

BYLAWS

OF

DOLPHIN BAY PROPERTY OWNERS ASSOCIATION

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**BYLAWS OF
DOLPHIN BAY PROPERTY OWNERS ASSOCIATION**

**ARTICLE I.
GENERAL PROVISIONS**

Section 1.1 Name. The name of the association is Dolphin Bay Property Owners Association (the "**Association**"). The principal office of the Association shall be at such place in the City of Pismo Beach, County of San Luis Obispo as the Board of Directors may designate from time to time.

Section 1.2 Definitions. Unless expressly indicated to the contrary, the terms used herein shall have the following meanings:

(a) **Declaration.** That certain Amended and Restated Declaration of Covenants, Conditions and Restrictions and Reservation of Easements (Dolphin Bay Hotel & Residences) recorded December 2, 2005, in the Office of the County Recorder of San Luis Obispo, as Instrument No. 2005-100919, and all supplemental declarations and amendments thereto.

(b) **Additional Terms.** The balance of the terms herein shall have the same meaning as defined in the Declaration.

Section 1.3 Purpose. The Association has been formed for the purpose of exercising the powers and performing the duties of the Association set forth in these Bylaws, the Articles of Incorporation of the Association and the Declaration.

**ARTICLE II.
MEMBERSHIP AND VOTING RIGHTS**

Section 2.1 Qualifications. Each Owner of a Unit shall be a Member of the Association. If a Unit is owned by more than one Owner, all such Owners shall be Members of the Association; provided, however, that for the purposes of the representation of such Unit with regard to the affairs of the Association and the voting of the Members of the Association, such Unit, except as provided in Section 2.3 hereof, shall be represented by and entitled to only one (1) vote which shall be exercised and cast in accordance with the provisions of these Bylaws. Ownership of a Unit within the Project shall be the sole qualification for membership in the Association.

Section 2.2 Transfer Of Membership. The Association membership of each Owner shall be appurtenant to the Unit giving rise to such membership, and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon the transfer of title to said Unit and then only to the transferee of title to said Unit. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Unit shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Owner thereof.

Section 2.3 Voting Rights. The Association shall have two (2) classes of voting Membership:

(a) **Class A.** Until such time as the Class B Membership no longer exists, Class A Members shall be all Residential Owners (other than the Declarant) and the Commercial Owners (including Declarant). Upon the conversion of the Class B Membership to Class A Membership in accordance with Section 2.3(b) below, Class A Members shall be all Owners, including the Commercial Owners and Declarant. Except for the Hotel Owner who shall be entitled to four (4) votes and the Restaurant Owner who shall be entitled to two (2) votes, the Class A Members shall be entitled to one (1) vote for each Condominium owned by such Class A Member. When more than one (1) Person owns any Condominium, all such Persons shall be deemed Members; *provided, however*, the vote for such Condominium owned by more than one (1) Person shall be exercised as a unit, as they themselves determine in accordance with Section 2.5 below. In no event shall more than one (1) vote be cast for each number of votes allocated to the Condominium. For purposes of this Section, it is understood that the Restaurant Owner shall be entitled at all times to two (2) Class A votes and the Hotel Owner shall be entitled at all times to four (4) Class A votes even if the Hotel Owner or Restaurant Owner is the Declarant.

(b) **Class B.** The Class B Member shall be Declarant. Declarant shall be entitled to three (3) votes for each Developer Unit owned by Declarant, provided that, solely for the purpose of counting votes in order to determine when Class B Membership shall cease and convert to Class A Membership, as provided in Subparagraph (i) below, Declarant shall be entitled to five (5) votes for each Developer Unit owned by Declarant. Class B Membership shall cease and be converted to Class A Membership on the happening of the earliest of the following events:

(i) When the total outstanding votes held by Class A Members equals the total outstanding votes held by the Class B Member;

(ii) Ten (10) years from the date of issuance of the most recent Final Subdivision Public Report with respect to any part of the Property (the "**Conversion Date**"); provided that if at the time of the Conversion Date less than seventy-five percent (75%) of the Units have been sold to Retail Purchasers, the Conversion Date shall be extended for consecutive two (2) year periods until seventy-five percent (75%) of the Units have been sold to Retail Purchasers.

