


Recording Requested By: )  
 )  
The Sunland Housing Group, )  
Inc. )  
 )  
And When Recorded Mail To: )  
 )  
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SPARBER, FERGUSON, NAUMANN & )  
PONDER )  
701 "B" Street, Suite 800 )  
San Diego, California 92101 )  
 )  
 )

This instrument is certified to be a true and exact copy of that certain instrument recorded on July 8, 1987 as File No. 87-381375 in the office of the County Recorder of San Diego County.

FIRST AMERICAN TITLE INSURANCE

  
By Authorized Signature

FOR RECORDER'S USE ONLY

**TIERRA DEL SOL AT BERNARDO HEIGHTS**

**OWNERS' ASSOCIATION, INC.**

**DECLARATION OF RESTRICTIONS**

TIERRA DEL SOL AT BERNARDO HEIGHTS

OWNERS' ASSOCIATION, INC.

DECLARATION OF RESTRICTIONS

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DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS is made and executed by The Sunland Housing Group, Inc., a California corporation, herein referred to as "Declarant,"

WITNESSETH THAT:

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

Lots 1 through 42 of Tierra Del Sol in the City of San Diego, County of San Diego, State of California according to Map thereof No. 11806 recorded in the Office of the County Recorder of San Diego County on May 13, 1987.

WHEREAS, Declarant has caused to be recorded in the Office of the County Recorder of San Diego County, California, a Condominium Plan (as the same is described in California Civil Code Section 1351(e)) affecting said real property.

WHEREAS, Declarant will create, on the real property described, a Condominium Project pursuant to California Civil Code Section 1351(f), to be developed in six (6) phases as follows:

<u>Phase</u>	<u>Lot Numbers</u>	<u>Number of Units</u>
1	1,2,3,10,24,31,32,41,42	22
2	4,5,11,13,25,26,33,34	20
3	6,7,8,14,28,35,36	20
4	12,19,27	14
5	16,17,18,23,24,38,39,40	24
6	15,19,20,21,22,30,37	26

There is no guarantee that all phases will be completed or that the phasing will occur as planned.

WHEREAS, Declarant is about to sell and convey Condominiums and Declarant desires and intends to hereby subject phase 1 of said Condominiums (and upon the annexation of phases 2, 3, 4, 5 and/or 6, to subject the Condominiums in said phases) to certain limitations, restrictions, conditions and covenants herein set forth.

WHEREAS, each Owner of a Unit (as defined in Article 1 hereof) will be a member of TIERRA DEL SOL AT BERNARDO HEIGHTS OWNER'S ASSOCIATION, INC., a California nonprofit mutual benefit corporation, herein referred to as the "Association" (more

specifically defined in Article 1 hereof). The Association has been formed to serve as the Neighborhood Association as described in the Community Declaration (more specifically defined in Article 1 hereof).

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

## 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 "Declaration" shall mean this instrument as the same may be amended pursuant to the Article entitled "Amendment."

1.1.2 "Plan" shall mean that certain Condominium Plan recorded July 8, 1987, File/Page No. 87-381374, Official Records of San Diego County, California, being a Condominium Plan as the same is described in California Civil Code Section 1351(e), and any amendments to said Condominium Plan.

1.1.3 "Project" shall mean the real property encompassed by the Plan, including all structures situated thereon, and any additional real property that may be annexed pursuant to the Article entitled "Annexation."

1.1.4 "Condominium" shall mean an estate in the Project, as defined hereinabove and in California Civil Code Sections 783 and 1351(f).

1.1.5 "Unit" shall mean the separate interest of a Condominium as the same is defined in California Civil Code Sections 1351(f) and 1351(1)(2) which are not owned in common with the owners of other Condominiums; each Unit, and the boundaries thereof, are described in the Plan.

1.1.6 "Common Area" shall mean Common Area as the same is defined in California Civil Code Section 1351(b) and as defined in the Plan. The Common Area is the real property within the Project owned or to be owned by the Association for

the common use and enjoyment of the Owners. The Common Area presently owned or to be owned by the Association consists of Lots 24, 31, 32, 41 and 42 in phase 1. If annexation is effectuated pursuant to the Article entitled "Annexation," the Common Area may then include such additional real property as is annexed as Common Area.

1.1.7 "Association" shall mean TIERRA DEL SOL AT BERNARDO HEIGHTS OWNERS' ASSOCIATION, INC., a California non-profit 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.

1.1.8 "Articles" shall mean the Articles of Incorporation of the Association and any amendments to said Articles.

1.1.9 "Bylaws" shall mean the Bylaws of the Association and any amendments to said Bylaws.

1.1.10 "Directors" or "Board of Directors" shall mean the Board of Directors of the Association.

1.1.11 "Owner" shall mean the person(s) who hold(s) record title to any Condominium.

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

1.1.13 "Exclusive Use Common Area" shall mean and refer to those portions of the Common Area to which an exclusive right to use is granted to an Owner as shown and described on the Plan and may consist of Parking Spaces, Driveways, Patios, Yard Areas and/or Storage.

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

1.1.15 "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.

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

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

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

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

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

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

1.1.22 "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.

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

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

1.1.25 "Community Rules" shall mean the Rules adopted by the Community Board pursuant to Paragraph 3.8 of the Community Declaration.

## ARTICLE 2

### Community Association

2.1 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.

2.2 Anything contained in this Declaration to the contrary notwithstanding, the lien of any assessment imposed upon any Unit pursuant to this Declaration shall be subordinate and inferior to the lien or any assessment imposed upon such Unit pursuant to the Community Declaration.

2.3 Declarant, for each Unit which it owns, hereby covenants, and each Owner of a Unit 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 Units 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 Units. All such funds collected by the Association shall be held in trust by the Association for the benefit of the Community Association, and such funds shall be disbursed to the Community Association as provided in the Community Declaration.

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

2.4 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 an Enforcing Person who may enforce the provisions of this Declaration pursuant to the Article entitled "Scope; Enforcement." 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.

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

Community Declaration, the Community Bylaws and the Community Articles.

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

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

### ARTICLE 3

#### Use

3.1 Each Unit shall be improved, used and occupied only for private single-family dwelling purposes.

3.2 Each Owner shall have the exclusive right to (i) paint, repaint, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, doors and fences in or bounding such Owner's Unit, provided that the floors of the Unit shall at all times be covered by cushion floor tile or carpeting over a heavy duty foam pad having a thickness of at least three-eighths (3/8) inch, and (ii) alter such Owner's Unit, provided such alteration shall not affect the Common Area, any other Unit or the structural portions of any building, wall or fence.

3.3 Each Owner shall construct and maintain shutters, blinds, curtains, drapes and/or appurtenances in or on the windows of his or her Unit. No Owner shall be permitted to hang sheets or blankets in said windows. No Owner shall be permitted to hang exterior shades or blinds on said windows.

3.4 No garage door of any Unit shall remain open except for purposes of ingress and egress.

3.5 No radio or television antenna or radio transmitter tower or facility shall be erected or maintained upon any Unit or upon any Exclusive Use Common Area.

3.6 No building additions, including patio covers, shall be permitted upon any Unit or upon any Exclusive Use Common Area without the express written consent of the Directors and the Architectural Control Committee.



3.7 No Unit shall be occupied or used for any purpose or in any manner which shall cause any structure in the Project to be uninsurable against loss by fire or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or cause any policy or policies representing such insurance to be cancelled or suspended or the company issuing the same to refuse renewal thereof.

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

3.9 No power equipment, hobby shop or car maintenance (other than emergency work) shall be permitted in any Unit or in the Common Area, except with the prior written approval of the Directors. Such approval shall not be unreasonably withheld. In deciding whether to grant approval, the Directors shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections.

3.10 Each Owner or Owners of a Unit may raise or keep only one (1) cat in said Unit and only one (1) dog in said Unit. The weight of any dog raised or kept by an Owner or Owners shall not exceed fifty (50) pounds.

3.11 The Common Area, except buildings, shall be improved and used only for (i) vehicular parking, (ii) vehicular and pedestrian movement within the Project, including access to the Units, and (iii) beautification of the Project and providing privacy to the residents thereof through landscaping and such other means as the Directors shall deem appropriate.

Notwithstanding the foregoing provisions of this Paragraph, no (i) pickup truck having a gross vehicle weight in excess of ten thousand (10,000) pounds, (ii) tractor, (iii) truck "cab," (iv) bus, (v) dune buggy, (vi) boat, (vii) trailer, (viii) recreational vehicle, (ix) mobile home, (x) motor home, (xi) camper shell (irrespective of whether the camper shell is attached to, or mounted upon, a vehicle or detached from a vehicle or otherwise not mounted upon a vehicle) or (xii) motorcycle shall be parked or stored in the Common Area; however, the Board of Directors may give written authorization to any Owner permitting temporary parking of any such equipment or vehicle owned by such Owner in the Common Area.

