Voting."

5.3 Voting Rights; Required Vote; Cumulative Voting.

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

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

5.3.3 Every Member entitled to vote at any election of directors of the Association may cumulate its votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which it is entitled, or distribute its votes on the same principle among as many candidates as it may desire. Cumulative voting shall be required in all elections in which more than two positions on the Board of Directors are to be filled. Notwithstanding the foregoing, no Member shall be entitled to cumulate votes for a

candidate or candidates unless such candidate's name or candidates' names have been placed in nomination prior to the voting and the Member has given notice at the meeting prior to the voting of the Member's intention to cumulate votes. If any one Member has given such notice, all Members may cumulate their votes for candidates in nomination. The candidates receiving the highest number of votes up to the number of directors to be elected shall be elected directors of the Association.

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

5.3.5 If a membership stands of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, husband and wife as community property, tenants by the entirety, persons entitled to vote under a voting agreement or otherwise, or if two or more persons (including proxyholders) have the same fiduciary relationship respecting the same membership, unless the secretary of the Association is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (i) if only one votes, such act binds all, or (ii) if more than one vote, the act of the majority so voting binds all.

5.4 Proxies.

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

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

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

ARTICLE 6 - Directors; Management

6.1 General Powers.

6.1.1 Subject to the limitations of the Declaration, of the Articles, of these Bylaws and of the laws of the State of California as to action to be authorized or approved by Members, all Association powers shall be exercised by or under authority of, and the business and affairs of the Association shall be controlled by, the Board of Directors. The Board of Directors may delegate the management of the activities of the Association to any person or persons, management company or committee however composed, provided that the activities and affairs of the Association shall be managed and all Association powers shall be exercised under the ultimate direction of the Board of Directors.

6.2 Specific Powers.

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

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

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

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

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

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

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

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

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

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

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

(xi) To prosecute or defend, in the name of the Association, any action affecting or relating to the Open Space, or any action in which all of the Owners have an interest in the subject thereof.

(xii) To suspend temporarily the (a) right of an Owner to use any recreational facilities within the Open Space and (b) voting privileges of an Owner, for default in the payment of any regular or special assessment levied by the Association pursuant to the Declaration, or for violating any regulations adopted by or established by the Board of Directors to govern the use of and activity in the Open Space or for breaching any provision of the Declaration, the Articles or these Bylaws. Any suspension must be done in good faith and in a fair and reasonable manner. The Member must be given 15 days' prior notice of the suspension. Notice must set forth reasons for the suspension and may be given

by any method reasonably calculated to provide actual notice. Any notice given by mail must be given by first-class, registered or certified mail sent to the last address of the Member shown on the Association's records. The Member must be provided an opportunity to be heard, orally or in writing, not less than five days before the effective date of the suspension by a properly convened meeting of the Board of Directors.

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

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

6.2.3 Any contract entered into, or instrument executed, by any two or more directors pursuant to resolution of the Board of Directors shall be (i) valid and subsisting according to the tenor of such contract or instrument and (ii) a charge upon all cash, bank accounts and other personal property under the control of the Board of Directors. So long as it acts within the scope of its authority as a director, no director shall have any personal liability under any such contract or instrument; however, the foregoing shall not be construed to relieve any director who is also an Owner from liability as such Owner.

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

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

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

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

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

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

(ii) Incur aggregate expenditures for capital improvements to the Open Space in any fiscal year in excess of five percent of the budgeted gross expenses of the Association for such fiscal year;

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

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

(v) Pay any compensation to any director or officer of the Association for services performed in the conduct of the Association's business; however, the Board of Directors may

reimburse any such director or officer for expenses incurred by it in carrying on the business of the Association.

6.2.5 Anything contained in this Paragraph 6.2 to the contrary notwithstanding, the Board of Directors shall not have the power to (i) authorize or approve any contract for the professional management of the Project, or any contract providing for the services of Declarant, which does not permit the Association to terminate such contract on 90 days' or less written notice and/or has a term greater than three years or (ii) grant to anyone easements or use rights which affect the Open Space, except as may be permitted pursuant to the provisions of the Declaration.