Section 2.4 Special Procedure. To assure resident Owners' representation on the Board, at least twenty percent (20%) of the directors on the Board shall have been elected solely by the vote of the Owners, other than Declarant, for so long as a majority of the voting power of the Association resides in Declarant. A director who has been elected to office solely by the vote

of Members of the Association other than Declarant, may be removed from office prior to the expiration of such director's term of office only by the vote of at least a majority of the voting power residing in Members other than Declarant.

Section 2.5 Joint Owners Disputes. The one (1) vote for each Condominium must be cast as a unit, and fractional votes shall not be allowed. In the event that the joint Owners of any Condominium are unable to agree among themselves as to how their one vote shall be cast, they shall lose their right to vote on the matter in question. If any Owner or Owners cast a vote representing a Condominium, it will thereafter be conclusively presumed for all purposes that the Owner(s) were acting with the authority and consent of all other Owners of the same Condominium. In the event more than one (1) vote is cast for a particular Condominium, none of said votes shall be counted and said votes shall be deemed void

Section 2.6 Members' Rights And Duties. Each Member shall have the rights, duties and obligations set forth in these Bylaws, the Articles and the Declaration, as the same may be amended from time to time.

Section 2.7 Cumulative Voting. In any election of the Board in which two (2) or more positions on either the Residential Committee or the Commercial Committee are to be filled, every Owner entitled to vote at such an election shall have the right to cumulate his votes and give one candidate, or divide among any number of candidates, a number of votes equal to the number of Directors to be elected to such Committee multiplied by the number of votes which such Owner is otherwise entitled to cast pursuant to the Declaration and these Bylaws; provided that the procedural prerequisites to cumulative voting prescribed in Section 7615(b) of the California Nonprofit Mutual Benefit Corporation Law are satisfied. Subject to the provisions of Section 6.1 hereof, the candidates receiving the highest number of votes, up to the number of Board members to be elected, shall be deemed elected. Voting for members of the Board shall be by secret written ballot.

Section 2.8 Approval of Members. Unless elsewhere otherwise specifically provided in these Bylaws or the Declaration, any provision of these Bylaws or the Declaration which requires the vote or written assent of the voting power of the Association or any class or classes of membership shall be deemed satisfied by either of the following:

(a) the vote, in person or by proxy, of the Owners constituting a quorum casting a majority of the votes at a meeting duly called and noticed pursuant to the provisions of the Bylaws dealing with annual or special meetings of the Members; or

(b) written consents signed by the Owners constituting a quorum casting a majority of the votes.

Section 2.9 Special Declarant Representation Rights. Notwithstanding the provisions of this Article, until the occurrence of the Conversion Date, as set forth in Section 2.3 above, Declarant shall have the absolute authority to elect at least twenty percent (20%) of the total number of directors on the Board.

Section 2.10 General. Whenever these Bylaws, the Declaration or the Articles require the vote, assent or presence of a stated number of Owners or Members entitled to vote on a

matter or at a meeting with regard to the taking of any action or any other matter whatsoever, the provisions of this Article shall govern as to the total number of available votes, the number of votes an Owner is entitled to cast at the meeting, and the manner in which the vote attributable to a Unit having more than one Owner shall be cast.

ARTICLE III.

MEMBERSHIP ASSESSMENTS AND LIEN RIGHTS

Section 3.1 Membership Assessments. Regular Assessments for Common Expenses, Reconstruction Assessments, Capital Improvement Assessments, Emergency Assessments, Reimbursement Assessments, Remedial Assessments and Special Assessments, as provided for in the Declaration, together with all other assessments of the Members of the Association provided for in the Declaration shall be paid by the Members at the time, in the manner and subject to the conditions and limitations set forth in the Declaration, and the Board shall fix, levy, collect and enforce such assessments at the time, in the manner and subject to the limitations set forth in the Declaration.

Section 3.2 Enforcement, Lien Rights. For the purpose of enforcing and collecting assessments, this Association shall have the lien rights set forth in the Declaration, which lien rights shall be enforceable by the Board in the manner set forth in the Declaration. The Board shall also have and be entitled to exercise all other rights and remedies set forth in the Declaration or otherwise provided for at law or in equity.

ARTICLE IV.

MEMBERSHIP RIGHTS AND PRIVILEGES

Section 4.1 Rights And Privileges Of Members. No Member shall have the right, without the prior approval of the Board, to exercise any of the powers or to perform any of the acts delegated to the Board by these Bylaws, or the Declaration. Each Member shall have all of the rights and privileges including, but not limited to, property rights and rights to access over, and use and enjoyment of the Common Area granted to the Members by these Bylaws and the Declaration subject to such limitations as may be imposed in accordance therewith.