If any portion of the Common Area encroaches on any Unit or any Unit encroaches on the Common Area, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. A nonexclusive easement for ingress, egress and support throughout the Common Area is and

shall be appurtenant to each Unit, and the Common Area is and shall be subject to such easement.

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

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

3.14 No Owner of a Unit shall make any alteration or improvement to the Common Area or remove any planting, structure, furnishing or other object therefrom, except with the written consent of the Directors.

3.15 The Owner of each Unit shall be liable to the Association for all damages to the Common Area or to any improvements thereon or thereto (including but not limited to, buildings, recreational facilities and landscaping) or to any wall or fence adjacent to the Common Area caused by such Owner, its guests or any occupant of such Owner's Unit.

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

3.17 Anything in the preceding Paragraphs of this Article to the contrary notwithstanding, Declarant (and any successor in interest of Declarant) may use any Units owned by it, not exceeding at any one time four (4) in number, for the purpose of maintaining sales models. Such use shall be made of said Units only during reasonable hours. Notwithstanding the Article entitled "Amendment," this Section shall not be amended, modified or rescinded 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.

3.18 Any Owner desiring to lease or rent its Condominium shall deliver to the Board of Directors (i) a written notice expressing such intention and (ii) a copy of the proposed lease or rental agreement at least fourteen (14) days prior to the date such lease or rental agreement is to become effective or binding upon the parties thereto. All leases and rental agreements of Condominiums within the Project shall (i) be in writing, (ii) provide that the terms thereof are subject to the provisions of this Declaration, the Articles, the Bylaws and the regulations, if any, adopted by the Board of Directors relating to the use of and activity in the Common Area and (iii) provide that any failure by the tenant thereunder to comply with the terms of said documents shall constitute a default under such lease or rental agreement. No Owner shall lease less than the entire Condominium. No Owner shall lease or rent its Condominium for a term of less than thirty (30) days, except an Owner who is a lender in possession of a Condominium following (i) a default in a first mortgage, (ii) a foreclosure proceeding or (iii) any deed or other arrangement in lieu of foreclosure. Other than the foregoing, there shall be no restriction on the right of any Owner to lease its Condominium.

3.19 No sign of any nature shall be displayed or posted by an Owner in the Common Area. Further, no sign of any nature shall be displayed by an Owner to the public view on or from such Owner's Unit without the prior written approval of the Board of Directors as to (i) the size, shape, color and content thereof and (ii) the location on the Unit proposed by such Owner for the display thereof. However, such approval shall not be necessary in connection with the display of any sign of reasonable dimensions located on or in such Owner's Unit notifying the public that said Unit is "for rent" or "for sale." It is further provided, however, that any Owner displaying a "for rent" or "for sale" sign shall, in good faith and using its reasonable best efforts, endeavor to effect the rental or sale of its Unit, as the case may be. Notwithstanding the foregoing, Declarant may display or post any signs, flags, poles or other objects in the Common Area or in any Units owned by it which Declarant in its sole discretion deems appropriate in connection with its sale or leasing of Condominiums within the Project until Declarant has conveyed the last Condominium within 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 Condominium within 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.

#### ARTICLE 4

##### Ownership of the Common Area, Exclusive Use Common Area and Beneficial Interest in Common Personality

4.1 The Common Area is and shall be owned by the Association. Prior to Declarant's conveyance of the first Condominium in a phase, the Association shall be deeded fee title to the Common Area of said phase. The Owner of each Condominium shall have a right and easement of enjoyment in and to all of the Common Area which shall be appurtenant to and shall pass with each transfer, whether voluntary or involuntary, of title to the Condominium. However, such right and easement of enjoyment shall be subject to the provisions of this Declaration, including the rights of the Association and the Declarant to exercise all powers and to perform all duties set forth in this Declaration, the Articles of Incorporation and the Bylaws. No Owner may separate such right and easement of enjoyment from the fee title to his Condominium, although an Owner may delegate his right of enjoyment of the Common Area to the members of his family, his tenants, or contract purchasers who reside in his Condominium.

4.2 The Exclusive Use Common Area is and shall be Common Area owned by the Association. Said Exclusive Use Common Area, however, shall be set aside and reserved for the restricted use of the respective Units, as is or may hereinafter be designated in the Plan. The exclusive right of use of Exclusive Use Common Area granted to an Owner does not entitle such Owner to alter, change, or add to, in any way, the surfaces or structural parts of such Exclusive Use Common Area.

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

4.4 The Association shall be and become the Owner of all maintenance and other equipment acquired by it (i) for the maintenance and improvement of the Common Area and (ii) to implement the performance of its 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. No Owner shall possess any property right or interest in or to any personal property owned by the Association.

4.5 Notwithstanding anything contained in this Declaration to the contrary, Declarant, for itself and its successors in interest, hereby reserves a nonexclusive easement over, under, upon and across the Common Area 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 of the first Condominium in the Project without necessity of Declarant setting forth such reservation in the deed with respect to said conveyance. Said reservation of easement shall expire and be of no further force and effect six (6) years after the date on which this Declaration has been recorded. Notwithstanding the Article entitled "Amendment," no amendment of this Paragraph 4.5 may be had prior to the conveyance by Declarant (or its successor) of the last Condominium within the Project 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.

4.6 Declarant or the Association shall have the power to grant and convey in the name of all the Owners as their attorney-in-fact (or in the name of the Association as to any property to which the Association holds title) to any Owner or other party, licenses, and/or easements and rights-of-way in, on, over, or under the Common Area. The purpose of granting said licenses and/or easements and rights-of-way shall include, but not be limited to, maintaining common area greenbelts, use of private streets for ingress and egress, and constructing, erecting, operating or maintaining lines, cables, wires, conduits or other devices for electricity, cable television, power, telephone, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any similar public or quasi-public improvements or facilities. Each purchaser, in accepting a deed to a Condominium, expressly consents to such licenses, and/or easements and rights-of-way and authorizes and appoints Declarant (as long as Declarant owns one or more Condominium) as attorney-in-fact of such Owner to execute any and all instruments conveying or creating such licenses and/or easements or rights-of-way. However, no such license or easement may be granted if it would permanently interfere with the use, occupancy or enjoyment by any Owner of its Unit.

## ARTICLE 5

### Partition and Severance

5.1 In the event that any or all of the Common Area is conveyed to the Owners as tenants in common in equal fractional undivided interests, the provisions of this Article 5 shall apply. Except as set forth herein, such Common Area, if conveyed to the Owners, shall remain undivided and there shall be no judicial partition thereof. Nothing herein shall be deemed to prevent partition of a co-tenancy in a Condominium.

5.2 An action may be brought by any Owner for partition of the Project by sale of the entire Project, as if the Owners of all of the Condominiums in the Project were tenants in common in the entire Project in the same proportion as their interests in

the Common Area; provided, however, that partition shall be made only upon the showing that (i) three (3) years after damage or destruction to the Project which renders a material part thereof unfit for its use prior thereto, the Project has not been rebuilt or repaired substantially to its state prior to its damage or destruction, or (ii) that three-fourths (3/4) or more of the Project has been destroyed or substantially damaged (or that three-fourths (3/4) or more of the Units has been rendered unfit for their use prior thereto), and that Owners holding in the aggregate more than fifty percent (50%) interest in the Common Area are opposed to repair or a restoration of the Project, or (iii) that the Project has been in existence in excess of fifty (50) years, that it is obsolete and uneconomic, and that Owners holding in the aggregate more than fifty percent (50%) interest in the Common Area are opposed to repair or restoration of the Project, or (iv) any of the conditions as specified in Section 1359 of the California Civil Code have been fulfilled. Any proceeds from such sale of the entire Project in the event of a partition as herein provided shall, notwithstanding anything contained herein to the contrary, be equitably distributed among the Owners (and their Mortgagees as their respective interests may appear) so that each Owner (and its Mortgagees as their interests may appear) shall be entitled to a portion of such proceeds based upon the proportion that the fair market value of such Owner's Condominium (determined by a real estate appraiser, selected by the Board of Directors, who has been awarded the professional designation of Member Appraisal Institute) bears to the aggregate of the fair market value of all Condominiums within the Project (similarly determined).

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

5.4 Except as set forth in this Article or when provided by statute in case of condemnation or substantial loss to the Units and/or the Common Area, neither the Owners nor the Association shall, by act or omission, without the prior written consent of at least two-thirds (2/3) of all First Mortgagees (based upon one (1) vote for each first mortgage or deed of trust owned), be entitled to:

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

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

(iii) Partition or subdivide any Condominium;

(iv) Abandon, partition, subdivide, encumber, sell or transfer the Common Area; or

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

## ARTICLE 6

### The Association

6.1 The Association is, effective upon the recordation hereof, the "management body" to provide for the management, control, maintenance, architectural control and preservation of the Common Area, all as more specifically set forth in this Declaration, the Articles, the Bylaws and the regulations from time to time adopted by the Directors. Said management, control, maintenance and preservation of the Common Area shall include, but not be limited to, the following:

(i) Maintenance of the perimeter wall surrounding the Project;

(ii) Maintenance of greenbelt areas;

(iii) Maintenance of all private streets and off-street parking areas;

(iv) Maintenance of roof and exterior of Units;

(v) Maintenance of all boundary fences within the Project;

(vi) Landscaping and maintenance of all front yard areas;

(vii) Maintenance of a private sewer within the Project; and

(viii) Maintenance of a private storm drain within the Project.

