

BYLAWS  
OF  
RM UNIT XI HOMEOWNER'S ASSOCIATION

**BYLAWS OF  
RM UNIT XI HOMEOWNER'S ASSOCIATION**

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**ARTICLE I**

**RECITALS AND DEFINITIONS**

**Section 1.01. Name of Corporation.** The name of this corporation shall be **RM UNIT XI HOMEOWNER'S ASSOCIATION** and shall be referred to herein as the "Association".

**Section 1.02. Corporation is Non-Profit.** This corporation has been formed pursuant to the California Non-Profit Corporation Law as a mutual benefit corporation.

**Section 1.03. Specific Purpose.** The specific and primary purpose of this Association shall be to own, repair, maintain and manage the Common Area facilities within that certain real estate project located in the County of San Benito, State of California and commonly referred to as Ridgemark Estates, to maintain individual Lots to the extent and in the manner more particularly described in the Covenants and Restrictions, enforce the Rules and Regulations adopted by the Board of Directors, from time to time, and the terms and conditions of the Covenants and Restrictions and to otherwise enhance and promote the use and enjoyment of Common Areas and association property by the Owners in common

**Section 1.04. Definitions.**

(a) **Definition of Covenants and Restrictions.** The term "Covenants, Conditions and Restrictions" shall mean all limitations, restrictions, covenants, terms and conditions set forth in the Declaration of Covenants, Conditions and Restrictions recorded in the Office of the Recorder of the County of San Benito with respect to the Properties at Book \_\_\_\_\_, Page \_\_\_\_\_. Official Records of San Benito County, as such Declaration may from time to time be supplemented, amended or modified by a subsequent Declaration, or amendment thereto, duly recorded in said Recorder's Office.

(b) **Definition of County.** The term "County" shall mean the County of San Benito, State of California.

(c) **Definition of Office of Recorder.** The term "Office of Recorder" shall mean the Office of the Recorder, County of San Benito, State of California.

(d) **Definition of Person.** The term "Person" shall mean and include any individual, corporation, partnership, association or other entity recognized by the laws of the State of California.

(e) Other Definitions Incorporated by Reference. The terms defined in the Covenants and Restrictions shall have the same meaning when used herein unless the context clearly indicates a contrary intention.

## ARTICLE II

### PRINCIPAL OFFICE

**Section 2.01. Location of Principal Office.** The principal office of the Association shall be located at such place within the County as the Board may, from time to time, designate by resolution.

## ARTICLE III

### MEMBERSHIP

**Section 3.01. Members of the Association.** Every Owner of a Lot within the Properties shall be a Member of the Association. Membership in the Association shall be appurtenant to, and may not be separate from, ownership of any Lot. Membership rights are subject to temporary suspension in the event that a Member is in default in the payment of assessments or is otherwise in violation of these Bylaws, the Covenants and Restrictions or the Association Rules provided that disciplinary action resulting in such suspension is taken in accordance with Article XI, Section 11.06, of the Covenants and Restrictions.

**Section 3.02. Term of Membership.** Each Owner who is a Member shall remain a Member until he or she no longer qualifies as such under Section 3.01 above.

**Section 3.03. Multiple Ownership of Lots.** If more than one person owns a Lot, all of said persons shall be deemed to be one Member. In the case of multiple ownership, unless the Secretary of the Association is given written notice to the contrary and is given a copy of the instrument or court order allocating voting rights differently, only one of such multiple Owners shall be entitled to vote the membership. The Secretary of the Association shall be notified in writing of the Owner designated by his or her co-Lot Owners as having the sole right to vote the membership on their behalf. If more than one multiple Owner attempts to vote a membership, the Secretary may refuse to count any ballot pertaining to said Lot.

**Section 3.04. Furnishing Evidence of Membership.** A person shall not be entitled to exercise the rights of a Member until such person has advised the Secretary in writing that he or she is qualified to be a Member under Section 3.01 above, and has provided the Secretary with evidence of such qualification in the form of a copy of a recorded grant deed (certified by the Office of the Recorder) or a currently effective policy of title insurance. Exercise of membership rights shall be further subject to the rules regarding Record Dates for Notice, Voting and Actions by Written Ballot set forth herein.

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ARTICLE IV

MEMBERSHIP VOTING

Section 4.01. Membership and voting rights provisions contained in Sections 3.01 through 3.06 of the Declaration are incorporated by reference.

Section 4.02. Proxies.

(a) Each person entitled to vote shall have the right to do so either in person or by one or more agents authorized by written proxy, signed by the person, and filed with the Secretary of the Association. A proxy shall be deemed signed if the Member's name is placed on the proxy (whether by manual signature, typewriting, telegraphic transmission, or otherwise) by a Member or the Member's attorney in fact. Any form of proxy or written ballot distributed by any person to the membership of the Association shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted on. The proxy or written ballot shall provide that, when the Member specifies a choice, the vote shall be cast in accordance with that choice. The proxy shall also identify the person who is authorized to exercise the proxy and the length of time it will be valid. Any proxy or written ballot that is distributed to 10 or more members shall satisfy the requirements of California Corporations Code Section 7514(a) if the Association has one hundred (100) or more members. Any proxy shall be for a term not to exceed 11 months from the date thereof, unless otherwise provided in the proxy; provided that the maximum term of any proxy shall be 3 years from the date of execution and, provided further, that any proxy pertaining to the nomination or election of directors shall have a maximum term not to exceed one year. Any form of proxy distributed by any person to the membership of the Association shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon.

(b) Any proxy issued hereunder shall be revocable by the person executing such proxy at any time prior to the vote pursuant thereto, by (i) delivery to the Secretary of a written notice of revocation; (ii) a subsequent proxy executed by the Member executing the prior proxy and presented prior to the meeting or (iii), as to any meeting, by attendance at such meeting and voting in person by the Member executing the proxy. The dates contained on the forms of proxy presumptively determine the order of execution, and the order in which they are mailed. A proxy shall be deemed revoked when the Secretary shall receive actual notice of the death or judicially declared incompetence of the Member issuing the proxy, or upon termination of such Member's status as an Owner of a Lot as provided in Article III, Section 3.01 above.

(c) Any proxy given with respect to any of the matters described in this subparagraph (c) shall be valid only if the proxy sets forth the general nature of the matter to be voted on. The matters subject to this requirement are:

(i) Removal of directors:

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- (ii) Filling of vacancies on the Board;
  - (iii) Approval of contracts or transactions between the Association and one or more of its directors, or between the Association and a corporation, firm or association in which one or more of its directors has a material financial interest;
  - (iv) Action to amend the Articles of Incorporation, these Bylaws or the Covenants and Restrictions;
  - (v) Sale, lease, exchange, transfer or other disposition of all or substantially all of the Association's assets otherwise than in the regular course of the Association's activities;
  - (vi) Approval of any merger of the Association or adoption and approval of an amendment of an agreement of merger;
  - (vii) Election by the Association to voluntarily wind up and dissolve:  
or
  - (viii) Action to change any Association assessments in a manner requiring membership approval under the Covenants and Restrictions.
- (d) In any election of directors any form of proxy in which the directors to be voted upon are named therein as candidates, and which is marked by a Member "withhold" or otherwise marked in a manner indicating that the authority to vote for the election of directors is withheld shall not be voted either for or against the election of a director. If any proxy issued in connection with the election of directors is marked so as to direct the proxy holder to vote the proxy for a specified candidate or candidates, the proxy holder shall vote in accordance with the direction of the proxy issuer.
- (e) No amendment of the Articles or Bylaws repealing, restricting, or expanding proxy rights may be adopted without approval by the affirmative vote of a majority of the voting power of Members represented and voting at a duly held meeting at which a quorum is present, or the affirmative vote of a majority of the voting power of Members by written ballot as provided in Article IV, Section 4.06 hereof, provided, however, that as long as two classes of voting memberships exist, such amendment shall require approval by the affirmative vote of a majority in each class.
- (f) Where two or more persons constitute a member, any proxy with respect to the vote of such Member shall be signed by all such persons. All such persons may attend meetings, but no vote of such Member shall be cast without the unanimous consent of all persons present at such meeting constituting each Member.

**Section 4.03. Action by Written Ballot Without a Meeting.**

- (a) Any matter or issue requiring the vote of the Members, other than the

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election of directors, may be submitted for vote by written ballot without a meeting of the Members, provided the requirements for action by written ballot set forth in this Section 4.06 and the provisions of California Corporations Code Section 7513 and 7516 are met. The determination to seek Member approval for corporate action in this fashion shall be made by a majority of the Board or by Members having ten (10%) percent of the total votes of the membership signing a written request and delivering this request to the Secretary. In the event that any matter or issue is to be voted upon by written ballot, at least 15 days prior to the date the written ballots are to be received to be counted, the Board shall distribute the written ballot to every member entitled to vote on the matter. Such ballot shall set forth the proposed action and provide an opportunity to specify a choice between approval or disapproval of each matter or a group of matters to be acted upon. The written ballot shall provide a reasonable time within which to return the written ballot to the Association and shall state on its face or in an accompanying notice the date by which the written ballot must be returned in order to be counted. The written ballot shall provide that, where the member specifies a choice, the vote shall be cast in accordance with that choice. The time fixed for the return of ballots may only be increased if the board so notifies the Members in writing prior to commencement of the balloting period and then for no more than 45 days.