Section 4.2 Rules. The Board may establish rules and regulations for the Association pursuant to Section 4.13 of the Declaration.

Section 4.3 Suspension Of Voting Rights; Imposition Of Reasonable Monetary Penalties. After the meeting of the Board, as provided below, upon ten (10) days prior written notice to the delinquent Member, the Board shall have the right to suspend the voting rights of any Member or Members for the period during which any Assessment owed by such Member remains unpaid and delinquent. The Board shall also have the right to impose reasonable monetary penalties for any other failure to comply with the Declaration or the Association Rules by any Member, his servants, guests, tenants, invitees or the members of his family; provided that any suspension of voting rights shall be made or monetary penalties imposed by the Board only after a meeting of the Board, at which a quorum of the Board is present, duly called and held for such purpose in the same manner as provided in these Bylaws for the noticing, calling and holding of a special meeting of the Board. Additionally, the Board shall have the right to

suspends such Member's right to use the Common Areas for any period during which any Assessment against such Owner's Unit remains unpaid; provided, that these provisions shall not operate or be construed to deny or restrict ingress or egress of any Owner to and from such Owner's Unit.

Written notice of such meeting, including notice of the proposed actions of the Board and the reasons therefor, shall be given as in the manner described for special meetings of the Board to the Member whose voting rights are being sought to be suspended or against whom monetary penalties are sought to be imposed. Such notice shall indicate the effective date of such suspension or imposition of monetary penalties which date shall not be less than fifteen (15) days from the date such notice is given. Such notice shall be given either by personal delivery or deposited in the United States mail, certified or registered, postage and fees prepaid, return receipt requested, addressed to such Member either at the address of his Unit in the Project or the address given to the Association by him for the purpose of giving notice. Such notice, if mailed, shall be deemed given and received two (2) business days after being so deposited in the United States mail.

The Member whose voting rights are being sought to be suspended or against whom monetary penalties are sought to be imposed shall be entitled to appear at such meeting not less than five (5) days before the effective date of the suspension or imposition of monetary penalties and present his case as to why voting rights should not be suspended or such monetary penalties should not be imposed. The decision as to whether such rights should be suspended or such monetary penalties should be imposed shall be made by a majority of the members of the Board present at such meeting and shall be binding upon all Members. No action taken at such meeting shall be effective unless a quorum of the Board is present. No suspension of voting rights or imposition of monetary penalties shall be effective unless and until written notice has been given to the Member of the suspension or imposition of monetary penalties and the reason(s) therefor and the effective date of such suspension or imposition of monetary penalties is indicated in said notice. The Member may challenge such suspension or imposition of monetary penalties as described in Section 7341(e) of the California Nonprofit Mutual Benefit Corporation Law.

The remedies described above shall not limit the right of the Board to establish a schedule of late payment charges to be imposed on any Member for nonpayment of assessments. Said late charges shall be separate and in addition to the remedies described above.

Notwithstanding the foregoing, as set forth in Regulation 2792.26 (c), a monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the Association's governing instruments or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to common areas and facilities for which the Member was allegedly responsible or in bringing the Member and his subdivision interest into compliance with the governing instruments shall not be characterized nor treated herein or in the other governing instruments as an Assessment which may become a lien against the Member's subdivision interest enforceable by a sale of the interest in accordance with the provisions of Sections 2924, 2924(b), and 2924(c) of the California Civil Code; provided, however, as set forth in Regulation 2792.26 (d), the foregoing provisions of this paragraph do not apply to charges imposed against an Owner consisting of reasonable late payment penalties for delinquent

Assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent Assessments.

ARTICLE V. MEETINGS OF MEMBERS

Section 5.1 Place Of Meeting, Procedure. All meetings of the Members shall be held within the Project or as close thereto as may be practical. Without limiting the foregoing, unless unusual conditions exist, meetings of the Members shall be held within the County. All meetings of the Members shall be conducted in accordance with a recognized system of parliamentary procedure as the Board may adopt.