6.2 Each Owner shall be and become a Member of the Association contemporaneously with its acquisition of a Condominium [whether such acquisition occurs by (i) conveyance of a Condominium by Declarant, (ii) voluntary transfer, assignment or conveyance of a Condominium, (iii) involuntary transfer of a Condominium, including without limitation by reason of the death of an Owner, or (iv) foreclosure (by trustee's power of sale or by judicial process) of a deed of trust or other lien on a Condominium] without necessity of documentation or other action, of any kind, by any person. The Board of Directors may require

that any person acquiring a Condominium notify the Association in writing of such acquisition so as to facilitate accurate record keeping of the membership.

6.3 A Board of Directors consisting initially of three (3) persons shall possess and be vested with the rights, powers and duties set forth in this Declaration, the Articles and the Bylaws.

6.4 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:

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

6.5 The imposition of a monetary penalty pursuant to Paragraph 6.4 must be done in good faith and in a fair and reasonable manner. The Owner must be given fifteen (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 (5) 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 the 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.

The imposition of a monetary penalty pursuant to Paragraph 6.4 shall not be characterized nor treated as an assessment. Hence, the failure to pay a monetary penalty imposed pursuant to Paragraph 6.4 shall not result in the imposition of an assessment lien upon the Lot of an Owner enforceable by sale of the Lot pursuant to Sections 2924, 2924(b) and 2924(c) of the California Civil Code.

6.6 The agents, employees and independent contractors of the Association shall have a nonexclusive easement to enter any Unit in the Project for the purpose of performing or satisfying



the duties and obligations of the Association hereunder, provided that such entry shall occur (i) at a reasonable hour and (ii) after reasonable notice has been given to the Owner of such Unit. In the event that there is an emergency and no one is in the Unit at the time of such emergency, the agents, employees and independent contractors of the Association may enter such Unit immediately and without notice for the sole purpose of taking such action as is necessary under the circumstances.

## ARTICLE 7

### Assessments

7.1 The Board of Directors have and shall have the right and power to make from time to time reasonable assessments upon the Owners to meet anticipated authorized expenditures (including the establishment of an adequate reserve fund for replacement and maintenance of facilities and improvements in and to the Common Area) of the Association, and to change from time to time the amount, installments and/or frequency of payment of assessments. No increase or decrease in the amount of such reasonable assessments for anticipated authorized expenditures of the Association in any one (1) fiscal year of the Association which exceeds ten percent (10%) of the regular assessment for the immediately preceding fiscal year may be made without the approval of (i) the Owners entitled to exercise a majority of the total voting power in each voting class as provided in Article 5 (which Article is entitled "Voting Rights") of the Bylaws or (ii) upon cessation of one (1) of the two (2) voting classes as a separate and distinct voting class, the Owners entitled to exercise (i) a majority of the total voting power of the Association and (ii) a majority of the votes of members other than Declarant. Each Owner shall be assessed separately for a share of such anticipated authorized expenditures, which share shall be proportioned according to the number of Units owned by such Owner as compared to the total number of Units in the Project. 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, addressed respectively to each Condominium, at least sixty (60) days prior to the beginning of a fiscal year; such assessment shall be a debt of the Owner thereof at the time such assessment is made. Amounts, or installments, of assessments shall bear interest at the rate of ten percent (10%) per annum from and after the due date thereof established by the Directors. The amount of any such assessment, together with said interest, costs and reasonable attorneys' fees in the event enforcement is commenced, shall be and become a lien upon any Condominium, the Owner of which is assessed, when the Directors cause to be recorded with the County Recorder of San Diego County, California, a notice of assessment. Said notice shall state the amount of such assessment and the aforesaid interest, costs and attorneys' fees, a description of the Condominium upon which such assessment shall constitute a lien and the name of the record Owner thereof. Upon payment of

said assessment and charges in connection with which such notice has been so recorded, or other satisfaction thereof, the 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 (1) year from the date of recordation of said notice of assessment; provided, however, that said one (1) year period may be extended by the Directors for not more than one (1) additional year by recording a written extension thereof. Such lien may be enforced by sale of the Condominium by the Directors or other person authorized by the 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, 2924(b) and 2924(c), applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. The Directors on behalf of the Association shall have the right to (i) bid at any foreclosure sale of a Condominium; (ii) a credit, in any such bidding, in the amount of the aggregate of the unpaid assessment(s), said interest and said charges and (iii) hold, lease, mortgage and convey said Condominium in the name "The Board of Directors of Tierra Del Sol at Bernardo Heights Owners' Association, Inc., under 'Declaration of Restrictions' recorded \_\_\_\_\_, Official Records of San Diego County, California" (said recording reference being the recording date of this instrument).

7.1.1 Anything herein to the contrary notwithstanding, the Directors may 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 7.1. Provided however, notice of said special assessment(s) is not governed by the time constraint imposed on assessments made pursuant to Paragraph 7.1. The amount of any such special assessment, together with any late charge incurred pursuant to this Article, costs and reasonable attorneys' fees in the event enforcement is commenced, shall be and become a lien upon any Condominium in the same manner as regular assessments become a lien. Provided, however, no such special assessment exceeding, in the aggregate, five percent (5%) of the budgeted gross expenses of the Association for the then current fiscal year of the Association may be levied without the approval of (i) the Owners entitled to exercise a majority of the total voting power in each voting class or by written ballot of such Owners as provided in Article 5 (which Article is entitled "Voting Rights") of the Bylaws of the Association or (ii) upon cessation of one (1) of the two (2) voting classes (described in said Article) as a separate and distinct voting class of Owners, then (i) a majority of the total voting power of the Association and (ii) a majority of the Owners other than Declarant; the provisions of the preceding clause shall not apply (i) to special assessments(s) for repair, or the like, described in the Article entitled "Destruction; Insurance" or (ii) in the case where the special assessment against a Member is a remedy utilized by the

Board of Directors to reimburse the Association for costs incurred in bringing the Member into compliance with the provisions of the Association Articles, Bylaws or this Declaration.

7.1.2 In the event the Association does not receive an Owner's payment of the entire amount of a regular or special assessment imposed upon its Condominium pursuant to this Article within fifteen (15) days after the due date thereof, said assessment shall be deemed delinquent. At that time, a late charge 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, control, maintenance, architectural control and preservation of the Common Area. 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 charge in the amount of (i) Ten Dollars (\$10.00) or (ii) ten percent (10%) of the amount of the delinquent assessment, whichever is greater. The Association and each of the Owners agree that such late charge represents a fair and reasonable estimate of the costs and expenses which the Association will incur by reason of such late payment. Acceptance of any such late charge 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.

7.2 Until such time as the Directors shall change the same pursuant to Paragraph 7.1, such assessments shall be due and payable monthly on the first day of each calendar month, commencing the first day of the calendar month next following the recording of the first conveyance by Declarant of a Condominium. Declarant shall be absolutely liable for the monthly installment of assessment, and any special assessment, constituting a lien on any Condominium and accruing prior to the conveyance thereof by Declarant.

7.3 Anything in Paragraph 7.1 to the contrary notwithstanding, if any tax is assessed upon the entire Project, or upon the Common Area only, a share thereof shall be included in the assessment upon each Owner which shall be a pro rata share equal to the number of Condominiums owned by an Owner divided by the total number of Condominiums within the Project.

7.4 The Association shall comply with the requirements of the Consumer Credit Protection Act (Public Law 90-321, 82 Stat. 164 et seq.), also known as the "Federal Truth-in-Lending Act," to the extent the same may be applicable.

## ARTICLE 8

### Destruction; Insurance

8.1 The Directors shall keep, under one Association master policy, (i) all buildings and improvements in the Project and (ii) all personalty owned by the Association, insuring against loss by perils under a multi-peril policy(ies) of hazard insurance for the interest of all Owners. The amount of coverage of such insurance shall be not less than one hundred percent (100%) of the insurable value (based on replacement cost) of said buildings and improvements and fair market value of personalty as determined annually by an insurance carrier selected by the Directors. The name of the insured under each policy of such insurance shall be substantially "Tierra Del Sol at Bernardo Heights Owners' Association, Inc., 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 shall be vested in the Directors, and insurance proceeds shall be payable directly to the Association or to Mortgagees as their interests appear.

8.2 In the event of any loss, damage or destruction of any of the buildings or improvements in the Project, the 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, each Owner shall be assessed separately for a share of such deficiency, which share shall be a fraction the numerator of which shall equal the number of square feet of floor area of the Unit to be assessed and the denominator of which shall equal the number of square feet of floor area of all Units to be assessed. In any event, all hazard insurance proceeds received for such loss, damage or destruction shall be used for replacement, repair or rebuilding.