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

6.3 Number.

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

6.4 Election and Tenure of Office.

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

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

arising in connection with the right to vote, count and tabulate all votes or consents, determine when the polls shall close, determine the result and do such acts as may be proper to conduct the election or vote with fairness to all Members.

6.5 Vacancies.

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

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

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

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

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

6.6 Removal of Directors.

6.6.1 The entire Board of Directors or any individual director may be removed from office by an affirmative vote (or written ballot) of Members holding a majority of the voting power in each voting class entitled to vote at an election of directors; provided, however, unless the entire Board of Directors is removed, an individual director shall not be removed prior to the expiration of its term of office when the votes cast against removal would be sufficient to elect such director if voted cumulatively at an election at which the same total number of votes were cast and the entire number of directors authorized at the time of the director's most recent election were then being elected. If any director(s) is so removed, a new director(s) may be elected at the same meeting.

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

6.7 Place of Meetings.

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

6.8 Organizational Meetings; Notice.

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

6.9 Other Regular Meetings; Notice.

6.9.1 Regular meetings of the Board of Directors, other than the annual organizational meeting, shall be held at such date, time and place within the Project as may be agreed upon from time to time by the Board of Directors except that said meetings shall be held at least every six months if business to be transacted by the Board of Directors does not justify more frequent meetings; or may be called at any time by the chairman of the Board of Directors or the president, any vice president,

secretary or by any two directors of the Association. If said date shall fall upon a holiday such meeting shall be held on the next succeeding business day thereafter.

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

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

6.10 Special Meetings; Notice.

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

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

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

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

6.11 Adjournment.

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

6.12 Quorum; Required Vote.

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

6.13 Open Meetings; Executive Sessions.

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

6.13.2 Notwithstanding anything to the contrary contained in this Article, the Board of Directors may, with the approval of a majority of a quorum thereof, adjourn any meeting and reconvene

in executive session to discuss, consider or vote upon (i) items related to or involving personnel, (ii) litigation in which the Association is or may become involved and/or (iii) matters of a similar nature, provided that the nature of any and all such business to be considered in executive session shall first be announced in the open meeting.

6.14 Action by Unanimous Written Consent.

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

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

ARTICLE 7 - Officers

7.1 Officers.

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

7.2 Appointment.

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

7.3 Subordinate Officers.

7.3.1 The Board of Directors may at any time appoint, or may designate an officer to appoint, such other officers as the business of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in these Bylaws or as the Board of Directors may from time to time determine.

7.4 Removal and Resignation.

7.4.1 Any officer may be removed, either with or without cause, by the Board of Directors; and additionally, any subordinate officers not appointed by the Board of Directors may be removed by any officer upon whom such power of removal has been conferred by the Board of Directors.

7.4.2 Any officer may resign at any time by giving written notice to the Board of Directors, or to the president or to the secretary of the Association. Any such resignation shall take effect as of the date of the receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

7.5 Vacancies.

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

7.6 Chairman of the Board.

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

7.7 President.

7.7.1 Subject to such supervisory powers, if any, as may be given by the Board of Directors to the chairman of the Board of Directors, if there be such an officer, the president shall be the general manager and the chief executive officer of the Association and, subject to the control of the Board of Directors, shall have the general power to supervise, direct and control the business and officers of the Association. The president shall preside at all meetings of the Members and in the absence of the chairman of the Board of Directors, or if there be

none, at all meetings of the Board of Directors. The president shall be an ex officio member of all standing committees and shall have the general powers and duties of management usually vested in the office of president of a corporation and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

7.8 Vice President(s).

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

7.9 Secretary and Assistant Secretary.

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

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

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

7.9.4 The assistant secretary, if there shall be such an officer or if there be more than one, the assistant secretaries in the order determined by the Board of Directors (or if there be no such determination, then in the order of their appointment), shall, in the absence of the secretary or in the event of the inability or refusal of the secretary to act, perform the duties

and exercise the powers of the secretary and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