(b) Approval by written ballot 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 of Members authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the action at a meeting of Members.

(c) Written ballots shall be solicited in a manner consistent with the requirements of Article V, Section 5.04(c) pertaining to the giving of notice of Members' meetings. All solicitations of written ballots shall indicate the number of responses needed to meet the quorum requirement for valid action and shall state the percentage of approvals necessary to pass the measure submitted. If deemed necessary by the Board, the ballot shall be conducted in accordance with such additional procedures, not inconsistent with the provisions of this Section, as may be prescribed by a firm of certified public accountants of good repute who may also be retained to supervise the secrecy and control of the election.

(d) Upon tabulation of the ballots, the Board shall notify the Members of the outcome of the balloting process. If insufficient votes to constitute a quorum are cast the Board so shall notify the Members. Once exercised, a written ballot may not be revoked.

**Section 4.04. Only Majority Vote of Members Represented at Meeting Required, Unless Otherwise Specified.** If a quorum as defined in Article V, Section 5.05. of These Bylaws is present, the affirmative vote of the majority of the voting power of Members represented at the meeting, entitled to vote and voting on any matter (other than the election of directors) shall be the act of the Members, unless the vote of a greater number is

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required by California's Non-Profit Corporation Law, by the Articles of Incorporation, by the Bylaws or Declaration of this Association.

**ARTICLE V**

**MEMBERSHIP MEETINGS**

**Section 5.01. Place of Meeting - Procedure.** The meetings of the Members shall be at the offices of the Association within the Properties or at such other reasonable place (within the County) and at such time as may be specified herein or designated by notice of the Board of the meeting. Meetings shall be conducted under Roberts' Rules of Order.

**Section 5.02. Annual Meeting.** The first annual meeting of Members of the Association shall be held within forty-five (45) days after the closing of the sale of the Lot that represents the 51st percentile interest authorized for sale under the First Final Subdivision Public Report issued for the Project by the California Commissioner of Real Estate, but in no case later than six (6) months after the closing and recording of the sale of the first Lot. Thereafter, the annual meeting of the Members of the Association shall be held each year on the first Monday of February at the hour of 7:00 P.M., or at such other date or time as may be fixed by the Board, but in no event shall an annual meeting be held less often than once each calendar year. If the scheduled date of the annual meeting falls on a legal holiday, the meeting shall be held at the same time on the next business day.

**Section 5.03. Special Meetings.**

(a) A majority of the Board or 5% or more of the Members may call special meetings of the Members at any time to consider any reasonable business of the Association.

(b) **Calling Special Meetings by Members.** If a special meeting is called by Members other than the President, the request shall be submitted by such Members in writing, specifying the general nature of the business proposed to be transacted, and shall be delivered personally or sent by registered mail or by telegraphic or other facsimile transmission to the President, any Vice President, or the Secretary of the corporation. The officer receiving the request shall cause notice to be promptly given to the Members entitled to vote, in accordance with the provisions of Section 5.04 of this Article V, that a meeting will be held, and the date and time for such meeting, which date shall be not less than 35 or more than 90 days following the receipt of the request. If the notice is not given within the 20 days after receipt of the request, the persons requesting the meeting may give the notice. Nothing contained in this subsection shall be construed as limiting, fixing, or affecting the time when a meeting of Members may be held when the meeting is called by action of the Board of Directors or the President.

**Section 5.04. Notice of Members' Meetings.**

(a) All notices of meetings of Members (whether annual or special) shall be sent or otherwise given in writing to each Member who, on the record date for notice of the

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meeting (Article V, Section 5.08) is entitled to vote thereat, in accordance with subparagraph (c) of this Section 5.04, not less than 10 nor more than 90 days before the date of the meeting stating (i) the general nature of the business to be transacted, and no other business may in that case be transacted, or (ii) in the case of a regular meeting, those matters which the Board of Directors, at the time of giving the notice, intends to present for action by the Members; but any proper matter may be presented at the meeting for such action so long as a quorum is present. The notice of any meeting at which directors are to be elected shall include the names of all those individuals who are nominees at the time the notice is given to the Members. If notice is given by mail and the notice is not given by first-class, registered or certified mail, the notice shall be given not less than 20 (nor more than 90 days) before the meeting.

(b) If action is proposed to be taken at any meeting for approval of any of the following proposals, the notice shall also state the general nature of the proposal. Member action on such items is invalid unless the notice or written waiver of notice states the general nature of the proposal(s):

- (i) Removing a director without cause;
- (ii) Filling vacancies on the Board of Directors under those circumstances where a vote of the Members is required pursuant to Article VII, Section 7.05 of these Bylaws;
- (iii) Amending the Articles of Incorporation, these Bylaws or the Covenants and Restrictions in any manner requiring approval of the Members;
- (iv) Approving a contract or transaction between the Association and one or more of its directors, or between the Association and any corporation, firm or association in which one or more of its directors has a material financial interest;
- (v) Approving a plan of distribution of assets, other than cash, in liquidation;
- (vi) Approving any change in the Association's assessments in a manner requiring membership approval under the Covenants and Restrictions; or
- (vii) Voting upon any election to voluntarily wind up and dissolve the corporation.

(c) Notice of any meeting of Members shall be given either personally or by first-class mail, telegraphic or other written communication, charges prepaid, addressed to each Member either at the address of that Member appearing on the books of the Association or the address given by the Member to the Association for the purpose of notice. If no address appears on the Association's books and no other has been given, notice shall be deemed to have been given if either (i) notice is sent to that Member by first-class mail or telegraphic or other written communication to the Association's principal office or (ii) notice is published at least once in a newspaper of general circulation in the county where that office is located. Notice shall be deemed to have been given at that time when delivered personally or 24 hours

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following deposit in the mail or telegram or facsimile transmission. In the event that the Association regularly sends its Members a newsletter or magazine the requirement of written notice hereunder may be satisfied by setting forth the required information in said newsletter or magazine so long as it is addressed and mailed or delivered to the Member at his or her address as shown on the books of the Association.

(d) An affidavit of the mailing or other means of giving any notice of any Members' meeting may be executed by the Secretary or Assistant Secretary of the Association, and if so executed, shall be filed and maintained in the Association's minute book. Such affidavit shall constitute prima facie evidence of the giving of notice.

**Section 5.05. Quorum Requirements.**

(a) Twenty-five (25%) percent of the voting power of Members, represented in person or by proxy, shall constitute a quorum for the transaction of business at a meeting of the Members; provided, however, that at any regular meeting actually attended, in person or by proxy, by less than one-third (1/3) of the voting power of Members (but at which a quorum is present) the only matters upon which action can be validly taken are those matters the general nature of which was described in the notice of meeting pursuant to Section 5.04 of this Article V. Notwithstanding anything herein to the contrary, a quorum for purposes of obtaining membership approval of special assessments or increases in annual assessments as may be required by Article IV, Sections 4.02(a) and 4.03(c) of the Covenants and Restrictions means more than fifty (50%) percent of the Owners.

(b) The Members present at a duly called or duly held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the Members required to constitute a quorum.

**Section 5.06. Adjourned Meeting.** Any Members' meeting, annual or special, whether or not a quorum is present, may be adjourned from time to time by the vote of the majority of Members represented at the meeting, either in person or by proxy. Unless there is an absence of a quorum (in which case no other business may be transacted at the meeting except as provided in Section 5.05(b)), the adjourned meeting may take any action which might have been transacted at the original meeting. When a Members' meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. No meeting may be adjourned for more than 45 days. If after adjournment a new record date is fixed for notice or voting, a notice of the adjourned meeting must be given to each Member who on the record date for notice of the meeting is entitled to vote thereat.

**Section 5.07. Waiver of Notice or Consent by Absent Members.**

(a) The transactions of any meeting of Members, either annual or special,

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however called or noticed, and wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if a quorum be present either in person or by proxy, and if, either before or after the meeting, each person entitled to vote, who was not present in person or by proxy, signs a written waiver of notice or a consent to a holding of the meeting, or an approval of the minutes. The waiver of notice or consent need not specify either the business to be transacted or the purpose of any annual or special meeting of Members, except that if action is taken or proposed to be taken for approval of any of those matters specified in Section 5.04(b) of this Article V, the waiver of notice or consent shall state the general nature of the proposal. All such waivers, consents, or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

(b) Attendance by a person at a meeting shall also constitute a waiver of notice of that meeting, except when the person objects at the beginning of the meeting to the transaction of any business due to the inadequacy or illegality of the notice. Also, attendance at a meeting is not a waiver of any right to object to the consideration of matters not included in the notice of the meeting which are required to be described therein pursuant to Section 5.04(b) of this Article V, if that objection is expressly made at the meeting.