8.3 Copies of all such insurance policies (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Association and open for inspection by Owners at any reasonable time(s). All such insurance policies shall (i) provide that they shall not be reducible or cancellable by the insurer, without first giving ten (10) 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, Directors and Owners and (iii) contain or have attached a standard mortgagee clause or endorsement (customarily used by private institutional lenders in the County of San Diego, California) in favor of all first Mortgagees, together with such other endorsement(s) as such first Mortgagees may require to fully protect their interests.

8.4 The Association shall give notice in writing to (i) all first Mortgagees in the event of any loss or "appropriation" affecting the Common Area which exceeds Ten Thousand Dollars (\$10,000.00) and (ii) all affected first Mortgagees in the event

of any damage to a Unit which exceeds One Thousand Dollars (\$1,000.00).

8.5 Said multi-peril policy(ies) of hazard insurance shall be issued by an insurance carrier which (i) has a financial rating by Best's Insurance Reports of Class VI or better and (ii) is authorized to transact business within the State of California.

8.6 The 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 Directors, volunteers and other persons responsible for handling funds belonging to or administered by the Association; such insurance or, in lieu thereof, fidelity bond, shall be written in an amount not less than one and one-half (1-1/2) times the Association's estimated annual operating expenses and reserves.

8.7 To the extent insurance is available, the Board of Directors shall procure and keep in force insurance in an amount up to Five Hundred Thousand Dollars (\$500,000.00) on behalf of any Director, Officer, or Member of a Committee of the Association (collectively referred to herein as the "Agent") against any liability asserted against or incurred by the Agent in such capacity or arising out of the Agent's status as such, regardless of whether the Association would have the power to indemnify the Agent against such liability under applicable law.

8.8 The Directors shall procure and keep in force during the term hereof insurance (with a "severability of interest" endorsement) in the name of the Association and the Owners against any liability to the public resulting from any occurrence in or about the Common Area with bodily injury limit not less than One Million Dollars (\$1,000,000.00) for each occurrence and property damage limit not less than One Million Dollars (\$1,000,000.00) for each occurrence. The policy(ies) of such insurance shall contain a waiver of subrogation by the insurer(s) against the Association, Directors and Owners.

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

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

## ARTICLE 9

### Condemnation

9.1 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.

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

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

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

9.2.3 "Award" means compensation paid by a condemnor for an appropriation, including, but not limited to, monetary and other consideration paid in avoidance of the exercise of said right and power of eminent domain.

9.2.4 "Condominium Total Value" means the cash fair market value of a Condominium the Unit of which is determined (pursuant to Paragraph 9.4) to be unsuitable for the purpose intended as a result of (i) an appropriation and (ii) the use to which appropriated land will thereafter be put and (iii) restoration and repair of any Common Area damaged or destroyed as a result of such appropriation.

9.2.5 "Condominium Partial Value" means the diminution in cash fair market value of a Condominium the Unit of which is determined (pursuant to Paragraph 9.4) to be, as a result of (i) an appropriation and (ii) the use to which the land appropriated will thereafter be put and (iii) restoration and repair of any Common Area damaged or destroyed as a result of such appropriation, suitable for the purpose for which it was intended.

9.3 The Board of Directors is hereby irrevocably appointed the agent for every Owner to (i) negotiate with any condemnor for settlement of an award for any appropriation, (ii) defend any action brought for an appropriation, and to engage and compensate counsel and expert witnesses therefor or to aid the Board of Directors in the exercise of any of its powers under this Article, (iii) conduct, arrange, or supervise an independent appraisal to determine the relative values of the Units and the Common Area affected by any appropriation, (iv) receive in the name of the Association any award and to retain the same, pending

its disbursement, in a noninterest-bearing bank account in the name of the Association and (v) disburse the same as soon as may be practicable, pursuant to the following Paragraphs of this Article. Notwithstanding any provision herein to the contrary, Mortgagees shall automatically be entitled to join in any appropriation proceedings. No settlement of an award negotiated by the Association on behalf of the Owners shall be binding upon said Mortgagees without their prior written consent.

9.4 In the event of any appropriation, the Directors shall, within ten (10) days of the initiation of such proceedings, notify all Mortgagees (whose security interest shall be affected by such appropriation) thereof; and as soon as may be practicable, shall determine upon competent evidence satisfactory to it:

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

9.4.2 As to any Unit so determined to be unsuitable for the purpose for which it was intended, the identity, description and the Condominium Total Value of the Condominium of which such Unit is a part.

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

9.5 Any determination made by the Directors pursuant to Paragraph 9.4 shall be binding upon all Owners. Nothing herein contained shall be construed to preclude the Directors from reconsidering, and changing, any such determination.

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

9.6.1 First, to Mortgagees as their interests may appear.

9.6.2 Second, to contractors, subcontractors, materialmen and others for the costs of the repair or restoration of damage or destruction to the Common Area caused by appropriation, or to the Association in reimbursement for such costs; the balance of the award is hereinafter referred to as "award balance."

9.6.3 Third, the award balance to Owners as follows:

(a) If the award balance equals or exceeds the aggregate of Condominium Total Values and Condominium Partial Values (i) to each Owner the amount of the Condominium Total Value or Condominium Partial Value, if any, determined, pursuant to Paragraph 9.4, for such Owner's Condominium and (ii) to the Association, the remainder of the award balance.

(b) If the award balance is less than the aggregate of Condominium Total Values and Condominium Partial Values, to each Owner that portion of the award balance which bears to the award balance the same ratio as the Condominium Total Value (or Condominium Partial Value), if any, determined, pursuant to Paragraph 9.4, for such Owner's Condominium bears to the aggregate of Condominium Total Values and Condominium Partial Values.

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

## ARTICLE 10

### Accounting

10.1 The Directors shall maintain books of account of all its receipts and expenditures and shall cause such books to be examined as of the close of each fiscal year and a report to be made thereon to the Association. The Directors shall deliver a copy of such report to the Owner of each Condominium within one hundred twenty (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, and 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 may 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 a public accountant.

## ARTICLE 11

### Scope; Enforcement

11.1 The limitations, restrictions, conditions and covenants set forth in this Declaration constitute a general scheme for (i) the maintenance, protection and enhancement of value of the Project and all Condominiums and (ii) the benefit of all



Owners. Said limitations, restrictions, conditions and covenants are imposed on each Condominium for the benefit of every other Condominium and the present and future Owners thereof. Said limitations, restrictions, conditions and covenants are and shall be covenants running with the land or equitable servitudes, as the case may be.

11.2 Each and every limitation, restriction, condition and covenant contained herein shall cease, terminate and be extinguished without necessity of further documentation of any kind, fifty (50) years from the date of recording of this Declaration.

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

11.4 The results of or condition caused by any 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 at law or in equity now or hereafter available against a public or private nuisance may be exercised by an Enforcing Person.

11.5 Any of the foregoing to the contrary notwithstanding, no action to enforce this Declaration shall be instituted (excepting the enforcement for failure to pay assessment(s) as set forth in the Article entitled "Assessments") unless and until a written notice of such breach setting forth the facts of such breach and the legal description of the Condominium affected thereby has been (i) filed for record in the Office of the Recorder of San Diego County, California, and (ii) delivered by certified mail to the Owner of such Condominium prior to such recording, and such breach has not been remedied within thirty (30) days after the recording of such notice. Any action instituted hereunder shall be commenced within one hundred twenty (120) days, but not prior to thirty (30) days, after the recording of such notice.

11.6 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.

11.7 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 reasonable attorneys' fees.

## ARTICLE 12

### Rights of Mortgagees

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

12.2 A breach of any of the foregoing limitations, restrictions, conditions or covenants (except as provided in this Article with respect to a breach by failure to pay any assessment) shall not defeat or render invalid the lien of any first mortgage or first deed of trust made in good faith and for value as to a Condominium. Such limitations, restrictions, conditions and covenants, however, shall be binding upon and effective against any person whose title to said Condominium is acquired by foreclosure, trustee's sale or otherwise.

12.3 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 Condominium and given for value and (ii) any blanket construction (including acquisition) mortgage(s) or deed(s) of trust encumbering all or any part of the Project which mortgage(s) or deed(s) of trust may have been expressly subordinated to this Declaration.

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

12.3.2 In the event any Mortgagee (i) shall acquire title to any Condominium by judicial foreclosure, exercise of power of sale contained in any real property mortgage or deed of trust, or deed in lieu of foreclosure and (ii) shall thereafter sell and convey such Condominium, any real property mortgage or deed of trust received by such lender as security for all or a portion of the purchase price of such Condominium shall be incontrovertibly deemed "given for value." Notwithstanding the

provisions of Paragraph 12.3 above, any lien created by or pursuant to this Declaration, which lien arises from the failure to pay assessment(s) accruing during the period of such Mortgagee's holding of title to said Condominium, shall be a lien superior to the lien of said real property mortgage or deed of trust received to secure a portion of said purchase price.