7.10 Chief Financial Officer and
Assistant Chief Financial Officer

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

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

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

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

ARTICLE 8 - Committees

8.1 Architectural Control Committee.

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

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

8.1.3 Commencing one year from the date of the original issuance by the California Department of Real Estate of the final subdivision public report for the Project, and so continuing each year thereafter until (i) 90 percent of the Lots are sold by Declarant or (ii) the fifth anniversary of the original issuance of the final subdivision public report for the Project, whichever first occurs, the Board of Directors shall appoint one of the members of the Board of Directors to serve on the Architectural Control Committee for a term of one year and until such director's successor is appointed or until such director's earlier resignation or removal. All members of the Architectural Control Committee appointed by the Board of Directors shall serve at the pleasure of the Board of Directors.

8.1.4 Any vacancy on the Architectural Control Committee by reason of death, resignation or removal by the Board of Directors of any of its appointees shall be promptly filled by the Board of Directors with a member of the Board of Directors within 30 days after such vacancy first occurs. Notwithstanding anything contained in this Article to the contrary, any vacancy on the Architectural Control Committee by reason of death, resignation

or removal by Declarant of any of its appointees shall be promptly filled by Declarant with a person (who need not be a Member or directors) within 30 days after such vacancy first occurs.

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

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

8.2 Executive and Other Committees.

8.2.1 The Board of Directors may by resolution adopted by a majority of the number of directors then in office, provided that a quorum is present, create an Executive Committee, and such other committees as may be necessary from time to time, each consisting of two or more directors and with such powers as it may designate, consistent with the Articles, these Bylaws and the laws of the State of California. Appointments to such committees shall be by a majority vote of the directors in office at the time of appointment. The Board of Directors may appoint one or more directors as alternate members of any committee, who may replace any absent member at any meeting of the committee. Such committees shall hold office at the pleasure of the Board of Directors and need not be reappointed annually.

ARTICLE 9 - Association Records and Reports; Inspection

9.1 Records.

9.1.1 The Association shall maintain adequate and correct accounts, books and records of its business and properties. All

such books, records and accounts shall be kept at its principal place of business in the State of California or at such other place as may be designated by the Board of Directors from time to time.

9.2 Inspection of Books and Records.

9.2.1 The Member register, the books of account, minutes of proceedings of the Association, of the Board of Directors, of the Executive Committee and of other committees of the Association shall (upon the written demand of any Member) be open to inspection and copying by such Member or its duly appointed representative at any reasonable time, for a purpose reasonably related to such Member's interests as a Member, at the office of the Association or at such other place within the Project as the Board of Directors shall prescribe. All of the foregoing documents, books and records shall be exhibited at any time when required by the demand at any Members' meeting of at least 10 percent of the Members represented at such meeting.

9.2.2 Every director and every director of the Community Association of Bernardo Heights, a California nonprofit mutual benefit corporation, shall have an absolute right, at any reasonable time, to inspect the aforementioned documents, books and records and to inspect the physical properties owned or controlled by the Association. The right of inspection by each director shall include the right, at such director's expense, to make extracts and copies of documents.

9.2.3 An inspection demand other than at a Members' meeting shall be made in writing upon the president, secretary or assistant secretary of the Association. The Board of Directors shall establish reasonable rules with respect to (i) hours and days of the week when such an inspection may be made and (ii) payment of the cost of reproducing copies of such documents, books and records requested by a Member or director.

9.3 Certification and Inspection of Bylaws.

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

9.4 Checks, Drafts, Etc.

9.4.1 All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the Association, shall be signed or

endorsed by such person or persons and in such manner as shall be determined from time to time by resolution of the Board of Directors.

9.5 Contracts, Etc.; How Executed.

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

9.6 Annual Budget.

9.6.1 The Board of Directors shall cause to be prepared a pro forma operating statement (budget) for each fiscal year which shall include a statement of (i) all contemplated expenses and costs for such fiscal year and (ii) all contemplated receipts from assessments and income for such fiscal year. The pro forma operating statement shall be distributed to each Member not less than 60 days prior to the beginning of such fiscal year.