Section 5.2 Annual Meeting Of Members. The annual meeting of Members shall be held each year in the same month in which the organization meeting as hereinafter provided for was held, commencing with the year immediately following the year during which the organization meeting as hereinafter provided for is held. An organization meeting shall be held within forty-five (45) days after recordation of the deed for the sale of the Unit representing the fifty-first (51st) percentile interest to be sold in the Project, but in no event later than six (6) months following the recordation of a deed evidencing the initial sale and conveyance by the Declarant of a Unit within the Project. At the organization meeting, and at all subsequent annual meetings as required, the Members shall elect a Board of Directors (including the members of the Residential Committee and the Commercial Committee) by secret written ballot in accordance with the requirements of these Bylaws. The Members may also transact such other business of the Association as may properly come before them at such organization or annual meeting.

Written notice of both the organization meeting and each annual meeting shall be given to each Member by the Secretary or, in the case of the organization meeting only, by the Declarant, in the manner hereinafter provided. All such notices of any organization or annual meeting shall be sent to each Member not less than ten (10) days and not more than ninety (90) days before such meeting, and shall specify the place, the day and the hour of such meeting and shall generally state those matters which the Board, at the time of mailing of the notice intends to present for action by the Members (but any proper matter may be presented for action at such meeting). The notice of any meeting at which Directors are to be elected shall include the names of those who are nominees at the time the notice is sent to Members.

Section 5.3 Special Meetings. Special meetings of Members, for any purpose or purposes whatsoever, may be called at any time by the President of the Association or by any two Members of the Board, and the Board shall promptly schedule a special meeting in response to a written request for a special meeting signed by Members representing at least five percent (5%) of the total voting power of all Members or any two (2) or more Directors; provided, that no special meeting may be held or called prior to the organization meeting. Except in special cases where other express provision is made by statute, these Bylaws or the Declaration, notice of such special meetings shall be given in the same manner as for annual meetings and may be given by any person or persons entitled to call such meeting. Notices of any special meetings shall specify in addition to the place, day and hour of such meeting, the general nature of the business to be transacted (and no other business may be transacted).

If a special meeting is requested by Members, 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 Association. The Officer receiving the request shall cause notice to be promptly given to the Members entitled to vote, that a meeting will be held, and the date for such meeting, which date shall be not less than ten (10) nor more than ninety (90) days following the receipt of the request. If the notice is not given within twenty (20) days after receipt of the request, the persons requesting the meeting may give the notice. Nothing contained in this paragraph 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.

Section 5.4 Notice Of Certain Agenda Items. 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 by the Members;
- (iii) Amending the Articles;
- (iv) Increasing the Common Area of the Project;
- (v) Adopting a contract or transaction in which a Director has a material financial interest; and
- (vi) Approving a plan of distribution of assets, other than cash, in liquidation when the Association has more than one class of memberships outstanding.

Section 5.5 Manner Of Giving Notice. Notice of any meeting of the 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 any Unit in the Project owned by the Member 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 and the Member does not reside in any Unit owned by him, 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 executive 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 the time when delivered personally or sent by telegram or other means of written communication or two (2) business days after being deposited in the United States mail. An affidavit of the mailing or other means of giving any notice of any Members' meeting may be executed by the Secretary, Assistant Secretary, or any other party of the Association giving the notice, and if so executed, shall be filed and maintained in the minute book of the Association.

Section 5.6 Adjourned Meetings And Notices Thereof. Any membership meeting, organization, annual or special, whether or not a quorum is present, may be adjourned from time to time by the affirmative vote of a majority of the votes entitled to be cast and represented at such meeting in person or by proxy, but in the absence of a quorum, no other business may be transacted at any such meeting unless these Bylaws or the Declaration otherwise provide.

If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting, or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed for regular meetings. No meeting may be adjourned for more than forty-five (45) days. Except as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting, other than by an announcement at the meeting at which such adjournment is taken.

Section 5.7 Quorum. The presence either in person or by proxy at a Members' meeting of Members representing and entitled to cast more than fifty percent (50%) of that number of votes (the "**Net Total Votes**") which is equal to the difference between the total number of votes in the Association and the number of votes as to which voting rights are suspended at the time of the subject meeting in accordance with these Bylaws, shall constitute a quorum for any action by the Members, unless a different requirement is imposed by these Bylaws, the Articles or the Declaration, and a majority of the Net Total Votes present at a meeting at which a quorum is present shall prevail at such meeting unless a different percentage is required by these Bylaws, the Articles or the Declaration. Subject to the provisions of Section 5.4 and unless otherwise expressly authorized by these Bylaws or the Declaration, all action required or permitted to be taken by the Members may be taken only at a duly called and properly noticed organization, annual or special meeting at which a quorum is present.