12.4 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 sixty (60) days after its occurrence, the Board shall, if any first Mortgagee of such Owner shall have so requested of the Association, immediately notify, in writing, such first Mortgagee 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."

12.5 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.

12.6 In the event there shall be any express or implied conflict between any provision of this Article 12 and any other provision of the Declaration, the provisions of this Article 12 shall govern and prevail.

## ARTICLE 13

### Declarant's Security for Its Obligations

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

13.1.1 The Directors shall, within ten (10) days after passage of the Grace Period (hereinafter defined), consider and vote on the question of action to be taken by the Association to enforce the obligations under the Bond with respect to any improvement in or to the Common Area for which a notice of completion has not been filed within sixty (60) days (the "Grace Period") after the completion date specified for that improvement in the "Planned Construction Statement" appended to the Bond. If the Association has, in writing, extended the time for completion of any improvement in or to the Common Area, the 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 thirty (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 Directors.

13.1.2 If the Directors fail to consider and vote on the question of action to be taken by the Association to enforce the obligations under the Bond or should the 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 (5%) of the voting power of the Association sign and submit to the Directors a petition demanding such meeting. Such meeting shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Directors of said petition. At such special meeting, all Members other than Declarant shall be entitled to vote.

13.1.3 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 Directors shall immediately initiate and thereafter pursue appropriate action in the name of the Association to enforce the obligations under the Bond. If the Directors refuse 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 Paragraph 7.1.1; 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.

13.1.4 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 or Member on behalf of the Association for a period of sixty (60) days after said special meeting. If no notice of completion is filed for said improvements in or to the Common Area within sixty (60) days after the date of said special meeting, the provisions of the foregoing Sections shall govern the action to be taken by the Directors and the Association with respect to enforcing the obligations under the Bond.

13.2 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 Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof. The fee payable to the American Arbitration Association to initiate such arbitration

shall be remitted by Declarant; however, the costs of such arbitration shall ultimately be borne as determined by the Arbitrator(s) under the aforesaid Rules.

## ARTICLE 14

### Amendment

14.1 Before the close of the first sale of a Condominium in the Project to a purchaser other than Declarant, this Declaration and any amendments to it may be amended in any respect or revoked by the execution by Declarant and any Mortgagee of record of an instrument amending or revoking the Declaration.

14.2 Before the close of the first sale of a Condominium in a second or subsequent phase of the Project to a purchaser other than Declarant, any Supplement (as hereinafter described) recorded pursuant to the Article entitled "Annexation" with respect to such phase may be amended in any respect or revoked by the execution of an instrument amending or revoking the Supplement by Declarant and any Mortgagee of record of the Property described in the Supplement. The amending or revoking instrument shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the Office of the County Recorder of San Diego County.

14.3 This Declaration may be amended only by written instrument (or counterparts thereof) signed and acknowledged (a) by the Owners entitled to exercise seventy-five percent (75%) of the total voting power in each voting class as provided in Article 5 (which Article is entitled "Voting Rights") of the Bylaws or (b) upon cessation of one (1) of the two (2) voting classes (described in said Article) as a separate and distinct voting class of Owners, by the Owners entitled to exercise seventy-five percent (75%) of the total voting power including the vote(s) of Declarant in the remaining voting class (described in said Article), provided that such signatures include the signatures of not less than seventy-five percent (75%) of the Owners other than Declarant and filed for record in the Office of the Recorder of San Diego County, California. Any written instrument amending this Declaration shall bear, or have attached thereto, the written consent of two-thirds (2/3) of all first Mortgagees as of the time of recording such amendment (based upon one (1) 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 the Common Area, Exclusive Use Common Area and Beneficial Interest in Common Personalty," "Partition and Severance," "Assessments," "Destruction; Insurance," "Condemnation," "Accounting," "Scope; Enforcement," "Rights of Mortgagees" and the following Paragraphs hereof: 1.1.2, 1.1.5, 1.1.6, 1.1.12, 3.1, 3.2, 3.12, 3.14, 6.2 and 14.3.

14.4 Each such amendment to this Declaration shall become effective only upon being filed for record as hereinabove provided and shall, from and after its effective date, be as effective as this instrument as to all (i) the Common Area, (ii) the Units, (iii) the Condominiums, (iv) the Project and (v) the Owners (as of the effective date) and their successors in interest.

## ARTICLE 15

### Annexation

15.1 The property described in Exhibit "A", attached hereto and incorporated herein by this reference, or any portion thereof may be annexed to the Project and made subject to this Declaration at the written election of the Declarant (or by the successors in title to such property) made at any time and from time to time within three (3) years following the original issuance of a final subdivision public report by the California Commissioner of Real Estate for the most recent phase of the Project. Such election shall be made by the recording of a Supplement to this Declaration (the "Supplement"). The Supplement shall describe the property to be annexed and shall state that it is being effected pursuant to the terms of this Declaration for the purpose of annexing the property described in the Supplement to the Declaration. Any Supplement recorded in accordance with the terms of this Paragraph shall be conclusive in favor of all persons who relied on it in good faith. Upon recording the Supplement in accordance with the provisions of this Declaration, the property described in the Supplement shall be part of the Project and subject to the provisions of this Declaration, and to the rights and powers of the Association pursuant to the terms of this Declaration, the Articles, and the Bylaws, and thereafter all of the Owners of Condominiums constituting a portion of the annexed property shall automatically be members of the Association, with voting rights commencing on the date regular assessments commence. Regular and special assessments with respect to the annexed property shall commence at the time and to the extent described in Paragraph 7.1, and the assessment of each Owner shall be recalculated and modified, if necessary, to take into account the greater number of Condominiums in the Project, using the same method of calculating as is described in Paragraph 7.1. Declarant in such Supplement shall expressly reserve for the benefit of all property that may from time to time be covered by this Declaration reciprocal easements of use, enjoyment, access, ingress and egress. Such easements may be used by Declarant, its successors, purchasers, and all Owners of Condominiums, their guests, tenants and invitees, for sidewalks, walkways, vehicular access, and such other purposes reasonably necessary to the use and enjoyment of all Condominiums in the Project. The Supplement may contain complementary additions, amendments, and modifications to this Declaration necessary to reflect the different character, if any, of the property being annexed, which are not inconsistent with the general scheme of this Declaration.

Notwithstanding the foregoing, unless approved by the California Department of Real Estate, no Supplement may (i) cause a substantial increase in the Common Area costs and expenses then being borne by Owners that was not disclosed in the Final Subdivision Public Report for the phase of the Project in which an Owner purchased its Condominium; or (ii) otherwise materially adversely affect the rights of Owners without the prior affirmative vote or written consent of at least sixty-six and two-thirds percent (66-2/3%) of each class of Owners entitled to vote and their Mortgagees.

15.2 Additional property may be annexed to the Project upon the affirmative vote or written consent of at least sixty-six and two-thirds percent (66-2/3%) of the voting power of Members of the Association, excluding the vote of Declarant. Upon such approval, a Supplement shall be prepared and recorded pursuant to the applicable provisions of Paragraph 15.1.

## 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) forty-eight (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, condition, restriction, covenant or provision contained in this Declaration is to be held invalid, void or unenforceable by any Court of competent jurisdiction, the remaining portions of this Declaration shall, nevertheless, be and remain in full force and effect.

16.3 Every right, privilege, duty and obligation in or upon the Association shall be exercised by, and shall be a burden upon, any California corporation incorporated (i) for a purpose exercising or discharging, as the case may be, said rights, privileges, duties and obligations, and (ii) by, or with the written consent of, the Owners of a majority of the Condominiums. No provision of the Articles of Incorporation or Bylaws of said corporation, and no action of said corporation, in violation or contravention of any provision of this Declaration shall be valid, subsisting or of any effect whatsoever.

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

IN WITNESS WHEREOF, this Declaration has been executed at San Diego, California, as of June 25th, 1987.

DECLARANT:

THE SUNLAND HOUSING GROUP,  
INC., a California corporation

By: 

\_\_\_\_\_  
URE R. KRETOWICZ, Chief  
Executive Officer

By: 

\_\_\_\_\_  
THOMAS P. DOBRON, Secretary

DCLRST/TDS  
REGW5



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

On June 25, 1987, before me, the undersigned, a Notary Public in and for said State, personally appeared URE R. KRETOWICZ, personally known to me, or proved to me on the basis of satisfactory evidence, to be the person who executed the within instrument as the Chief Executive Officer of the corporation that executed the within instrument, 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.



*Linda Fern Hall*  
\_\_\_\_\_  
Notary in and for Said State

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

On June 25, 1987, before me, the undersigned, a Notary Public in and for said State, personally appeared THOMAS P. DOBRON, personally known to me, or proved to me on the basis of satisfactory evidence, to be the person who executed the within instrument as the Secretary of the corporation that executed the within instrument, 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.