9.7 Initial Financial Report.

9.7.1 The Board of Directors shall cause to be prepared an initial financial report, which report shall include (i) a balance sheet as of an accounting date (the "Accounting Date") which is the last day of the month closest in time to six months from the date of closing of the first sale of a Lot in the Project and (ii) an operating statement for the period from the date of the first closing to the Accounting Date, which operating statement shall include a schedule of assessments received and receivable itemized by the Lot number and by the name of the Member so assessed. The initial financial report shall be distributed to each Member within 60 days from the Accounting Date.

9.8 Annual Report.

9.8.1 The Board of Directors shall cause to be prepared by an independent accountant, and shall distribute to each Member, within 120 days after the close of the Association's fiscal year, an annual report, which annual report shall include (i) a balance sheet as of the end of the fiscal year, (ii) an operating (income) statement for the fiscal year, (iii) a statement of changes in financial position for the fiscal year, (iv) a statement of the place where the names and addresses of the

current Members are located and (v) any information required to be reported under Section 8322 of the California Corporations Code. The financial statements prepared in connection with the annual report shall be prepared in conformity with generally accepted accounting principles or some other basis of accounting which reasonably sets forth the assets and liabilities and the income and expenses of the Association and discloses the accounting basis used in their preparation. Upon written request of a Member, the Board of Directors shall promptly cause the most recent annual report to be sent to the requesting Member.

ARTICLE 10 - Corporate Seal

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

ARTICLE 11 - Amendments to Bylaws

11.1 By Members.

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

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

11.2 No Amendment by Board of Directors.

11.2.1 Anything contained herein to the contrary notwithstanding, the Board of Directors shall not have any right or power to adopt, amend or repeal any of these Bylaws.

11.3 Record of Amendments.

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

ARTICLE 12 - Amendments to Articles

12.1 Amendments.

12.1.1 Amendments to the Articles may only be adopted by a vote of a majority of the directors of the Association and (i) by a vote or written ballot of Members entitled to exercise a majority of the voting power in each of the two voting classes of the Association or (ii) upon cessation of one of the two voting classes, by a vote or written ballot of Members entitled to exercise a majority of the voting power in the remaining voting class, provided that said vote or written ballot shall include the votes of a majority of the Members other than Declarant.

12.2 Record of Amendments.

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

ARTICLE 13 - Supremacy of Declaration

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

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

IN WITNESS WHEREOF, the undersigned has hereunto subscribed
its name this _____ day of _____, 19__.

GENSTAR DEVELOPMENT INC.,
a New York Corporation
(Penasquitos Properties
Division)

By

By

FAIRWAY POINTE
OWNERS' ASSOCIATION, INC.

Unanimous Written Consent of Directors

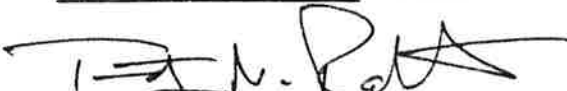
The undersigned, being all of the directors of FAIRWAY POINTE OWNERS' ASSOCIATION, INC., a California nonprofit mutual benefit corporation (the "Association"), do hereby adopt the following resolutions:

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


<u>Name</u>	<u>Office</u>
<u>Gary S. Kashing</u>	President
<u>Timothy N. Roberts</u>	Vice President
<u>LaDonna K. Clifton</u>	Secretary
<u>LaDonna K. Clifton</u>	Chief Financial Officer

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

IN WITNESS WHEREOF, the undersigned have executed this Unanimous Written Consent of Directors pursuant to Section 7211(b) of the California Corporations Code and the Bylaws of the Association as of the _____ day of _____, 19____ at _____, California.