**Section 5.08. Record Dates for Member Notice, Voting and Giving Consents.**

(a) For the purpose of determining which Members are entitled to receive notice of any meeting, vote, act by written ballot without a meeting or exercise any rights in respect to any other lawful action, the Board of Directors may fix, in advance, a "record date" and only Members of record on the date so fixed are entitled to notice, to vote, or to take action by written ballot or otherwise, as the case may be, notwithstanding any transfer of any membership on the books of the corporation after the record date, except as otherwise provided in the Articles of Incorporation, by agreement or in the California Non-Profit Corporation Law. The record dates established by the Board pursuant to this Section shall:

(i) In the case of determining those Members entitled to notice of a meeting, not be more than 90 nor less than 10 days before the date of the meeting.

(ii) In the case of determining those Members entitled to vote at a meeting, not be more than 60 days before the date of the meeting;

(iii) In the case of determining Members entitled to cast written ballots, not be more than 60 days before the day on which the first written ballot is mailed or solicited; and

(iv) In the case of determining Members entitled to exercise any rights in respect to other lawful action, not be more than 60 days prior to the date of such other action.

(b) Failure of Board to Fix a Record Date.

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(i) Record Date for Notice of Meetings. Unless fixed by the Board, the record date for determining those Members entitled to receive notice of a meeting of Members, shall be the business day preceding the day on which notice is given, or, if notice is waived, the business day preceding the day on which the meeting is held.

(ii) Record Date for Voting. Unless fixed by the Board, the record date for determining those Members entitled to vote at a meeting of Members shall be the day of the meeting, or in the case of an adjourned meeting, the day of the adjourned meeting.

(iii) Record Date for Action by Written Ballot Without Meeting. Unless fixed by the Board, the record date for determining those members entitled to vote by written ballot on proposed corporate actions without a meeting, when no prior action by the Board has been taken, shall be the day on which the first written ballot is mailed or solicited. When prior action of the Board has been taken, it shall be the day on which the Board adopts the resolution relating to that action.

(iv) Record Date for Other Lawful Action. Unless fixed by the Board, the record date for determining those Members entitled to exercise any rights in respect to any lawful action shall be Members at the close of business on the day on which the Board adopts the resolution relating thereto, or the 60th day prior to the date of such other action whichever is later.

(v) "Record Date" Means as of Close of Business. For purposes of this paragraph (b) a person holding a Membership as of the close of business on the record date shall be deemed the Member of record.

**Section 5.09. Open Forums.** In addition to the annual and special meetings discussed in Sections 5.02 and 5.03 of this Article V, the Secretary of the Association shall be entitled to call informal meetings of the membership, to be known as Open Forums, for the purpose of discussing problems common to members residing in one particular area within the Properties or problems common to all Members. Open Forums shall be called on written notice delivered to all interested Members at least 5 days before the date of the meeting. The notice shall set forth the date, time and place of the Open Forum and the general nature of each item to be discussed. Although the Members attending the Open Forum may discuss any issue that has been noticed, no formal action may be taken at the meeting, such action being reserved to membership meetings satisfying the requirements of Sections 5.01 through 5.08 of this Article V.

## ARTICLE VI

### MEMBERSHIP RIGHTS

Subject to the provisions hereof and the provisions of the Covenants and Restrictions, the Members shall have the following rights:

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**Section 6.01. Use and Enjoyment of Common Areas.** Each Member shall be *entitled to the use and enjoyment of all Common Areas and Common Facilities within the Properties.*

**Section 6.02. Use of Common Areas, etc., by Family Members.** Each Member shall have the right to designate members of his or her family who reside within the Member's Lot with the Member who may use and enjoy the Common Areas and Common Facilities within the Properties.

**Section 6.03. Tenants.** Each Member shall have the right to assign his rights as a Member (other than voting rights) to a Tenant residing within said Member's Lot. Such assignment shall only be effective so long as said Tenant is so residing in said Member's Lot and is in compliance with the Covenants and Restrictions and the Association Rules, as the same may exist from time to time. At all times the Owner shall remain responsible for compliance by Owner's Lessee or Tenant with the provisions of these Bylaws, the Covenants and Restrictions and the Association Rules. The assignment of an Owner's right to use Common Area recreational facilities to a Tenant or Lessee shall not be effective until such time as the owner-Member has given the Secretary written notice thereof setting forth the name of the assignee and the members of his or her family who will be entitled to the use and enjoyment of the Common Facilities by virtue of said assignment. During the period of any lease or rental of a Lot, the Member shall not be entitled to use the Common Facilities except to the extent reasonably necessary to perform the usual responsibilities of a Landlord or to insure or gain compliance by the Tenant with the requirements of these Bylaws and the Covenants and Restrictions:

**Section 6.04. Guests.** The guests of a Member or assignee of the member under Section 6.03 above shall have the right to use and enjoy the Common Areas, recreation facilities and roads within the Properties.

**Section 6.05. Compliance with Association Charter Documents, Rules and Regulations.** The right of use and enjoyment hereunder, shall at all times be subject to the rules, limitations and restrictions set forth herein and Association Rules, as the same are in existence from time to time. With the exception of the right of use of any roads or driveways, the board shall have the right to impose monetary penalties or to temporarily suspend the use and enjoyment of any Common Facilities for the failure of a Member to pay any assessment when due under the Covenants and Restrictions, or to comply with any other rule or regulation imposed upon such Member, his tenants or guests, pursuant to the Articles of Incorporation, these Bylaws or the Covenants and Restrictions; provided, however, that any such suspension shall only be imposed after such person has been afforded the notice and hearing rights more particularly described in the Covenants and Restrictions.

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**ARTICLE VII**

**BOARD OF DIRECTORS**

**Section 7.01. General Corporate Powers.** Subject to the provisions of the California Non-Profit Corporation Law, the Covenants, Conditions and Restrictions, and any limitations in the Articles and these Bylaws relating to action requiring approval by the Members, the business and affairs of the Association shall be vested in and exercised by, the Association's Board of Directors consisting of seven (7) persons who shall be Members. Subject to the limitations expressed in Article X, Section 10.01, the Board may delegate the management of the activities of the Association to any person or persons, management company or committee, provided that notwithstanding any such delegation, the activities and affairs of the Association shall continue to be exercised under the ultimate direction of the Board.

**Section 7.02. Term of Office.** Each director elected at the annual meeting shall hold office for a term of two (2) years and until a successor director has been elected and qualified. A member elected to fill an unexpired Board vacancy shall serve for the unexpired term of his predecessor. Three (3) directors shall be elected in each odd numbered year and four (4) directors shall be elected in each even numbered year.

**Section 7.03. Nominations of Directors.**

(a) Except for the initial director selected by the incorporators or the Members, as provided by the following section of these Bylaws, at least sixty (60) days prior to the date of any election of directors, the President shall appoint a nominating committee to select qualified candidates for election to those positions on the Board of Directors held by directors whose terms are then expiring. The nominating committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more Members of the Association who may or may not be Board Members. Committee members shall serve until their successors have been appointed. The nominating committee shall make its report at least 30 days before the date of the election, and the Secretary shall forward to each member, with the notice of meeting required by Article V, Section 5.04, a list of candidates nominated. The nominating committee shall make as many nominations for election to the board as it shall, in its discretion, determine, but not less than the number of vacancies on the Board to be filled. Members in good standing may be nominated as candidates for election to the Board.

(b) If there is a meeting to elect directors, any member present at the meeting, in person or by proxy, may place the names of additional candidates in nomination.

(c) the Board shall adopt procedures that provide for a reasonable opportunity for nominees to communicate their qualifications and reasons for candidacy to the members and to solicit votes, and for a reasonable opportunity for all members to choose among the nominees. Without authorization of the board, no Association funds may be expended to support a nominee for director after there are more nominees than can be elected.

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**Section 7.04. Election of Directors.**

(a) The initial directors shall be elected either by the incorporator of the Association, or by the Members as soon as practical after the incorporation of the Association, and shall hold office until the first annual meeting of the Members as specified in these Bylaws. At the first annual meeting, the Members shall elect directors to fill all the positions on the Board. Unless the office is vacated sooner, each director shall hold office until his or her term expires and a successor has been elected and qualified. The term of office of three directors receiving the highest number of votes shall be for two (2) years and the term of office for the remaining elected directors shall be for one (1) year. Successor directors shall be elected at the next annual meeting corresponding with the expiration of the terms. The election of directors shall be by secret written ballot. The person receiving the highest number of votes up to the number of positions to be filled shall be elected.