*Linda Fern Hall*  
\_\_\_\_\_  
Notary in and for Said State



EXHIBIT "A"

REAL PROPERTY SUBJECT TO ANNEXATION

Lots 4 through 9, 11 through 23, 25 through 30 and 33 through 40 of Tierra Del Sol in the City of San Diego, County of San Diego, State of California according to Map thereof No. \_\_\_\_\_ recorded in the Office of the County Recorder of San Diego County, \_\_\_\_\_.

Lot #4, inclusive, of Bernardo Heights Unit No. 4, resubdivision, in the City of San Diego, County of San Diego, State of California, according to the Map thereof No. 9955, filed in the Office of the Recorder of San Diego County, on December 30, 1980.

EXA/BH  
REGW5

BYLAWS OF

TIERRA DEL SOL AT BERNARDO HEIGHTS  
OWNERS' ASSOCIATION, INC.

BYLAWS OF  
TIERRA DEL SOL AT BERNARDO HEIGHTS  
OWNERS' ASSOCIATION, INC.

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BYLAWS OF  
TIERRA DEL SOL AT BERNARDO HEIGHTS  
OWNERS' ASSOCIATION, INC.

ARTICLE 1

Definitions

1.1 Articles

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.

1.2 Association

1.2.1 "Association" shall mean the Tierra Del Sol at Bernardo Heights 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 described hereinbelow.

1.3 Board of Directors

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

1.4 Bylaws

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

1.5 Common Area

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

1.6 Condominium

1.6.1 "Condominium" shall mean an estate in the Project as defined hereinbelow and in California Civil Code Sections 783 and 1351(f).

1.7 Declarant

1.7.1 "Declarant" shall mean THE SUNLAND HOUSING GROUP, INC., a California corporation, which constitutes the Declarant under the Declaration, defined hereinbelow.



## 1.8 Declaration

1.8.1 "Declaration" shall mean that certain Declaration of Restrictions recorded \_\_\_\_\_, 19\_\_\_\_, File/Page No. \_\_\_\_\_, Official Records of San Diego County, California, and any amendments thereto.

## 1.9 Member

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

## 1.10 Owner

1.10.1 "Owner" shall mean the person(s) who hold(s) record title to any Condominium, and shall include Declarant as long as Declarant holds title to a Condominium.

## 1.11 Plan

1.11.1 "Plan" shall mean that certain Condominium Plan recorded \_\_\_\_\_, 19\_\_\_\_, File/Page No. \_\_\_\_\_, Official Records of San Diego County, California, being a Condominium Plan as the same is described in California Civil Code Section 1351, and any amendments to said Condominium Plan.

## 1.12 Project

1.12.1 "Project" shall mean the real property encompassed by the Plan, including all structures situated thereon and any additional real property that may be annexed pursuant to the terms of the Declaration.

## 1.13 Unit

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

## ARTICLE 2

### Functions of the Association

#### 2.1 Purpose

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

## 2.2 Assessments

2.2.1 Pursuant to the provisions of the Article entitled "Assessments" of the Declaration, 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 the assessment levied upon such Owner's Condominium(s) under the provisions of the Declaration.

## ARTICLE 3

### Membership

#### 3.1 Members

3.1.1 The Association shall have one (1) 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 (2) classes of Members for the purpose of voting as set forth in Article 5. No Owner shall hold more than one (1) 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 his or her acquisition of a Condominium [whether such acquisition occurs by (i) conveyance of a Condominium by Declarant, (ii) voluntary transfer, assignment or conveyance of a Condominium, (iii) involuntary transfer of a Condominium, including without limitation by reason of the death of an Owner, or (iv) foreclosure (by trustee's power of sale or by judicial process) of a deed of trust or other lien on, a Condominium], without necessity of documentation or other action of any kind by any person. The Association may require that any person acquiring a Condominium shall notify the Association in writing of such acquisition so as to facilitate accurate record keeping of the membership. Prior to the conveying of a Condominium by Declarant, Declarant shall be a Member as to such Condominium. Transfer of membership in the Association shall be only by the above-specified means.

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

#### 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 forty-five (45) days after the sale and conveyance by Declarant of a majority of the Condominiums in the Project, but in no event later than six (6) months after the sale and conveyance by Declarant of the first Condominium in the Project. Subsequent annual meetings of Members shall be held on the anniversaries of the first annual meeting of Members and shall be held at such time on said date as may be designated by the Board of Directors. If the date of the annual meeting shall be a legal holiday, then the meeting shall be held on the next-succeeding business day, at the same hour.

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

#### 4.3 Special Meetings

4.3.1 Special meetings of Members, for any lawful purpose or purposes whatsoever, shall be called by (i) the Board of Directors upon the vote for such a meeting by a majority of a quorum of the Board of Directors or (ii) receipt of a written request for such a meeting signed by Members representing at least five percent (5%) of the total voting power of the Association.

4.3.2 Upon request in writing by registered mail to the Board of Directors at the principal office of the Association, or delivered to the Board of Directors in person by Members entitled to call a meeting of Members, 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 ten (10) nor more than ninety (90) days after the receipt of the request. If said notice is not given within twenty (20) days after receipt of the request, the person(s) 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 requirement set forth in Paragraph 4.4.

#### 4.4 Notice of Meetings

4.4.1 Written notice of meetings, annual or special, shall be given to Members who are entitled to vote at such meetings not less than ten (10) days nor more than ninety (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 twenty (20) days before the meeting. The notice shall specify the place, the date and time of the meeting and (i) in case of a special meeting, the general nature of 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. The notice of any meeting at which directors are to be elected shall include the names of all those who are nominees at the time notice is given to Members.

4.4.2 Such notices 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 supplied by the Member 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 (1) 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 five (5) days nor more than thirty (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 forty-five (45) days, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed for regular meetings. At the adjourned meeting the Association may transact any business, except for the election of the Board of Directors, which might have been transacted at the original meeting.

#### 4.5 Consent to or Approval of 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 waiver of notice or (ii) written consent to the holding of such meeting or (iii) written approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the records of the Association or made part of the minutes of 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 set forth the proposed action, provide an opportunity to specify approval or disapproval of any proposal and 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 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, by written ballot 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 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 (5) and not more than thirty (30) days from the date of the originally scheduled meeting. At such adjourned meeting at which the requisite number of Members 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 (2) classes for the purposes of voting, Class A and Class B. Class A Member(s) shall be all Owners of Condominiums except Declarant and said Class A Member(s) shall be entitled to one (1) vote for each Condominium owned. If a Unit is owned by more than one (1) person, each such person shall be a member of the Association, but there shall be no more than one (1) vote for each Unit. The lone Class B Member shall be Declarant who shall be entitled to three (3) votes for each Condominium owned in any phase of the Project. Declarant's Class B voting status shall cease and convert to Class A voting status on the earlier occurrence of one (1) of the following: (i) when the total votes outstanding in Class A equal the total votes outstanding in Class B; (ii) on that certain date which is two (2) years after the original issuance of the most recently issued Final Subdivision Public Report for a phase of the Project by the Commissioner of the California Department of Real Estate; or (iii) on the fourth anniversary of the original issuance of the Final Subdivision Public Report for the first phase of the Project.

#### 5.3 Voting Rights; Required Vote; Cumulative Voting

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

5.3.2 When a quorum is present at any regular or special meeting of Members, the affirmative vote of a majority of

the voting power present at such meeting shall prevail, except as otherwise provided for in the Articles, Bylaws and Declaration.

5.3.3 Every Member entitled to vote at any election for directors of the Association may cumulate his or her votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which he or she is entitled, or distribute his or her votes on the same principle among as many candidates as he or she may desire. 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 In the event that Members other than Declarant lack sufficient votes in the aggregate, after cumulating the votes of each of said Members, to elect not less than one (1) director or twenty percent (20%) of the total number of directors authorized hereunder, Declarant shall not be entitled to vote in the election of one director or twenty percent (20%) of the directors to be elected, whichever is greater.

5.3.5 If a membership stands of record in the names of two (2) 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 (2) 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 (1) votes, such act binds all, or (ii) if more than one (1) 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 (1) or more agents authorized by a written proxy executed by the person or his or her duly authorized agent and filed with the Secretary of the Association. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy, except that the maximum term of any proxy shall be three (3) 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 Paragraph. 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, regardless of the postmark dates on the envelopes in which they are mailed.

5.4.2 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, including, but not limited to, rules and regulations relating to the use of and activities permitted in the Common Area.

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

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

(iv) To enforce the provisions of 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, workmen's compensation, medical, hospital and other insurance insuring Owners, directors and officers of the Association and other persons and (b) bonds of directors and other persons.

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

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

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

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

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

(xi) To sell, at such price and terms as the Board of Directors may determine, the entire Project for the benefit of all of the Owners and mortgagees thereof, as their interests shall appear. Said power to sell shall be exercisable only (a) when partition of the Project may be had under California Civil Code Sec. 1354, (b) after recordation of a certificate by those Owners consenting to the exercise of said power to sell (in accordance with said Sec. 1354) that said power is properly exercisable and (c) after obtaining the written consent of at least seventy-five percent (75%) of the first mortgagees (based upon one (1) vote for each first mortgage or deed of trust owned).