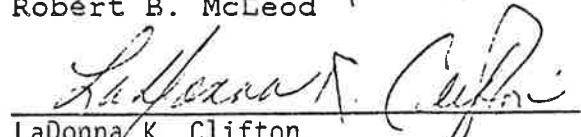
Timothy N. Roberts




Robert B. McLeod



H. M. Darmstandler



LaDonna K. Clifton



Gary S. Kashing

THE FAIRWAY POINTE OWNERS' ASSOCIATION, INC.

Unanimous Written Consent of Directors

The undersigned, being all the directors of THE FAIRWAY POINTE OWNERS' ASSOCIATION, INC., a California nonprofit mutual benefit corporation (the "Association"), do hereby unanimously consent to the adoption of the following resolution:

RESOLVED that the following persons are hereby elected directors of the Association to serve until the next annual meeting of Members and until their respective successors are duly elected and qualified:

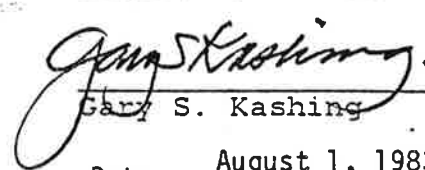
Robert B. McLeod
Gary S. Kashing
Timothy N. Roberts
LaDonna K. Clifton
H.M. Darmstandler

IN WITNESS WHEREOF, the undersigned have executed this Unanimous Written Consent of Directors this first day of August, 1983, pursuant to the authority granted by the Bylaws of the Association.

GENSTAR DEVELOPMENT INC.



Robert B. McLeod



Gary S. Kashing

Date August 1, 1983

FAIRWAY POINTE
OWNERS' ASSOCIATION, INC.

Certification

The undersigned, being the secretary of FAIRWAY POINTE OWNERS' ASSOCIATION, INC., a California nonprofit mutual benefit corporation (the "Association"), does hereby certify that:

1. _____, a _____, is the sole Member, as of the date hereinbelow set forth, of FAIRWAY POINTE OWNERS' ASSOCIATION, INC., a California nonprofit mutual benefit corporation (hereinafter "Association"); and

2. The foregoing Bylaws, comprising ___ pages, constitute the Bylaws of the Association as duly adopted by the sole Member of the Association by written ballot dated _____, 19__.

IN WITNESS WHEREOF, the undersigned has executed this Certification this _____ day of _____, 19__.

Secretary of Fairway Pointe
Owners' Association, Inc.

THE FAIRWAY POINTE OWNERS' ASSOCIATION, INC.

Unanimous Written Consent of Members

The undersigned, being all the persons who would be entitled to vote at a meeting of the members of THE FAIRWAY POINTE OWNERS' ASSOCIATION, INC., a California nonprofit mutual benefit corporation (the "Association"), do hereby unanimously consent to the adoption of the following resolution:

RESOLVED that Paragraph 6.3.1 of Article 6 of the Bylaws of the Association is hereby amended to read as follows:

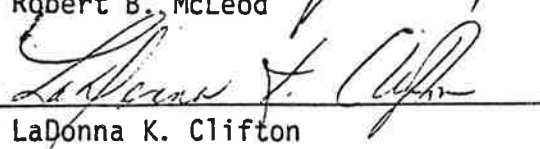
6.3 Number.

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

IN WITNESS WHEREOF, the undersigned have executed this Unanimous Written Consent of Members this first day of August, 1983, pursuant to the authority granted by section 7513(a) of the California Corporations Code.

GENSTAR DEVELOPMENT INC.,
a New York corporation
(Penasquitos Properties Division)

By 
Robert B. McLeod

By 
LaDonna K. Clifton

THE FAIRWAY POINTE OWNERS' ASSOCIATION, INC.