The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members so that less than a quorum is present if any action taken (other than adjournment) is approved by at least a majority of the Members required to constitute a quorum. If any meeting cannot be held because a quorum is not present, a majority of the Members present either in person or by proxy and entitled to vote, may adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the time the original meeting was called at which meeting the quorum requirement shall be twenty-five percent (25%) of the Net Total Votes.

Section 5.8 Consent Of Absentees. The transactions of any meeting of Members, either organization, annual or special, however called and noticed, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, and if, either before or after the meeting, each of the Members entitled to vote and not present in person or by proxy signs a written waiver of notice or a consent of the holding of such meeting or an approval of the minutes thereof. 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 the matters specified in Section 5.4, 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.

Section 5.9 Waiver By Attendance. 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 required to be so included in the notice of the meeting, if that objection is expressly made at the meeting.

Section 5.10 Action Without Meeting. Any action other than the election of Directors, which under the provisions of the California Nonprofit Mutual Benefit Corporation Law may be taken at a meeting of the Members, may be taken without a meeting and without prior notice if (a) the written ballot of every Member is solicited specifying the proposed action and providing an opportunity to specify approval or disapproval of any proposal, (b) the required number of signed approvals in writing, setting forth the action so taken, is received, (c) the number of ballots cast within the time period specified equals or exceeds the quorum required to be present at a meeting authorizing the action, and (d) the number of approvals equals or exceeds the number of votes that would be required to approve at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

Ballots shall be solicited in a manner consistent with the requirements of subdivision (b) of Section 7511 and Section 7514 of the California Nonprofit Mutual Corporation Benefit Law. All such solicitations shall indicate the number of responses needed to meet the quorum requirement and shall state the percentage of approvals necessary to pass the measure submitted. The solicitation must specify the time by which the ballot must be received in order to be counted.

Subject to Sections 7611 and 7613 of the California Nonprofit Mutual Benefit Corporation Law, any Member casting a ballot, or the proxy holders of a Member or a transferee of a membership or a personal representative of the Member or their respective proxy holders, may revoke the ballot, or substitute another, by a writing received by the Association prior to the time specified in the solicitation pursuant to the preceding paragraph, but may not do so thereafter. Such revocation is effective upon its receipt by the Secretary of the Association.

Section 5.11 Record Date. The Board of Directors may fix a date in the future as a record date for the determination of the Members entitled to notice of and to vote at any meeting of Members.

To determine the Members entitled to notice of and to vote at any meeting of Members, the record date shall not be more than sixty (60) days nor less than ten (10) days prior to the date of the meeting. When a record date is so fixed, only Members of record on that date shall be entitled to notice of and to vote at the meeting, notwithstanding any transfer of or issuance of membership certificates on the books of the Association after the record date. If no record date is fixed, Members at the close of business on the business day preceding the day on which notice is given or, if notice is waived, at the close of business on the business day preceding the day on which the meeting is held are entitled to notice of and to vote at the meeting of Members.

The record date for determining those Members entitled to vote by written ballot on corporate action without a meeting shall not be more than sixty (60) days before the day on

which the first written ballot is mailed or solicited. If no record date is fixed, Members on the day the first written ballot is mailed or solicited who are otherwise eligible to vote are entitled to cast written ballots.

For purposes of this Section, a person holding membership as of the close of business on the record date shall be deemed the Member of record.

Section 5.12 Proxies. Every person entitled to vote or execute consents shall have the right to do so either in person or by an agent or agents authorized by a written proxy executed by such person or his duly authorized agent and filed with the Secretary of the Association prior to the commencement of the meeting at which the proxy is to be exercised. A validly executed proxy that does not state that it is irrevocable shall continue in full force and effect unless (i) revoked by the Member executing it, before the vote cast pursuant to that proxy, by a writing delivered to the Association stating that the proxy is revoked by a subsequent proxy executed by such Member, or by personal attendance and voting at a meeting by such Member, or (ii) if written notice of the death or incapacity of the maker of the proxy is received by the Association before the vote pursuant to that proxy is counted; provided, however, that no proxy shall be valid after the expiration of eleven (11) months from the date of the proxy, unless otherwise provided in the proxy, except that the maximum term of any proxy shall be three (3) years from the date of execution. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of the California Nonprofit Mutual Benefit Corporation Law. In any election of Directors, any form of proxy that 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. Failure to comply with this paragraph shall not invalidate any corporation election taken, but may be the basis for challenging the proxy at a meeting. 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 upon, except it shall not be mandatory that a candidate for election to the Board be named in the proxy or written ballot. The proxy or written ballot shall provide that, where the Member specifies a choice, the vote shall be cast in accordance with that choice. The proxy shall also identify the person or persons authorized to exercise the proxy and the length of time it will be valid.