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

(xiii) To suspend temporarily the (a) right of an Owner to use the recreational facilities within the Common Area and (b) voting privileges of an Owner, for default in the payment of any regular or special assessment levied by the

Association pursuant to the Declaration, or for violating any regulations adopted by or established by the Board of Directors to govern the use of and activity in the Common Area, or for breaching any provision of the Declaration, the Articles or the Bylaws. Any suspension must be done in good faith and in a fair and reasonable manner. The Member must be given fifteen (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 or registered 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 (5) days before the effective date of the suspension by a properly convened meeting of the Board of Directors.

(xiv) To impose a reasonable monetary fine(s), as provided in the Declaration, upon an Owner for any breach of any of (a) the limitations, restrictions, conditions or covenants set forth in the Declaration [other than a breach by failure to pay an assessment(s)], (b) the provisions of the Articles or the Bylaws of the Association or (c) the rules and regulations adopted or established by the Board of Directors pursuant to the Declaration, the Articles or the Bylaws. The imposition of such fine(s) must be done in good faith and in a fair and reasonable manner. The Member must be given fifteen (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 or registered 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 (5) 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 (2) 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; (ii) a charge upon all cash, bank accounts and other personal property under the control of the Board of Directors. Any transfer, assignment or conveyance to, or any contract right in favor of, the Board of Directors shall vest in the Board of Directors, for the benefit of the Owners according to the number of Condominiums

owned by an Owner divided by the total number of Condominiums within the Project. So long as he or she acts within the scope of his or her 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, the Board of Directors may not, without the vote of Members entitled to exercise a majority of the voting power in each of the voting classes as provided in Article 5 hereof, and after termination of the two-class voting structure without the vote or written assent of a bare majority of the total voting power of the Association, as well as the vote or written assent of a prescribed majority of members, other than Declarant; (i) enter into a contract with a third person for materials and/or services benefiting the Common Area or the Association for a term in excess of one (1) year, except (a) any management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration, (b) any 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 and (c) any prepaid casualty and/or liability insurance policy(ies) which do not exceed three (3) years' duration provided that such policy(ies) permits for short rate cancellation by the insured, (ii) incur aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent (5%) 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 (5%) of the budgeted gross expenses of the Association for that fiscal year, (iv) fill a vacancy on the Board of Directors created by the removal of a director or (v) pay any compensation to any director or officer of the Association for services performed in the conduct of the Association's business; however, the Board of Directors may reimburse any such director or officer for expenses incurred by him in carrying on the business of the Association.

6.2.5 Anything contained in this Paragraph 6.2 to the contrary notwithstanding, the Board of Directors shall not have the power to (i) authorize or approve any contract for the professional management of the Project which does not permit the Association to terminate, without cause or payment of a termination fee, on ninety (90) days' or less written notice and/or has a term greater than three (3) years or (ii) grant to anyone easements or use rights which affect the Common Area.

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 (3) until changed by an amendment to the Articles and by an amendment to this Paragraph 6.3 of these Bylaws, adopted by the vote or written assent of the Members entitled to exercise a majority of the voting power of the Members in each voting class as provided in Article 5 hereof. If the proposed amendment is made after termination of the two-class voting structure, then the vote or written assent of a bare majority of the total voting power of the Association, as well as the vote or written assent of a prescribed majority of members, other than Declarant, is required.

### 6.4 Election and Tenure of Office

6.4.1 The directors shall be elected by secret and written ballot at the annual meeting of Members, to serve for one (1) 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 (1) or three (3). 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 (1) or three (3) inspectors are to be appointed. 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 increase of the authorized number of directors by amendment to these Bylaws and to the Articles and the failure of the Members to elect the additional director(s), (iii) the failure of the Members at any time to elect the full number of authorized directors, or (iv)

the failure of any director to qualify to serve in the office within thirty (30) days after notice of his or her 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 titled "Voting Rights." Each director so elected shall hold office until his or her successor is elected at an annual, regular or special meeting of Members or until his or her 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 of the Articles and 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 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 number of directors shall have the effect of removing any director prior to the expiration of his or her 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 by written ballot of Members holding a majority of the voting power in each voting class entitled to vote in an election of directors; provided however, unless the entire Board of Directors is removed, an individual director shall not be removed prior to the expiration of his or her term of office when the votes cast against removal, or not consenting in writing to such removal, would be sufficient to elect such director if voted cumulatively at an election at which the same total number of votes were cast and the entire number of directors authorized at the time of the director's most recent election were then being elected. If any director(s) is so removed, a new director(s) may be elected at the same meeting.

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

#### 6.7 Place of Meetings

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

#### 6.8 Organizational Meetings; Notice

6.8.1 Annual organizational meetings of the Board of Directors shall be held immediately following the adjournment of the annual meetings of Members or at such other time and on such other date as the Board may designate by resolution. No notice of organizational meetings need be given to directors except that written notice setting forth the date, time and place of said meeting shall be posted at a prominent place (or places) within the Common Area at least four (4) 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 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 (6) 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 (2) directors of the Association. If said day shall fall upon a holiday, such meeting shall be held on the next succeeding business day thereafter.

6.9.2 Written notice of the time and place of regular meetings shall be delivered personally to the directors or sent to each director by letter or by telegram, charges prepaid, addressed to him or her at his or her address 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 directors are regularly held, at least four (4) days before the meeting. Written notice of the resolution, if any, establishing a date of the month, the time and place of a regular meeting shall also be given to each director. Notices of the time and place shall also be posted at a prominent place (or places) within the Common Area at least four (4) days before the date of the meeting.

6.9.3 Notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding the meeting, whether before or after the meeting, or

who attends the meeting without protesting prior thereto or at its commencement, the lack of notice to such director. All such waivers, consents and approvals shall be filed with the Association records or made a part of the minutes of the meetings.

#### 6.10 Special Meetings; Notice

6.10.1 Special meetings of the Board of Directors for any purpose shall be called by written notice signed by the President or by any two (2) directors other than the President.

6.10.2 Written notices of the time and place of special meetings, and the general nature of the business to be considered thereat, shall be delivered personally to the directors or sent to each director by letter or by telegram, charges prepaid, addressed to him or her at his or her address 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 directors are regularly held. In case such notice is mailed or telegraphed, it shall be deposited in the United States mail or delivered to the telegraph company in the place in which the principal office of the Association is located at least five (5) days prior to the date of the holding of the meeting. In case such notice is personally delivered as above provided, it shall be so delivered at least four (4) days prior to the date of the holding of the meeting. Such mailing, telegraphing or delivery shall be due, legal and personal notice to such director.

6.10.3 Notice of the meeting need not be given to any director who signed a waiver of notice or a written consent to holding of the meeting. All such waivers or consents 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 time and place of the meeting and the general nature of the business to be considered, shall be posted at a prominent place (or places) within the Common Area at least seventy-two (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 time and place. If the meeting is adjourned for more than twenty-four (24) hours, notice of any adjournment to another 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 the Articles and 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 quorum of the Board of Directors.

6.13.2 Notwithstanding anything to the contrary contained in this Section, the Board of Directors may, with the approval of a majority of a quorum thereof, adjourn any such 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 Actions Without Meetings

6.14.1 Anything in this Article 6 to the contrary notwithstanding, the Board of Directors may take any action without a meeting if all directors consent in writing to the action being taken.

6.14.2 If the Board of Directors takes action by unanimous written consent without a meeting, an explanation of the action taken shall be posted at a prominent place(s) within the common area within three (3) days after obtaining the written consent of all directors.



## 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, one or more additional vice presidents, one or more assistant secretaries, one or more assistant financial officers and such other officers as may be appointed in accordance with the provisions of Paragraph 7.3. Any two or more offices, except those of President and Secretary, may be held by the same person.

#### 7.2 Appointment

7.2.1 The officers 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 each shall hold office until his or her successor shall be appointed or until his or her earlier resignation, removal or disqualification.

#### 7.3 Subordinate Officers

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

#### 7.4 Removal and Resignation

7.4.1 Any officer may be removed, either with or without cause, by a majority of the directors at that time in office at any organizational, regular or special meeting of the Board; 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 at the date of the receipt of such notice or at any later time specified therein, the acceptance of such resignation shall not be necessary to make it effective.

## 7.5 Vacancies

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

## 7.6 Chairman of the Board

7.6.1 The Chairman of the Board, 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 him or her by the Board of Directors or prescribed by the Bylaws.

## 7.7 President

7.7.1 Subject to such supervisory powers, if any, as may be given by the Board of Directors to the Chairman of the Board, if there be such an officer, the President shall be the Chief Executive Officer of the Association and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the Association. He shall preside at all meetings of the Members and in the absence of the Chairman of the Board, or if there be none, at all meetings of the Board of Directors. He shall be an ex officio member of all standing committees and shall have the general powers and duties of management usually vested in the office of president of a corporation and shall have such other powers and duties as may be prescribed by the Board of Directors or the Bylaws.