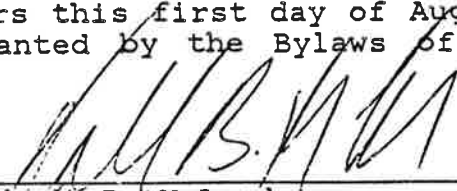
Unanimous Written Consent of Directors

The undersigned, being all the directors of THE FAIRWAY POINTE OWNERS' ASSOCIATION, INC., a California nonprofit mutual benefit corporation (the "Association"), do hereby unanimously consent to the adoption of the following resolution:

RESOLVED that the following persons are hereby elected directors of the Association to serve until the next annual meeting of Members and until their respective successors are duly elected and qualified:

Robert B. McLeod
Gary S. Kashing
Timothy N. Roberts
LaDonna K. Clifton
H.M. Darmstandler

IN WITNESS WHEREOF, the undersigned have executed this Unanimous Written Consent of Directors this first day of August, 1983, pursuant to the authority granted by the Bylaws of the Association.



Robert B. McLeod



Gary S. Kashing

Index as Amendment to CC 215

461

RECORDED IN
OFFICIAL RECORDS
OF SAN DIEGO COUNTY, CA.

1984 DEC 10 AM 10:37

VEFA 1.1.1.2
COUNTY RECORDER

RECORDS DEPARTMENT OF FIRST AMERICAN TITLE CO.

Recording Requested By:

Declarant

When Recorded Mail To:

Genstar Development Inc.
La Jolla Eastgate Bldg.
Suite 340
9404 Genesee Ave.
La Jolla, California 92037

Attention: Ms. Mim Scott

) Space Above For Recorder's Use

RF 6.00
MG 1.00

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

GENSTAR DEVELOPMENT INC., a New York corporation ("Declarant"), makes this Declaration of Annexation and Supplemental Restrictions for the Community of Bernardo Heights on the terms and conditions stated herein with reference to the facts set forth in Article 1.

ARTICLE 1 - Recitals

1.1 Declarant caused to be filed for record on September 30, 1980, File/Page No. 80-319018, Official Records of San Diego County, California, that certain "Declaration of Covenants, Conditions and Restrictions for the Community of Bernardo Heights" dated September 29, 1980 ("the Community Declaration"); the Community Declaration was amended by (i) a "First Amendment to Declaration of Covenants, Conditions and Restrictions" recorded July 31, 1981, File/Page No. 81-243645, Official Records of San Diego County, California, and (ii) a "Second Amendment to Declaration of Covenants, Conditions and Restrictions" recorded December 14, 1983, File/Page No. 83-456035, Official Records of San Diego County, California.

1.2 The property described in Exhibit A ("the Annexation Property") was included in Exhibit B to the Community Declaration as property subject to annexation by Declarant into the Community of Bernardo Heights ("the Community") and was, at the time the Community Declaration was filed for record, owned by Declarant.

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

ARTICLE 2 - Annexation of Annexation Property

2.1 Declarant hereby declares the following:

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

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

ARTICLE 3 - Application of Community Declaration

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

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

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

3.4 The Fairway Pointe Owners' Association, a California nonprofit mutual benefit corporation, will be the Neighborhood Association (as defined in the Community Declaration) for the Annexation Property.

ARTICLE 4 - General Provisions


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

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

IN WITNESS WHEREOF, this Declaration of Annexation has been executed at San Diego, California, as of November 30, 1984.

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

By 
Robert B. McLeod
Vice President

By 
LaDonna K. Monsees
Assistant Secretary

Lots 1 through 87, inclusive, of BERNARDO HEIGHTS
UNIT NO. 9 RESUBDIVISION, according to Map thereof No.
10434, filed in the Office of the County Recorder of
San Diego County, California, on July 19, 1982.

EXHIBIT A

PLANNED RESIDENTIAL DEVELOPMENT PERMIT NO. 83-0560 ✓
PLANNING DIRECTOR

This Planned Residential Development Permit Amendment is granted by the Planning Director of The City of San Diego to GENSTAR DEVELOPMENT INC., a New York Corporation, "Owner/Permittee," under the conditions contained in Section 101.0900 of the Municipal Code of The City of San Diego.