Each Member entitled to vote at any election of directors where more than two positions are to be filled shall have the right to cumulate his or her vote by giving one candidate a number of votes equal to the number of directors to be elected, multiplied by the number of votes to which the Member is entitled or by distributing his or her votes on the same principle among as many candidates as he or she desires. No Member shall be entitled to cumulate votes unless (i) the candidate's name or candidates' names have been placed in nomination before the voting and (ii) a Member has been given notice at the meeting, and before the voting, of the Member's intention to cumulate the Member's votes. If any one Member has given such notice, all Members may cumulate their votes for candidates in nomination.

Any director may resign effective on giving written notice to the President, the Secretary, or the Board unless the notice specifies a later time for the effectiveness of such resignation.

(b) As long as a majority of the voting power of the Association resides in the Declarant, or as long as there are two outstanding classes of membership in the Association, no less than 20 percent of the directors shall be elected by Members other than Declarant. If Members other than Declarant are unable to elect at least 20 percent of the directors by the exercise of cumulative voting or otherwise, the number of positions on the board necessary to meet the 20 percent requirement shall be filled by nominees elected by Members other than Declarant (the "specially elected" directors). Nominations for specially elected directors may be made by any Member other than Declarant by submitting a written nomination before the meeting to the Secretary of the Association, or by placing a name in nomination at the meeting prior to the vote. A specially elected director may be removed prior to the expiration of his or her term only by the vote or written assent of Members other than Declarant who hold a majority of the voting rights other than the voting rights held by Declarant. In case of the death, resignation, or removal of a specially elected director, a successor shall be elected by Members other than Declarant to hold office for the unexpired term of his or her predecessor and until a successor has been elected and qualified. Except as otherwise provided in this

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section, the provisions of this Declaration, the Articles, and the Bylaws, application to directors, including their election, removal, rights, and duties, shall apply to specially elected directors.

(c) Prior to the date of the election, the Board shall appoint three eligible Members who are not Members of the current Nominating Committee to act as official inspectors of the election. The board may also appoint other Members to assist the three inspectors. The inspectors shall discharge their duties impartially, in good faith, to the best of their ability and as expeditiously as possible. All decisions, acts and the certification of any election must be made by at least a majority of the three official inspectors. Before the election, the inspectors shall determine the number of memberships outstanding and the eligible voting power of each as of the Record Date established in accordance with Article V, Section 5.08 hereof.

At the election, the inspectors shall: (1) determine the existence of a quorum at the meeting by counting the number of eligible voters present, in person and by proxy; (2) hear and determine all challenges and questions in any way arising in connection with the right to vote or the conduct of the election; (3) establish the authenticity, validity and effect of the proxies and collect the proxy votes and the ballots; (4) decide when the polls are closed; (5) count and tabulate all votes; and (6) determine the result of the election. Any report or certificate made by the inspectors shall be prima facie evidence of the facts recited therein.

**Section 7.05. Vacancies on Board of Directors.**

(a) A vacancy or vacancies in the Board of Directors shall be deemed to exist on the occurrence of any of the following: (i) the death or resignation of any director or the removal of a director pursuant to subparagraph (d) hereof; (ii) the failure of the Members, at any meeting of Members at which any director or directors are to be elected, to elect the number of directors to be elected at such meeting.

(b) Except as provided in this paragraph, any director may resign, which resignation shall be effective on giving written notice to the President, the Secretary, or the Board of Directors, unless the notice specified a later time for the resignation to become effective. If the resignation of a director is effective at a future time, the Board of Directors may elect a successor to take office when the resignation becomes effective.

(c) Vacancies on the Board shall be filled by a majority vote of the remaining directors though less than a quorum, or by a sole remaining director. The successor director shall serve for the unexpired term of his or her predecessor. The members may elect a director or directors at any time to fill any vacancy or vacancies not filled by the directors, but any such election or written ballot shall require the approval of a majority of the voting power. A vacancy created by the removal of a director can be filled only by election of the Members.

(d) The Board of Directors shall have the power and authority to remove a director and declare his office vacant if he has (i) been declared of unsound mind by a final

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order of court, (ii) been convicted of a felony; (iii) been found by a final order or judgment of any court to have breached any duty under Sections 5230-5236 of the California Non-Profit Corporation Law (relating to the standards of conduct of directors); or (iv) if the director fails to attend three (3) consecutive regular meetings of the Board which have been duly noticed in accordance with California Law. Except as otherwise provided in the immediately preceding sentence and in subparagraph (e) hereof, a director may only be removed from office prior to expiration of his term by the affirmative vote of a majority of the votes represented and voting at a duly held meeting at which a quorum is present (which affirmative votes also constitute a majority of the required quorum) or by written ballot in conformity with Article IV, Section 4.06 hereof.

(e) Unless the entire Board is removed from office by the vote of the Members, no individual director shall be removed from office prior to the expiration of his term if the number of votes cast against his removal would be sufficient to elect the Director if voted cumulatively at an election at which the same total number of votes were cast and the entire number of directors authorized at the time of the most recent election of the directors were then being elected.

Notwithstanding the foregoing provisions of this subparagraph (e) a Director who has been elected to office solely by the votes of Members of the Association other than the declarant subdivider, may be removed from office prior to the expiration of his term only by the vote of at least a majority of the voting power residing in Members other than the declarant subdivider.

(f) No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

**ARTICLE VIII**

**BOARD MEETING**

**Section 8.01. Place of Meetings; Meetings by Telephone.** Regular meetings of the Board of Directors may be held at any place within the Properties that has been designated from time to time by resolution of the Board. In the absence of such designation, regular meetings shall be held at the principal office of the Association. Special meetings of the Board shall be held at any place within the County that has been designated in the notice of the meeting or if not stated in the notice, at the principal office of the Association. Notwithstanding the above provisions of this Section 8.01, a regular or special meeting of the Board may be held at any place consented to in writing by all the Board members, either before or after the meeting. If consents are given, they shall be filed with the minutes of the meeting. Any meeting, regular or special, may be held by conference telephone or similar communication equipment, so long as all directors participating in the meeting can hear one another, and all such directors shall be deemed to be present in person at such meeting.

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**Section 8.02. Annual Meeting of Directors.** Immediately following each annual meeting of Members, the Board of Directors shall hold a regular meeting for the purpose of organization, election of officers, and the transaction of other business. Notice of this meeting shall not be required.

**Section 8.03. Regular Meetings.** Regular meetings of the Board shall be held monthly at such time and place within the development as may be fixed from time to time by resolution of the Board, provided that, if the business to be transacted by the Board does not require monthly meetings, regular meetings may be held less frequently but no less than one regular meeting quarterly. If a regular meeting falls on a legal holiday, the meeting shall be held at the same time on the next business day. Notice of the time and place of any regular meeting shall be posted at a prominent place or places within the Common Area, and shall be given to each director not less than four days before the meeting, provided, however, that notice need not be given to any director who signs a waiver of notice or written consent to the holding of the meeting.

**Section 8.04. Special Meetings of the Board.**

(a) Special meetings of the Board of Directors for any purpose may be called at any time by the President, or the Vice President, the Secretary, or any two directors.

(b) Notice of Special Meetings.

(i) Manner of Giving. Notice of the time and place of special meetings of the Board shall be given to each director by one of the following methods: (a) By personal delivery of written notice; (b) by first-class mail, postage prepaid; (c) by telephone communication, either directly to the director or to a person at the director's office who would reasonably be expected to communicate such notice promptly to the director; or (d) by telegram, charges prepaid. All such notices shall be given or sent to the director's address or telephone number as shown on the records of the Association. Notice of a meeting need not be given to any director who signed a written waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at commencement of the meeting, the lack of notice to such director. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes. Notice of any special meeting shall also be posted in a prominent place within the Common Area at least 72 hours prior to the scheduled time for the meeting.

(ii) Time Requirements. Notices sent by first-class mail shall be deposited into a United States mailbox at least 4 days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph shall be delivered, telephoned, or given to the telegraph company at least 48 hours before the time set for the meeting.

(iii) Notice Contents. The notice shall state the date, time and place for the meeting, and the nature of any special business to be considered.

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**Section 8.05. Open Meetings.** Regular and special meetings shall be open to all members. The Board of Directors shall permit any member of the association to speak at any meeting of the association or the Board of Directors, except for meetings of the Board held in executive session. A reasonable time limit for all members of the association to speak to the Board of Directors or before a meeting of the association shall be established by the Board of Directors. The board may, with the approval of a majority of its Members present at a meeting in which a quorum for the transaction of business has been established, adjourn a meeting and reconvene in executive session to discuss and vote on personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in an executive session shall first be announced in open session and any matter discussed in executive session shall be generally noted in the minutes of the Board of Directors.

In addition, on request of any Member being disciplined by the Association, the Board shall meet in executive session to discuss the disciplinary matter, and the Member shall be entitled to attend the executive session.