ARTICLE VI. DIRECTORS

Section 6.1 Number, Qualifications, Term Of Office. The affairs of the Association shall be managed by a Board of six (6) Directors who shall be Members of the Association or representatives of Declarant designated by Declarant. At the organization meeting, the Members shall elect all six (6) Directors. The Board shall consist of (a) the Residential Committee, and (b) the Commercial Committee. The Residential Committee shall consist of three (3) members of the Board, two (2) of whom shall hold office for two (2) years, and one (1) who shall hold office for (1) year. Residential Owners shall be entitled to elect the members of the Residential Committee only, and shall not be entitled to vote for members of the Commercial Committee. The Commercial Committee shall consist of three (3) members of the Board, each of whom shall hold office for three (3) years. The Commercial Owners shall be entitled to elect the members of the Commercial Committee only, and shall not be entitled to elect the members of the

Residential Committee (except to the extent a Commercial Owner is also a Residential Owner). At each annual meeting of the Members thereafter, the Members shall elect a new Director to fill each vacancy created by the expiration of a prior Director's term of office. Such new Directors who are members of the Residential Committee shall serve for a term of two years or until the later election of their successors. Such new Directors who are members of the Commercial Committee shall serve for a term of three years or until the later election of their successors. Prior to the organization meeting, and thereafter until their successors are elected, the Incorporator of the Association or the first Directors appointed by the Incorporator shall serve as Directors of the Association. The number of Directors may be increased from time to time, but in no event shall the number of Directors be less than three (3), by an amendment to these Bylaws by the Members as hereinafter provided in these Bylaws.

Section 6.2 Nominating Committee. The President of the Association shall appoint a committee to select qualified candidates for election to the Board at least ninety-five (95) days before the date of the election, and the Secretary shall forward to each Member, with the notice of meeting required by Section 5.2, a list of candidates nominated, by office.

Members representing five percent (5%) of the membership may nominate candidates for directorships at any time before the fiftieth (50th) day preceding such election. On timely receipt of a petition signed by the required number of Members, the Secretary shall cause the names of the candidates named on it to be placed on the ballot along with those candidates named by the nominating committee. At the meeting to elect Directors, any Member present at the meeting, in person or by proxy, may place names in nomination.

Section 6.3 Removal, Vacancies And Resignation. The entire Board or any individual Director may be removed from office, with or without cause, at any duly called, noticed and held annual or special meeting of the Members, at which a quorum is present, by a majority of the total votes present at such meeting either in person or by proxy, and entitled to vote, provided, however that unless the entire Board is removed from office by the vote of the Members of the Association, no individual Director shall be removed prior to the expiration of his term of office if the votes cast against removal or not consenting in writing to such 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 Director were then being elected. A Director who has been elected to office solely by the votes of Members other than Declarant may be removed from office prior to the expiration of his term of office only by the vote of at least a simple majority of the voting power residing in Members other than Declarant.

A vacancy or vacancies shall be deemed to exist in case of the death, resignation or removal of any Director, or if the Members shall increase the authorized number of Directors but shall fail at the meeting at which such increase is authorized or any adjournment thereof to elect the additional Director so provided for, or in the event the Members fail at any time to elect the full number of authorized Directors. Except for a vacancy created by removal of a Director, vacancies on the Board may be filled by a majority of Directors then in office, whether or not less than a quorum, or by a sole remaining Director. In the event of an increase in the authorized number of Directors, no more than one Director may be appointed by the Board, rather than

elected by the Members, to fill a vacancy created thereby. The Members may elect a Director at any time to fill any vacancy not filled by the Directors.

A vacancy in the Board created by the removal of a Director shall be filled by a majority of each class of Members including a majority of Members other than Declarant, at a duly called special meeting, and each Director so elected shall hold office until his successor is elected at an annual meeting of Members or at a special meeting duly called for that purpose.