1. Permission is granted to "Owner/Permittee" to construct a Planned Residential Development described as Bernardo Heights Phase III, Map Nos. 9573; 9955; 9562; 9604; 9610; 9706; 9647; 9716; 10434, 9857 and Parcel Map Nos. 12461; 11717 and 11588, located east of I-15 and south of Lomica Drive, in the R-1-5, R-2, R-2A and A-1-10 zones.
2. The Planned Residential Development Permit shall include the total of the following facilities:
 - a. 610 attached and detached residential units.
 - b. Off-street parking.
 - c. Incidental accessory uses as may be determined and approved by the Planning Director.
 - d. Swimming pools; tennis courts; baseball, football and soccer fields and tot lots.
3. Prior to the issuance of any building permits, a final subdivision map shall be recorded on the subject property. Rezoning of the subject property shall be approved by the City Council and become effective with the recordation of the subdivision map. Permits may be issued for model units prior to the final map recordation, subject to the requirements of the City Attorney, Engineering and Development Director and Planning Director.
4. An open-space easement shall be granted and shown on said map on all areas not shown for building sites. Such areas shall be coupled with the severalty interests of the owners of the dwelling units.
5. Prior to the issuance of grading permits, a landscaping and irrigation plan shall be submitted to the Planning Director for approval. Prior to the issuance of building permits, complete building plans, including landscaping and signs, shall be submitted to the Planning Director for approval. All plans

PRD Permit No. 83-0560

shall be in substantial conformity to Exhibit "A," dated June 28, 1979, on file in the Planning Department. All landscaping shall be installed prior to issuance of an occupancy permit. Subsequent to the completion of this project, no changes shall be made until an appropriate application for an amendment to this permit shall have been granted.

6. The construction and continued use of this permit shall be subject to the regulations of this or other governmental agencies.

7. 1,715 total parking spaces shall be provided (at a ratio of 2.8 spaces per dwelling unit). Of those spaces 627 shall be provided for guests (at a ratio of 1.02 spaces per unit). 437 curbside spaces may be included in the calculation. Each of the parking spaces shall be permanently maintained and not converted for any other use at any time. Each subsequent owner shall be informed of this requirement through the C.C. and R's. Each space shall be maintained on the subject property in the approximate location as shown on Exhibit "A" dated October 3, 1983. Parking spaces and aisles shall conform to Planning Department standards. No charge shall be made at any time for use of these off-street parking spaces.

8. Exterior radio or television antennas shall be prohibited except for one master antenna for the project. The installation of any underground CATV cable in any public rights-of-way within or adjacent to the project shall require either a license or franchise with the City prior to such installation.

9. No building additions shall be permitted unless approved by the homeowners association and the Planning Director. Patio covers may be permitted only if they are consistent with the architecture of the dwelling unit.

10. No manufactured slope shall be steeper than a ratio of 2:1.

11. The applicant shall post a copy of the approved permit in the sales office for consideration by each prospective buyer.

12. Any sales office or temporary sales signs advertising the subdivision shall be approved by the Planning Director and shall be consistent with the criteria established by the R-2A, R-2 or R-1-5 Zone.

13. Sidewalks shall be provided from each unit to sidewalk within the dedicated right-of-way, and if the sidewalks are contiguous to the curb of private streets, a five-foot general utility easement must be provided behind this walk.

14. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located.

15. The effective date of this permit shall be the date of final action by the Planning Director or the effective date of a concurrent rezoning case. If an appeal is filed, the effective date shall be the date of final action by the Planning Commission or, if appealed, the date of City Council action. The permit must be utilized within 36 months after the effective date. Failure to utilize the permit within 36 months will automatically void the permit unless an extension of time has been granted by the Planning Director, as set forth in Section 101.0900 of the Municipal Code.

16. No development shall commence, nor shall any permit for construction be issued, until:

a. The Permittee signs and returns the permit to the Planning Department;

b. The planned residential development permit is recorded in the Office of the County Recorder.

If the signed permit is not received by the Planning Department within 90 days of the decision of the Planning Director, Planning Commission's or City Council, the permit shall be void.

17. The property included within this Planned Residential Development shall be used only for the purposes and under the terms and conditions set forth in this permit unless authorized by the Planning Director or the permit has been revoked by The City of San Diego.