**Section 8.06. Quorum Requirements.** A majority of the authorized number of directors shall constitute a quorum for the transaction of business, except to adjourn as provided in Section 8.08 of this Article VIII. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board of Directors, subject to the provisions of the California Non-Profit Corporation law, especially those provisions relating to (i) approval of contracts or transactions in which a director has a direct or indirect material financial interest, (ii) appointment of committees, and (iii) indemnification of directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors below a quorum, if any action taken is approved by at least a majority of the required quorum for that meeting.

**Section 8.07. Waiver of Notice.** The transaction of any meeting of the board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present, and (b) either before or after the meeting, each of the directors not present, individually or collectively, signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. All waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting and shall have the same force and effect as a unanimous vote of the Board. The requirement of notice of a meeting shall also be deemed to have been waived by any director who attends the meeting without protesting before or at its commencement about the lack of notice.

**Section 8.08. Adjournment.** A majority of the directors present, whether or not constituting a quorum, may adjourn any meeting to another time and place; provided, however, that an adjournment for purposes of reconvening in executive session to discuss and

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vote upon personnel matters, litigation in which the Association is or may become involved and orders of business of a similar nature, can only be effected by approval of a majority of a quorum of the Board. The nature of any matter to be considered in executive session must first be announced in open session. If the meeting is adjourned for more than 24 hours, notice of adjournment to any other time or place shall be given prior to the time of the adjourned meeting to the directors who are not present at the time of the adjournment. Except as hereinabove provided, notice of adjournment need not be given.

**Section 8.09. Action Without a Meeting.** Any action required or permitted to be taken by the Board of Directors may be taken without a meeting, if all members of the Board, individually or collectively, consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board of Directors. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. An explanation of any action so approved shall be posted at a prominent place or places within the Common Area within three (3) days after the written consents of all the Directors have been obtained.

**Section 8.10. Minutes of Meeting.** The minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes of any meeting of the Board, other than an executive session, shall be available to Members within 30 days of the meeting. The minutes, proposed minutes, or summary minutes shall be distributed to any Member on request and on reimbursement of the Association's costs in making that distribution. The members shall be notified in writing at the time that the pro forma budget required in California Civil Code §1365 is distributed or at the time of any general mailing to the entire membership of the Association of their right to have copies of the minutes of meetings of the Board, how and where those minutes may be obtained, and the cost of obtaining them.

If two or more associations consolidate any of their functions under a joint neighborhood association, the Members of each participating association are entitled to attend all meetings of the joint association other than executive sessions. Those Members must be given reasonable opportunity to participate in the meetings and must be given the same access to the joint records as they are to the participating association's records. California Civil Code §1363(j)

**Section 8.11. Compensation.** Directors, officers and members of committees shall not be entitled to compensation for their services as such, although they may be reimbursed for such actual expenses as may be determined by resolution of the Board of Directors to be just and reasonable.

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ARTICLE IX

DUTIES AND POWERS OF THE BOARD

**Section 9.01. Specific Powers and Duties.** Without prejudice to the general powers of the Board of Directors set forth in Article VII, Section 7.01, the directors shall have the power to:

(a) Exercise all powers vested in the Board under the Articles of Incorporation, these Bylaws, the Covenants and Restrictions, and under the laws of the State of California.

(b) Appoint and remove all officers of the Association, the General Manager of the Association, if any, and other Association employees; prescribe any powers and duties for such persons that are consistent with law, the Articles, the Covenants, Conditions and Restrictions and these Bylaws; and fix their compensation.

(c) Appoint such agents and employ such other employees, including attorneys and accountants, as it sees fit to assist in the operation of the Association, and to fix their duties and to establish their compensation.

(d) Subject to the provisions of the Covenants and Restrictions, to adopt, establish and distribute upon adoption rules and regulations governing the use of the Common Areas, the Common Facilities, and the personal conduct of the members and their guests thereon, and to take such steps as it deems necessary for the enforcement of the Association Rules, including the imposition of monetary penalties and/or the suspension of voting rights and the right to use any Common Facilities; provided notice and a hearing are provided as more particularly set forth in the Covenants and Restrictions. Rules and regulations adopted by the Board may contain reasonable variations and distinctions as between Owners and tenants.

(e) Enforce all applicable provisions of the Covenants and Restrictions, these Bylaws and all other regulations relating to the control, management, and use of the Lots within the Properties and the Common Areas and Common Facilities; provided that at least fifteen (15) days prior notice of any charges (other than assessments) or potential discipline or fine and the reasons therefore are given to the member affected, and that an opportunity provided for the Member to be heard, orally or in writing, not less than five (5) days before the imposition of the discipline or fine, said hearing to be before the Board. Any notice required herein shall be given by any method reasonably calculated to provide actual notice. Any notice given by mail shall be given by first-class or registered mail sent to the last address of the Member as shown on the Association's records.

(f) Contract and pay premiums for fire, casualty, liability and other insurance and bonds (including indemnity bonds) which may be required from time to time in relation to the Properties.

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(g) Contract for and pay for maintenance, landscaping, utilities, materials, supplies, labor and services that may be required from time to time in relation to the Properties.

(h) Pay all taxes, special assessments and other assessments and charges which are or would become a lien on any portion of the Properties.

(i) Contract for and pay for construction or reconstruction of any portion or portions of the Properties which have been damaged or destroyed and which are to be rebuilt.

(j) If and when the Board deems it appropriate and subject to the limitations expressed in Article X, Section 10.01 hereof, to delegate its duties and power hereunder to the officers of the Association or to committees established by the Board or a property manager or property management company retained by the Board.

(k) Establish and levy assessments on the Members of the Association and to collect the same, in accordance with the Covenants and Restrictions, and to establish and collect reasonable use charges for any or all of the Common Facilities as the Board may deem necessary or desirable from time to time for the purpose of equitably allocating among the users the cost of maintenance and operation thereof.

(l) Perform all acts required of the Board under the Covenants and Restrictions.

(m) Prepare budgets and maintain a full set of books and records showing the financial condition of the affairs of the Association in a manner consistent with generally accepted accounting principles, and at no greater than annual intervals prepare an annual financial report, a copy of which shall be delivered to each Member as provided in Article XII, Section 12.09 hereof.

(n) The Board shall review on at least a quarterly basis a current reconciliation of the Association's operating and reserve accounts, the current year's actual reserve revenues and expenses compared with the current year's budget, and an income and expense statement from the Association's operating and reserve accounts. In addition, the Board shall review the latest account statements prepared by the financial institutions where the Association has its operating and reserve accounts.

(o) Appoint a Nominating committee for the nomination of persons to be elected to the Board, and to prescribe rules under which said Nominating Committee is to act, all as more particularly described in Section 7.03 of Article VII hereof.

(p) Appoint an Architectural Committee and to prescribe rules under which said committee is to act in order to discharge its responsibilities under the Covenants and Restrictions.

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(q) Appoint such other committees as it deems necessary from time to time in connection with the affairs of the Association in accordance with Article X hereof and to prescribe the duties, powers and rules of such committees.

(r) Fill vacancies on the Board of Directors (except a vacancy on the Board created by removal of a member of the Board) or in any committee.

(s) Open bank accounts and borrow money on behalf of the Association and to designate the signatories to Association bank accounts.

(t) Bring and defend actions by or against one or more Members of the Association to protect the interests of the Members or the Association, as such, so long as the action is pertinent to the operation of the Association, and to assess the Members for the cost of such litigation.

(u) Subject to the Covenants and Restrictions, to enter Lots as necessary in connection with construction, maintenance or emergency repairs for the benefit of the Common Areas or the Owners in common.

(v) To maintain and otherwise manage: (i) all easements and real property and all facilities, improvements and landscaping thereon in which the Association holds an interest, subject to the terms of any instrument transferring such interest to the Association, (ii) all personal property in which the Association holds an interest to the Association, and (iii) all property, real or personal, which the Association is obligated to repair or maintain pursuant to the Association Management Documents including without limitation, the Articles entitled "Repair and Maintenance" of the Declaration;

(w) To, within ten (10) days of the delivery of written request, provide an Owner with (i) a copy of the Association's governing instruments, (ii) a copy of the most recent financial statement of the Association, and (iii) a true statement in writing as to the amount of any unpaid Assessments and information relating to allowable charges which as of the date of the statement are or may be made a lien upon such Owner's parcel.

(x) To grant permits, licenses and easements on, over and under the Common Area for utilities, roads and other purposes not inconsistent with the intended use and occupancy of the covered property and reasonably necessary or useful for the proper maintenance or operation of the properties, provided that such permits, licenses and easements shall not unreasonably interfere with the right of any Owner to the use and enjoyment of his Parcel and the Common Area.