## 7.8 Vice President(s)

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

## 7.9 Secretary and Assistant Secretary

7.9.1 The Secretary shall keep, or cause to be kept, at the principal office of the Association or such other place as the Board of Directors may order, a book of minutes of all meetings of directors and Members showing (i) the 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 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 give, or cause to be given, notice of all the meetings of the Members and of the Board of Directors required by the Bylaws or by statute to be given; and shall keep the seal of the Association in safe custody and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or the Bylaws.

7.9.4 The Assistant Secretary, if there shall be such an officer or if there be more than one (1), 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 his inability or refusal 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 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 be 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. He or she 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 of his or her transactions as Chief Financial Officer and of the financial condition of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or the Bylaws.

7.10.3 If required by the Board of Directors, the Chief Financial Officer shall give the Association a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his or her office and for the restoration to the Association,

in case of his or her death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property, of whatever kind in his or her possession or under his or her control belonging to the Association.

7.10.4 The Assistant Chief Financial Officer, if there shall be such an officer or if there shall be more than one, the assistant financial officers in the order determined by the Board of Directors (or if there be no such determination, then in the order of their appointment), shall, in the absence of the Chief Financial Officer or in the event of his inability or refusal 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 The Association shall have an Architectural Control Committee for the purpose of advising the Board of Directors on matters of structural and landscaping architecture and design within the Project. The Architectural Control Committee shall have such powers and perform such duties as the Board of Directors shall delegate thereto.

8.1.2 The Architectural Control Committee shall, at all times, consist of three (3) individuals. Those individuals named in the Articles as the first Board of Directors of the Association shall, as appointees of Declarant, initially constitute the Architectural Control Committee and shall serve for one (1) year from the date of the original issuance by the California Department of Real Estate of the Final Subdivision Public Report for the first phase of development of the Project and until their successors are selected or until their earlier resignation or removal. Within one (1) year from the date of the original issuance by the California Department of Real Estate of the Final Subdivision Public Report for the Project, the Board of Directors shall appoint three (3) Members to serve on the Architectural Control Committee whose terms shall commence upon the expiration of the terms of the original appointees. All persons appointed by the Board of Directors to serve on the Architectural Control Committee shall hold office at the pleasure of the Board of Directors.

8.1.3 Any vacancy on the Architectural Control Committee by reason of death, resignation or removal by the Board of Directors shall be promptly filled by the Board of Directors with a Member(s) within thirty (30) days after such vacancy first occurs. If any position on the Architectural Control Committee

cannot be filled by the Board with a Member, then, in such event, the Board may appoint a non-Member(s) to fill such position(s).

## 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 (2) 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 (1) or more directors as alternate members of any committee. Such committees shall hold office at the pleasure of the Board 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 his 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 ten percent (10%) of the Members represented at such meeting.

9.2.2 Each director shall have an absolute right, at any reasonable time, to inspect and copy the aforementioned documents, books and records and to inspect the physical properties owned or controlled by the Association.

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 a budget for each fiscal year to be regularly prepared and distributed to all Members, not less than forty-five (45) days and not more than sixty (60) days prior to the beginning of each fiscal year of the Association, regardless of the number of Members or the amount of assets of the Association. The budget shall contain the following information: (i) the estimated revenue and expenses of the Association on an accrual basis; (ii) the amount of the total cash reserves of the Association currently available for contingencies; (iii) an itemized estimate of the remaining life of, and the methods of funding to defray the costs of repair, replacement or additions to, major components of the Common Area and facilities for which the Association is responsible; and (iv) a general statement setting forth the procedures used by the governing body in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Common Area and facilities for which the Association is responsible.

## 9.7 Initial Financial Report

9.7.1 The Board of Directors shall cause an initial financial report to be sent to Members 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 (6) months from the date of closing of the first sale of a Condominium in the Project and (ii) an operating statement for the period from the date of the first closing to the Accounting Date. The operating statement shall include a schedule of assessments received and receivable itemized by the Unit number and by the name of the Owner so assessed.

9.7.2 The initial financial report shall be sent to all Members within sixty (60) days after the Accounting Date.

## 9.8 Annual Report

9.8.1 An annual report shall be distributed to each member within one hundred twenty (120) days after the close of the Association's fiscal year.

9.8.2 The 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 and (iv) any information required to be reported under Section 8322 of the California Corporations Code. Financial statements shall be prepared from the books of the Association and shall be certified by the President, Secretary, Chief Financial Officer or a public accountant. If financial statements are not prepared by an independent accountant, the annual report shall be accompanied by a certificate of an authorized officer of the Association stating that the financial statements were prepared without audit from the books and records of the Association. The financial statements shall be prepared according to generally accepted accounting principles applied on a basis consistent with that of the preceding year.

9.8.3 An external audit by a licensee of the California State Board of Accountancy shall be required with respect to such financial statement for any fiscal year in which the gross income during such fiscal year exceeds \$75,000.

9.8.4 In addition to financial statements, the Board of Directors shall distribute, within sixty (60) days prior to the beginning of each fiscal year, a statement of the Association's policies and practices in enforcing its remedies against members for defaults in the payment of regular and special assessments, including the recording and foreclosing of liens against members' condominiums.

## 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 at the annual meeting of Members, or at any other meeting of Members called for that purpose (i) by an affirmative majority of the votes of Members represented and voting in each of the two (2) voting classes at a duly held meeting at which a quorum is present or by written ballot of such Members or (ii) upon cessation of one (1) of the two (2) classes as a separate and distinct voting class of Members, by a vote of Members entitled to exercise a majority of the voting power in the remaining voting class, including the vote(s) of Declarant as a Member of such remaining voting class or by written ballot of such Members, provided that said vote or written ballot shall include the votes of not less than a majority of the Members (other than Declarant).

#### 11.2 No Amendment by Directors

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

#### 11.3 Record of Amendments

11.3.1 Whenever an amendment or new Bylaw is adopted, it shall be copied 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 written assent was filed shall be stated in said book.

## ARTICLE 12

### Amendments to Articles

#### 12.1 Amendments

12.1.1 Amendments to the Articles of Incorporation of the Association may be adopted by resolution of the Board of Directors and (i) by a vote of Members entitled to exercise a majority of the voting power in each one of the two (2) voting



classes as provided in Article 5 hereof or by written ballot of such Members or (ii) upon cessation of one of the two (2) voting classes as a separate and distinct voting class of Members, by a vote of Members entitled to exercise a majority of the voting power in the remaining voting class, including the vote(s) of Declarant as a Member of such remaining voting class, or by written ballot of such Members, provided that said vote or written ballot shall include the votes of not less than 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 Sections 7814 or 7819.

ARTICLE 13

Supremacy of Declaration

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

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

IN WITNESS WHEREOF, these Bylaws have been executed at \_\_\_\_\_ as of \_\_\_\_\_, 19\_\_.

THE SUNLAND HOUSING GROUP,  
INC., a California corporation

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

URE R. KRETOWICZ, Chief  
Executive Officer

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

THOMAS P. DOBROW, Secretary

BYL/TDS  
REGW5

CERTIFICATION

The undersigned does/do hereby certify that:

1. The undersigned is the entire Membership, as of the date hereinbelow set forth, of TIERRA DEL SOL AT BERNARDO HEIGHTS OWNERS' ASSOCIATION, INC., a California nonprofit corporation (hereinafter "Association"); and

2. The foregoing Bylaws, comprising 26 pages, constitute the Bylaws of the Association, as duly adopted by the entire Membership of the Association by unanimous written consent dated \_\_\_\_\_, 19\_\_.

IN WITNESS WHEREOF, the undersigned has executed this Certification as of \_\_\_\_\_, 19\_\_.

THE SUNLAND HOUSING GROUP,  
INC. a California corporation

By: 

\_\_\_\_\_  
URE R. KRETOWICZ, Chief  
Executive Officer

By: 

\_\_\_\_\_  
THOMAS P. DOBRON, Secretary

BYL/TDS  
REGW5

TIERRA DEL SOL AT BERNARDO HEIGHTS  
OWNERS' ASSOCIATION, INC.

Unanimous Written Consent of Entire Membership

The undersigned, being the only person(s) who would be entitled to vote at a meeting of the members of TIERRA DEL SOL AT BERNARDO HEIGHTS OWNERS' ASSOCIATION, INC. (the "Association"), does/do hereby unanimously consent to the adoption of the following resolution:

RESOLVED that the form of Bylaws presented to the Membership is hereby adopted as the Bylaws of the Association.

IN WITNESS WHEREOF, the undersigned has/have executed this Unanimous Written Consent of Entire Membership as of \_\_\_\_\_, 19\_\_.

THE SUNLAND HOUSING GROUP,  
INC., a California corporation

By: 

\_\_\_\_\_  
URE R. KRETOWICZ, Chief  
Executive Officer

By: 

\_\_\_\_\_  
THOMAS P. DOBRON, Secretary

BYL/TDS  
REGW5