18. This Planned Residential Development Permit may be cancelled or revoked if there is any material breach or default in any of the conditions of this permit. Cancellation or revocation may be instituted by the City or Permittee.

19. This Planned Residential Development shall constitute a covenant running with the land; all conditions and provisions shall be binding upon the permittee and any successor(s), and the interests of any successor(s) shall be subject to every condition herein.

20. Private streets shall be named and begin with appropriate terms such as "Caminito," "Ruelle," "Row," or "Square." Public refuse collection shall not be permitted unless approved by the Director of General Services. All private streets shall be improved to the requirements set forth by the Engineering and

Development Director. No parking shall be permitted on any private streets except in approved locations.

21. Colors and textures shall be approved by the Planning Director prior to issuance of any building permits.

22. The revision to this PRD Permit is contingent upon Planning Commission approval of the CUP Permit for the golf course.

APPROVED by the Planning Director of The City of San Diego on October 3, 1983.

F4

AUTHENTICATED BY:

Anne L. Rast

Anne L. Rast, Senior Planner
Planning Department

Jack Van Cleave

Jack Van Cleave
Planning Director

State of California,)
County of San Diego.) ss.

On this 21st day of October, in the year 1983,
before me, Catherine L. Meyer, a Notary Public in
and for said county and state, personally appeared ANNE L. RAST,
personally known to me (or proved to me on the basis of satisfactory
evidence) to be the person who executed this instrument as Senior
Planner of The City of San Diego Planning Department, and JACK VAN CLEAVE,
personally known to me (or proved to me on the basis of satisfactory
evidence) to be the person who executed this instrument as Planning
Director of The City of San Diego, and acknowledged to me that The City
of San Diego executed it.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, in
the County of San Diego, State of California, the day and year in this
certificate first above written.

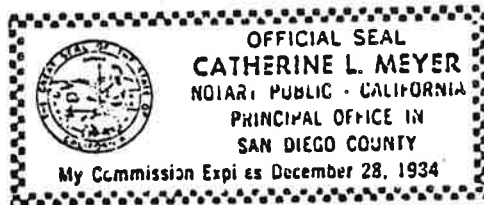
NOTARY STAMP

Name Catherine L. Meyer

(typed or printed)

Signature

Catherine L. Meyer



#504275

ACKNOWLEDGED:

The undersigned "Owner/Permittee" by execution hereof agrees to each and every condition of this permit and promises to perform each and every obligation of Permittee hereunder.

GENSTAR DEVELOPMENT INC., a New York corporation, Owner/Permittee

By Robert B. McLeod, Vice President

BY LaDonna K. Clifton, Ass't. Secretary

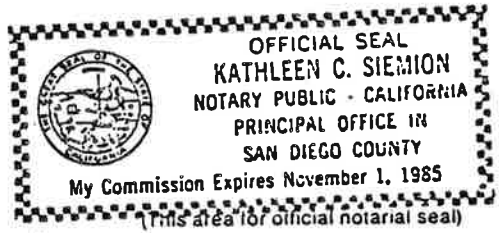
3002 (6/1) (Corporation) First American Title Insurance Company

STATE OF CALIFORNIA COUNTY OF SAN DIEGO ss.

On NOVEMBER 3, 1983 before me, the undersigned, a Notary Public in and for said State, personally appeared Robert B. McLeod and LaDonna K. Clifton, 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 Assistant Secretary, on behalf of GENSTAR DEVELOPMENT 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 Kathleen C. Siemion



the year 1983, and for said Notary president and acknowl-

l, in the is certif-

State of California,) County of San Diego.) ss.

On this _____ day of _____, in the year _____, before me _____, a Notary Public in and for said county and state, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as president (or secretary) or on behalf of the corporation therein named, and acknowledged to me that the corporation executed it.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, in the County of San Diego, State of California, the day and year in this certificate first above written.

Name _____ (typed or printed) Signature _____

NOTARY STAMP