Any Director may resign effective upon giving written notice to the President, the Secretary or the Board, unless the notice specifies a later time for the effectiveness of such resignation. If the Board accepts the resignation of a Director tendered to take effect at a future time, the Board shall have the power to elect a successor to take office when the resignation shall become effective.

In the event that any Member of the Board shall be absent from four (4) consecutive regular meetings of the Board of Directors, the Board may, by action taken at the meeting during which said fourth absence occurs, declare the office of said absent Director to be vacant.

Section 6.4 Place Of Meeting. All meetings of the Board shall be held within the Project if reasonably possible, otherwise at a place as close thereto as reasonably possible and within the County of San Diego, as designated at any time by resolution of the Board or by written consent of a majority of the members of the Board.

Section 6.5 Organization Meeting Of The Board. Immediately following the organization meeting and each annual meeting of the Members, the Board shall hold a regular meeting at the same place for the purpose of organization, election of Officers and the transaction of other business. Notice of such meeting is hereby dispensed with.

Section 6.6 Other Regular Meetings. Other regular meetings of the Board shall be held at a time and at such place within the Project or as close thereto as reasonably possible, which place may be designated by the Board from time to time. Notice of the time and place of such meeting shall be posted at a prominent place or places within the Common Area and shall be communicated to each Director not less than four (4) days prior to the meeting. Regular meetings of the Board shall be held at least once every three (3) months.

Section 6.7 Special Meetings. Special meetings of the Board for any purpose or purposes may be called by written notice at any time by the President, or if he is absent or unable or refuses to act, by any Vice President or by any two (2) Directors.

Notice of the time and place of special meetings and of the nature of any special business to be considered shall be given to each Director either (a) by written notice given by first-class mail at least ninety-six (96) hours prior to the scheduled time of such meeting, or (b) by telephone notice or written notice delivered personally or by telegraph at least seventy-two (72) hours prior to the meeting; provided notice need not be given to any Director who signs a waiver of notice or a written consent to the holding of the meeting. Notice of the time and place of all special meetings shall be posted at a prominent place or places within the Common Area no later than seventy-two (72) hours prior to the meeting.

Whenever any Director has been absent from any special meeting of the Board and notice of such meeting has been duly given to such Director, an entry in the minutes to the effect that notice has been duly given shall be made.

Section 6.8 Meetings By Telephone. Any meeting, regular or special, may be held by conference telephone or similar communication equipment, and any member of the Board may participate by conference telephone or similar communications equipment in a meeting at which other members of the Board are physically present, 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.

Section 6.9 Quorum Requirement, Waiver Of Notice. The transaction of any business at any meeting of the Board, however called and noticed, or wherever held, shall be as valid as though made at a meeting duly held after regular call and notice, if a quorum is present, unless a quorum is expressly not required pursuant to these Bylaws, and if, either before or after the meeting, each of the Directors not present signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records and made a part of the minutes of the meeting.

Section 6.10 Action Without Meeting. Any action required or permitted to be taken by the Board by law, according to the Articles or according to these Bylaws or the Declaration may be taken without a meeting, if all members of the Board shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board, and shall have the same force and effect as an unanimous vote of such Directors.

If the Board resolves by unanimous written consent to take action, an explanation of the action taken shall be posted at a prominent place or places within the Common Area within three days after the written consents of all Directors have been obtained.

Section 6.11 Quorum. A majority of the Board shall constitute a quorum thereof. Every act done or decision made by a majority of the Directors present at a meeting duly held at which a quorum is present, in person or by telephone, shall be regarded as the act of the Board, unless the provisions of these Bylaws, the Articles or the Declaration (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) shall require or permit the particular action involved to be taken by the Board under other circumstances.

Section 6.12 Adjournment. A quorum of the Directors may adjourn any Directors' meeting to meet again at a stated day and hour; provided, however, in the absence of a quorum, a majority of the Directors present at the Directors' meeting, either regular or special, may adjourn from time to time until the time fixed for the next regular meeting of the Board. Notice of the time and place of holding an adjourned meeting need not be given, unless the meeting is adjourned for more than twenty-four (24) hours, in which case personal notice of the time and place shall be given before the time of the adjourned meeting to the Directors who were not present at the time of the adjournment.

Section 6.13 Open Meetings. Regular and special meetings of the Board shall be open to all Members of the Association provided, however, Members who are not on the Board may not participate in any deliberation or discussion unless expressly so authorized by the vote of a majority of a quorum of the Board. Any Member may request to be and shall be connected to a meeting by telephone conference call. If the number of Members requesting such connection makes the telephone conference call impractical or impossible, a telephone conference meeting may not be held.