**Section 9.02. Limitations on Powers.** Without the vote or written assent of a majority of the Members, the Board of Directors shall not take any of the following actions:

(a) Enter into a contract with a third party for the furnishing of goods or services to the Common Area or the Association for a term longer than one year. This restriction shall not apply to: (i) FHA or VA approved management contracts, (ii) public utility contracts where the rates charged for materials or services are regulated by the Public Utilities Commission; provided, however, that the term of the contract does not exceed the shortest term for which the supplier will contract at the regulated rate, (iii) prepaid casualty or liability insurance policies not to exceed three years duration; provided the policies provide for short rate cancellation by the insured, (iv) lease agreements for laundry room fixtures and equipment not to exceed five years duration, (v) agreements for cable television services and equipment and satellite dish television services and equipment not to exceed five (5) years' duration, (vi) agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services not to exceed five years' duration, or (vii) contracts for terms not to exceed three years that are terminable by the Association after no longer than one year without cause, penalty or other obligation on ninety (90) days written notice of termination to the other party.

(b) Incur aggregate expenditures for capital improvements to the Common Areas in any fiscal year in excess of 5% of the budgeted gross expenses of the Association for that year.

(c) Sell during any fiscal year property of the Association having an aggregate fair market value greater than 5% of the budgeted gross expenses of the Association for that year.

(d) Pay compensation to members of the Board of Directors for services performed in the conduct of the Association's business; provided that directors can be reimbursed for reasonable travel and other expenses, verified in writing, incurred in the discharge of their duties.

(e) Borrow money on behalf of the Association in a sum in excess of ten percent (10%) of the budgeted gross receipts for the current fiscal year.

**Section 9.03. Due Process Requirements.** Before the Board imposes any monetary penalties (except late charges for late payment of any assessment), or suspensions of membership rights or Common Area use privileges against any Member for failure to comply with the Declaration, these Bylaws, or Association Rules, the Board must act in good faith and must satisfy each of the following requirements:

(a) The Member is given 15 days prior notice of the discipline to be imposed and the reasons for the imposition of the discipline. The notice may be given by any method reasonably calculated to give actual notice. If the notice is given by mail, it must be sent by first-class or registered mail to the last address of the member as shown on the Association's records.

(b) The Member is given an opportunity to be heard, orally or in writing, by the Board, not less than five (5) days before the effective date of the imposition of the discipline. The provisions of this Section 9.04 shall not apply to any monetary penalties, suspensions of

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membership rights or common area use privileges against any member for failure to pay regular or special assessments in accordance with the provisions of Article IV of the Covenants, Conditions and Restrictions.

**Section 9.04. Withdrawal From Reserves.** The signatures of at least two (2) persons, who shall be members of the Board, shall be required for the withdrawal of monies from the Association's reserve accounts.

**Section 9.05. Notice of Significant Legal Proceedings.** Notwithstanding anything herein to the contrary, the Board shall not institute any significant legal proceeding, including any arbitration or judicial reference proceeding, against any person without providing the Members of the Association with at least 120 days' prior written notice of the Association's intention to institute legal proceedings. The notice shall describe the purpose of the proceeding, the parties to the proceeding, the anticipated cost to the Association (including attorney fees) in processing the proceeding, the source of funds to process the proceedings (reserves or special or regular assessments), and suggested information that should be disclosed to third parties, such as prospective purchasers and lenders, while the proceeding is being prosecuted. For purposes herein, "significant legal proceeding" shall mean any legal proceeding in which it reasonably could be anticipated that any of the following events could occur:

- (a) The levy of a special assessment to fund all or any portion of the proceeding;
- (b) The expenditure of funds from the Association's reserves in connection with the proceeding in an amount in excess of 5 percent of the then current reserves;
- (c) The amount of the claim is in excess of \$5,000.00; or
- (d) A material adverse effect on the ability to sell and/or refinance the lots within the development during the period the proceeding is being prosecuted.

Notwithstanding the foregoing, the notice shall not be required to commence and pursue any action to collect delinquent assessments or to enforce any Common Area completion bond. Furthermore, if the Board in good faith determines that there is insufficient time to provide prior notice to the Members as required herein before the expiration of any applicable statute of limitations or before the loss of any other significant right of the Association, the Board may take the necessary steps to commence the proceeding to preserve the rights of the Association, provided that as soon as is reasonably practical thereafter and not later than 30 days following the commencement of the proceeding, the Board shall provide the Members with notice as required herein.

**Section 9.06. Alternative Dispute Resolution.**

- (a) Unless the applicable time limitation for commencing the action would run within 120 days, prior to the filing of a civil action by the Association or any owner or Member solely

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for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in connection with a claim for monetary damages, other than Association assessments, not in excess of five thousand dollars (\$5,000), related to the enforcement of the Association's Articles, Bylaws, or the Covenants, Conditions, and Restrictions, the parties shall endeavor to submit their dispute to a form of alternative dispute resolution such as mediation or arbitration. The form of alternative dispute resolution chosen may be binding or non-binding at the option of the parties. Any party to such dispute may initiate this process by serving on another party to the dispute a Request for Resolution. The Request for Resolution shall include (1) a brief description of the dispute between the parties, (2) a request for alternative dispute resolution, and (3) a notice that the party receiving the Request for Resolution is required to respond thereto within thirty (30) days of receipt or it will be deemed rejected. Service of the Request for Resolution shall be in the same manner as proscribed for service in a small claims action as provided in § 116.340 of the Code of Civil Procedure. Parties receiving a Request for Resolution shall have thirty (30) days following service of the Request for Resolution to accept or reject alternative dispute resolution and, if not accepted within the 30-day period by a party, shall be deemed rejected by that party. If alternative dispute resolution is accepted by the party upon whom the request for resolution is served, the alternative dispute resolution shall be completed within ninety (90) days of receipt of the acceptance by the party initiating the request for resolution, unless extended by written stipulation signed by both parties. The costs of the alternative dispute resolution shall be borne by the parties.

(b) At the time of filing a civil action by either the Association or an Owner or Member, solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages, other than Association assessments, not in excess of \$5,000.00, related to the enforcement of the Articles, Bylaws, or Covenants, Conditions and Restrictions of the Association, the party filing the action shall file with the complaint a certificate stating that alternative dispute resolution has been completed.

**Section 9.07. Limitation of Liability of Officers and Directors.** No director, officer, committee member, employee, or other agent of the Association, including the Declarant or any agent of the Declarant when acting in such capacity, shall be liable to any Owner or any other party, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of any such person if such person has acted in good faith and in a manner such person reasonably believed to be in the best interests of the Association.

**ARTICLE X**

**COMMITTEES**

**Section 10.01. Committees, Generally.** The Board may, by resolution adopted by a majority of the directors then in office, designate one or more committees, each consisting of two or more directors, or other Members who are not directors, to serve at the pleasure of

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the Board, which shall have all the authority of the Board, except that no committee, regardless of Board resolution, may:

- (a) Take any final action on any matter which, under the Non-Profit Corporation Law of California, also requires approval of the Members.
- (b) Fill vacancies on the Board of Directors or in any committee which has been delegated any authority of the Board.
- (c) Amend or repeal Bylaws or adopt new Bylaws.
- (d) Amend or repeal any resolution of the Board of Directors which by its express terms is not so amendable or repealable.
- (e) Appoint any other committees of the Board of Directors the Members of those committees.
- (f) Expend corporate funds to support a nominee for Director after there are more people nominated for director than can be elected.
- (g) Approve any transaction (1) to which the corporation is a party and one or more directors have a material financial interest; or (2) between the corporation and one or more of its directors or between the corporation or any person in which one or more of its directors have a material financial interest.

(h) Levy fines.

**Section 10.02. Standing Committees.** The following standing committees shall be established and maintained by the Board:

(a) **Architectural Committee.** The Board shall appoint an Architectural Committee consisting of three or more Members, said committee to have the powers and responsibilities described in Article VII of the Covenants and Restrictions.

(b) **Nomination Committee.** The Board shall appoint a three person Nomination Committee in accordance with Article VII, Section 7.03 of these Bylaws, which committee shall have the powers and responsibilities described in said Section 7.03.

(c) **Budget and Finance Committee.** The Board shall appoint four Members, one of whom shall be the Association's Treasurer, to a Budget and Finance Committee. The Committee shall meet a minimum of two (2) times annually. The Committee shall assist the Treasurer in executing his responsibilities as described herein and shall be responsible for developing the Association's annual budget for presentation to the membership at the Annual

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meeting. The Committee shall also monitor and report to the Board on financial and tax developments of interest to the Association.

**Section 10.03. Executive Committee.** Subject to Section 10.01 of this Article X, the Board shall have the power to appoint an Executive Committee composed of two or more Members of the Board to act on its behalf during intervals between regular Board meetings.

**Section 10.04. Meetings and Actions of Committees.** Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of Article VIII of these Bylaws, concerning meetings of directors, with such changes in the context of those Bylaws as are necessary to substitute the committee and its Members for the Board of Directors and its Members, except that the time for regular meetings of committees may be determined either by resolution of the Board of Directors or by resolution of the committee. Special meetings of committees may also be called by resolution of the Board of Directors. Notice of special meetings of committees shall also be given to any and all alternate Members, who shall have the right to attend all meetings of the committee. Minutes shall be kept of each meeting of any committee and shall be filed with the corporate records. The Board of Directors may adopt rules for the government of any committee not inconsistent with the provisions of these Bylaws.

**ARTICLE XI**

**OFFICERS**

**Section 11.01. Officers.** The officers of the Association shall be a President, a Vice-President, a Secretary and a Chief Financial Officer. The Association may also have, at the discretion of the Board, one or more Assistant Secretaries, one or more Assistant Treasurers, and such other officers as may be appointed in accordance with the provisions of Section 11.03 following. One person may hold two or more offices, except that neither the Secretary nor the Chief Financial Officer may serve concurrently as President.

**Section 11.02. Election of Officers.** The officers of the Association, except such officers as may be appointed in accordance with the provisions of Section 11.03 following, shall be chosen annually by majority vote of the Board at its first regular meeting each year, and shall hold his office until he or she shall resign or shall be removed or otherwise disqualified to serve, or his or her successor shall be elected and qualified.

**Section 11.03. Subordinate Officers.** The Board may appoint, and may empower the President to appoint, such other officers as the affairs 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 and as the Board may from time to time determine.

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**Section 11.04. Removal of Officers.** Any officer may be removed, either with or without cause, by the Board at any regular or special meeting, or by any officer upon whom such power of removal may be conferred by the Board; provided, however, that no such officer shall remove an officer chosen by the Board.

**Section 11.05. Resignation of Officers.** Any officer may resign at any time by giving written notice to the Board or to the President or to the Secretary. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Association under any contract to which the officer is a party.

**Section 11.06. Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in the Bylaws for regular appointments to such office.

**Section 11.07. President.** The President shall be elected by the Board from among the directors. He or she shall be the chief executive officer of the Association, and subject to the control of the Board, shall have general supervision, direction and control of the affairs and officers of the Association. He or she shall preside at all meetings of the Board, and shall have the general power and duties of management usually vested in the office of president of a corporation, together with such other power and duties as may be prescribed by the Board or the Bylaws.

**Section 11.08. Vice President.** The Vice President shall be elected by the Board from among the directors. In the absence or disability of the President, the Vice President shall perform all the duties of the President and when so acting shall have all the powers of, and be subject to all the restrictions upon, the President. He or she shall have such other powers and perform such other duties as from time to time may be prescribed by the Board or the Bylaws.

**Section 11.09. Secretary.** The Secretary shall keep or cause to be kept at the principal office or such other place as the Board may order, the following:

(a) A book of minutes of all meetings of directors and Members, with the time and place of holding same, whether regular or special, and if special, now authorized, the notice thereof given, the names of those present at directors' meetings, the number of Members present in person or by proxy at Members' meetings, and the proceedings thereof.

(b) Appropriate current records showing the Members of the Association, together with their addresses.

(c) A copy of the Articles and Bylaws, as amended to date.

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He or she shall give, or cause to be given, notice of all meetings of the Board required by the Bylaws or by law to be given, and he or she 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 or by the Bylaws. The Secretary shall be responsible to verify the filing of the annual Statement of Officers with the Secretary of State.

**Section 11.10. Treasurer.** The Treasurer, (who shall be known as the Chief Financial Officer), shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Association, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings and other matters customarily included in financial statements. The books of account shall at all reasonable times be open to inspection by any director or Member. The Treasurer shall deposit all monies and other valuables in the name and to the credit of the Association with such depositories as may be designated by the Board. He or she shall disburse the funds of the Association as may be ordered by the board, shall render to the President and Directors, whenever they request it, an account of all of his transactions as Treasurer and of the financial condition of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board or the Bylaws. If required by the Board, the Treasurer shall give the Association a bond in the amount and with the surety or sureties specified by the Board for faithful performance of the duties of his or her office and for restoration to the Association of all its books, papers vouchers, money, and other property of every kind in his or her possession or under his or her control on his or her death, resignation, retirement, or removal from office.

**ARTICLE XII**

**ASSESSMENTS AND FINANCES**

**Section 12.01. Description of Assessments to which Owners are Subject.** Owners of Lots within the Properties are subject to Annual and Special Assessments as more particularly described in Article IV of the Covenants and Restrictions.

**Section 12.02. Creation of the Lien and Personal Obligation of Assessments.** The creation of the lien and personal obligation of assessments is governed by Section 4.01 of Article IV of the Covenants and Restrictions.

**Section 12.03. Purpose and Basis of Assessments.** The purpose and basis of assessments is as specified in Sections 4.02 through 4.05 of Article IV of the Covenants and Restrictions.

**Section 12.04. Date of Commencement of Assessments: Due Dates.** The date of commencement and the due dates of assessments are as specified in Sections 4.01(c), 4.02(f), 4.03(c) and 4.09 of Article IV of the Covenants and Restrictions.

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**Section 12.05. Effect of Non-Payment of Assessment: Remedies of the Association.** The effect of non-payment of assessments and the remedies of the Association shall be as specified in Section 4.11 of Article IV of the Covenants and Restrictions.

**Section 12.06. Subordination of Lien to Mortgages.** The lien of the assessments shall be subordinated to the lien or charge of any first mortgage of record as more particularly described in Section 4.11 of Article IV of the Covenants and Restrictions.

**Section 12.07. Joint Signatures.** Unless the Board authorizes more stringent requirements, any check or other negotiable instrument issued by the Association shall require the joint signatures of any two of the following officers: the president, the chief financial officer, and the secretary, provided that under all circumstances the withdrawal of any money from the Association reserve accounts shall require the signatures of at least two people who shall either be Members of the Board or one Member of the Board and one officer who is not a Member of the Board. For all purposes herein, "reserve accounts" shall mean money that the Association's Board has identified from its annual budget for use to defray the future repair of, replacement of, or additions to those major components that the Association is obligated to maintain.

**Section 12.08. Association Accounts.** The Board shall maintain a deposit account and any other accounts it shall deem necessary to carry out its purposes, including reserve accounts for replacement of capital improvements as more particularly set forth in Section 4.08 of Article IV of the Covenants, Conditions and Restrictions. The signatures of at least two (2) persons, who shall be members of the Board of Directors or, one officer who is not a Member of the Board of Directors and a Member of the Board of Directors, shall be required for the withdrawal of money from the Association's reserve accounts.

**Section 12.09. Budgets and Financial Statements.** Financial statements for the Association shall be regularly prepared and copies thereof shall be distributed to each Member of the Association as follows:

(a) A pro forma operating statement (budget) for each fiscal year shall be distributed to Members not less than 45 nor more than 60 days before the beginning of the fiscal year. The pro forma operating statement shall include all of the following:

(i) The estimated revenue and expenses on an accrual basis;

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

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

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(B) As of the end of the fiscal year for which the study is prepared:

(C) The percentage that accumulated cash reserves actually set aside is of the current estimate of cash reserves necessary.

(iii) A statement as to whether the governing body of the Association has determined or anticipates that the levy of one or more special assessments will be required to repair, replace or restore any major component or to provide adequate reserves therefor.

(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 areas and facilities for which the Association is responsible.

(b) A balance sheet—as of an accounting date which is the last day of the month closest in time to six months from the date of closing of the first sale of a Lot in the subdivision—and an operating statement for the period from the date of the first closing to the said accounting date, shall be distributed within 60 days after the accounting date. This operating statement shall include a schedule of assessments received and receivable identified by the Lot number and name of the entity assessed.

(c) Within 120 days after the close of the fiscal year, an annual report consisting of:

(i) A balance sheet as of the end of the fiscal year;

(ii) An operating (income) statement for the fiscal year;

(iii) A statement of changes in financial position for the fiscal year;

(iv) A statement of the place where the names and addresses of the current Members are located; and

(v) Any information required to be reported under Section 8322 of the Corporations Code with respect to certain transactions in excess of \$50,000.00 per year between the Association and a director or officer of the Association and indemnifications and advances to officers or directors in excess of \$10,000.00 per year or such other transactions as may be required to be disclosed by such statute or any successor statute.

The annual report shall be prepared by an independent accountant for any fiscal year in which the gross income of the Association exceeds \$75,000.00, and shall be prepared in accordance with generally accepted accounting principles and standards as established by the California State Board of Accountancy. If the annual report is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the corporation that the statements were prepared without audit from the books and records of the corporation.

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(d) A statement as to the Association's policies and practices in enforcing the lien rights or other legal remedies for the default in the payment of its assessments against its Members shall be distributed to each Member of the Association within 60 days prior to the beginning of the fiscal year.

(e) In lieu of the distribution of the financial statement required by Section 12.09(a) of this Article XII, the Board may elect to distribute a summary of the statement to all Members with a written notice that the statement is available at the business office of the Association or at another suitable location within the boundaries of the development and that copies will be provided upon request and at the expense of the Association. If any Member requests a copy of the financial statement required by said Section 12.09(a) to be mailed to the Member, the Association shall provide the copy to the member by first-class United States mail at the expense of the Association and delivered within five (5) days. The written notice that is distributed to each of the Association Members shall be in at least 10-point bold type on the front page of the summary of the statement.

**Section 12.10. Fiscal Review.** The Board of Directors shall do all of the following; not less frequently than quarterly:

(a) Cause to be made and review a current reconciliation of the Association's operating accounts.

(b) Cause to be made and review a current reconciliation of the Association's reserve accounts.

(c) Review the current year's actual reserve revenues and expenses compared to the current year's budget.

(d) Review the latest account statements prepared by the financial institution where the Association has its operating and reserve accounts.

(e) Review an income and expense statement for the Association's operating and reserve accounts.

**ARTICLE XIII**

**INDEMNIFICATION AND INSURANCE**

**Section 13.01. Indemnification Right and Power.**

(a) The Association shall indemnify any agent of the Association who was a party to any proceeding by reason of the fact that the person is or was an agent of the Association against expenses actually and reasonably incurred in any proceeding to the extent that the agent was successful on the merits in defense of the proceeding or in defense of any claim, issue, or

matter therein. Expenses shall include any attorney's fees and any other expenses of establishing a right to indemnification.

(b) The Association may indemnify any agent of the Association who was or is a party or is threatened to be made a party to any proceeding by reason of the fact that such person is or was an agent of the Association, against expenses actually and reasonably incurred in connection with such proceeding provided the approval requirements described in Section 13.02 of these Bylaws have been satisfied.

(c) For purposes of Sections 13.01 - 13.05 of these Bylaws, the term "agent" means any present or former director, officer, employee, or other agent of the Association, the term "proceeding" means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative, and the term "expenses" includes judgments, fines, or settlements occurring in any proceeding other than a proceeding brought by or on behalf of the Association.

**Section 13.02. Indemnification Approval.**

(a) Unless indemnification is required as provided in Section 13.01 of these Bylaws, indemnification shall be made only if authorized in the specific case on a determination that indemnification is proper in the circumstances because the agent satisfied the appropriate standard of care described in Section 13.03 of these Bylaws. The determination must be made by one of the following methods:

(i) A majority vote of a quorum of the board consisting of directors who are not parties to the proceeding.

(ii) The affirmative vote of a majority of the voting power of the Members entitled to vote at a duly held Members' meeting in which a quorum was present, or the approval by written ballot under the procedures described in Section 4.06 of these Bylaws, provided that if the agent to be indemnified is a Member, the agent shall not be entitled to vote.

(iii) The court in which such proceeding is or was pending on application made by the Association or the agent or the attorney or other person rendering services in connection with the defense, whether or not the application is opposed by the Association.

(b) Notwithstanding the foregoing, any indemnification in any proceeding brought by or on behalf of the Association shall be subject to the restrictions contained in California Corporation Code Section 7237(c).

**Section 13.03. Standard of Care.** In any proceeding brought by or on behalf of the Association, the applicable standard of care shall require that the agent acted in good faith, in a manner the agent believed to be in the best interests of the Association and with the care, including reasonable inquiry, that an ordinarily prudent person in like position would use under similar circumstances. In all other proceedings, the agent must have acted in good faith,

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in a manner the agent believed to be in the best interests of the Association and, in the case of a criminal proceeding, had no reasonable cause to believe that his or her conduct was unlawful.

**Section 13.04. Advancement of Expenses.** On approval by the Board, expenses incurred in defending any proceeding may be advanced by the Association prior to the final disposition of the proceeding, provided the Association receives an undertaking by or on behalf of the agent that the advances will be repaid unless it is ultimately determined that the agent was entitled to indemnification as required or authorized by these Bylaws.

**Section 13.05. Insurance.** The Association shall have the power to purchase and maintain insurance on behalf of its agents, against any liability asserted against or incurred by any agent in such capacity or arising out of the agent's status as such whether or not the Association would have the power to indemnify the agent against such liability under Section 13.01 - 13.04 of these Bylaws.

**ARTICLE XIV**

**MISCELLANEOUS**

**Section 14.01. Records.** The Association shall maintain the following records:

- (a) Adequate and correct books and records of account;
- (b) Written minutes of the proceedings of its Members, Board and committees of the Board; and
- (c) A record of its Members, giving their names, addresses, telephone numbers, and voting rights.

The Association shall keep at its principal office the original or a copy of the Declaration, the Articles and these Bylaws, as amended to date.

**Section 14.02. Inspection of Books and Records.**

(a) All books, records, minutes, (including minutes of meetings of Committees of the Board) membership lists and papers of the Association, except confidential or privileged matters such as litigation files or employee records, shall at all times, during reasonable business hours, be subject to the inspection of any Member at the offices of the Association for any purpose reasonably related to the member's interest as such. Member's rights of inspection hereunder shall be exercisable on 10 days written demand on the Association, which demand shall state the purpose for which the inspection rights are requested. Inspection rights shall be subject to the Association's right to offer a reasonable alternative to inspection within 10 days after receiving the Member's written demand (as more particularly set forth in Sections 8330 and following of the California Non-Profit Corporation Law).

(b) The Board of Directors shall establish reasonable rules with respect to (i) notice of inspection, (ii) hours and days of the week when inspection may be made, and (iii) payment of the cost of reproducing copies of documents requested by the Member.

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(c) Every director shall have an absolute right at any reasonable time to inspect all books, records, documents and minutes of the Association and the physical properties owned by the Association. The right of inspection by a director includes the right to make extracts and copies of documents.

**Section 14.03. General Manager.** The Board may, from time to time, employ the services of a manager to manage the affairs of the Association and, to the extent not inconsistent with the laws of the State of California, and upon such conditions as are otherwise deemed advisable by the Board, the Board may delegate to the Manager any of its day-to-day management and maintenance duties and powers under these Bylaws and the Covenants and Restrictions, provided that the general manager shall at all times remain subject to the general control of the Board.

**Section 14.04. Amendment or Repeal of Bylaws and Amendment of Articles.** Except as otherwise expressly provided herein, the Articles of the Association and these Bylaws may only be amended or repealed, and new Bylaws adopted by the affirmative vote or written ballot of a majority of the total membership of the Association; provided that if any provision of these Bylaws or Articles requires the vote of a larger proportion or all of the Members, such provisions may not be altered, amended or repealed except by such greater vote, unless otherwise specifically provided herein. Notwithstanding the provisions of this section 14.04 requiring a majority vote of the total membership of the Association for amendment or repeal, so long as two classes of voting membership of the Association exists, any such amendment or repeal shall require a majority of the voting power of each class.

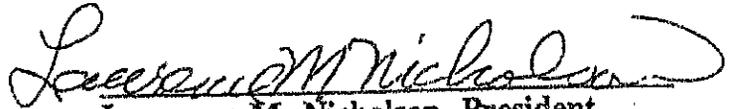
**Section 14.05. Notice Requirement.** Except as otherwise specifically provided in these Bylaws, any notice or other document permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered 24 hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: if to the Association or the Board c/o RM UNIT XI, Homeowner's Association, 701 McCray Street, Hollister, CA 95023; if to a director, at the address from time to time given by such director to the Secretary for the purpose of service of such notice; if to a member, at the address from time to time given by such Member to the Secretary for the purpose of service of such notice, or, if no such address has been given, to any Unit within the Properties owned by such Member.

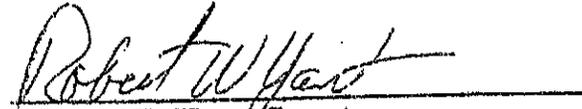
**Section 14.06. Construction and Definition.** Unless the context requires otherwise or a term is specifically defined herein, the general provisions, rules of construction, and definitions in the California Non-Profit Corporation Law shall govern the construction of these Bylaws. Without limiting the generality of the above, the masculine generally includes the feminine and neuter, and singular number includes the plural and the plural number includes the singular.

**Section 14.07. Conflict.** In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict

between the Covenants and Restrictions and these Bylaws, the Covenants and Restrictions shall control.

IN WITNESS WHEREOF, we have hereunto subscribed our names this 18th day of December, 1996.

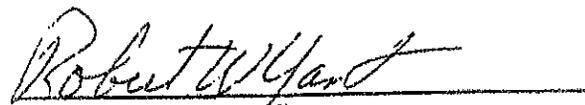
  
Lawrence M. Nicholson, President

  
Robert W. Yant, Secretary

CERTIFICATE OF SECRETARY

I certify that I am the duly-elected and acting Secretary of RM UNIT XI HOMEOWNER'S ASSOCIATION, A California nonprofit mutual benefit corporation, and the above Bylaws, consisting of thirty-four (35) pages, are the Bylaws of this corporation as adopted by the Board of Directors on December 18, 1996, since that they have not been amended or modified since that date.

Executed on December 18, 1996, at Hollister, California.

  
Robert W. Yant, Secretary