The Board may, with the approval of a majority of a quorum of its members, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, formation of contracts with third parties and orders of business of a similar nature. In any matter relating to the discipline of a Member, the Board shall meet in executive session if requested by such Member, and such Member shall be entitled to attend such executive session. The nature of any and all business to be considered in executive session shall first be announced in open session and generally noted in the minutes of the Board.

Section 6.14 Compensation. No Director of the Association shall receive any salary or other compensation for services rendered as a Director or Officer of the Association. However, Directors and Officers shall be reimbursed for expenses incurred in connection with the business of the Association and authorized by the Board. Nothing herein shall preclude any Director from serving the Association in any capacity other than as an Officer or a Director and receiving compensation therefor as authorized and approved by the Board. Any Director receiving any special compensation for services in such other capacity shall be excluded from deliberations and voting by the Board relative to the authorization thereof and fixing compensation with regard thereto.

Section 6.15 Committees. The Board shall have the power to appoint an Executive Committee and other committees and to delegate to such committees any of the powers and authority of the Board in the management of the business and affairs of the Association except the power to:

- (a) adopt, amend or repeal the Bylaws or the Articles of Incorporation;
- (b) fill vacancies on the Board or in any committee which has the authority of the Board;
- (c) amend or repeal any resolution of the Board which by its express terms is not so amendable or repealable;
- (d) appoint any other committees of the Board or the members of these committees; and
- (e) approve any transaction (1) to which the Association is a party and one or more Directors have a material financial interest, or (2) between the Association and one or more of its Directors, or (3) between the Association and any entity in which one or more of its Directors have a material financial interest.

Each Committee shall be composed of two (2) or more Directors (one member of the Executive Committee shall be the President) and shall keep regular written minutes of the proceedings and report the same to the Board.

Section 6.16 Powers And Duties. Subject to the limitations of the Articles, these Bylaws, the Declaration and the California Nonprofit Mutual Benefit Corporation Law as to action required to be taken, authorized or approved by the Members of the Association, or a portion or percentage thereof, all Association powers and duties including those set forth in the Declaration shall be exercised by, or under the authority of the Board, and the business and affairs of the Association shall be controlled by the Board.

ARTICLE VII. OFFICERS

Section 7.1 Enumeration Of Officers. The Officers of the Association shall be a President, a Vice President, a Secretary, a Chief Financial Officer and such other Officers as the Board may deem necessary. Any person may hold more than one office, provided that neither the Secretary nor the Chief Financial Officer may serve concurrently as the President. The President, Vice President and Secretary shall be members of the Board. The Chief Financial Officer may be, but need not be a member of the Board.

Section 7.2 Subordinate Officers. The Board may appoint, and may authorize the President or another Officer to appoint, any other Officers that the business of the Association may require, each of whom shall have the title, hold office for the period, have the authority, and perform the duties specified in these Bylaws or determined from time to time by the Board.

Section 7.3 Election. The initial Officers shall be chosen by a majority vote of the Directors at the first meeting of the Board, and thereafter, Officers shall be removed or chosen at any subsequent meeting of the Board by a majority vote of the total number of Directors on the Board.

Section 7.4 Term. All Officers shall hold office at the pleasure of the Board.

Section 7.5 Resignation Of Officers. Any Officer may resign at any time by giving written notice to the Board. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the 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 7.6 President. The President shall be the Chief Executive Officer of the Association and shall, subject to the control of the Board, have supervision, direction and control of the business and affairs of the Association. He shall preside at all meetings of the Members and at all meetings of the Board. He shall be an ex-officio member of all standing committees, including the Executive Committee, if in existence, and shall have the general powers and duties of management usually vested in the office of President of a California nonprofit mutual benefit corporation, and shall have such powers and duties as may be prescribed by the Board or by

these Bylaws. The President shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes of the Association.

Section 7.7 Vice President. In the absence or disability of the President, the Vice President shall perform all the duties of the President, and when so acting shall have all powers of, and be subject to all the restrictions upon, the President. The Vice President shall have such other powers and perform such other duties as from time to time may be prescribed for him by the Board or by these Bylaws.

Section 7.8 Secretary. The Secretary shall keep or cause to be kept, a book of minutes at the principal office of the Association or such other place as the Board may order, of all meetings of Directors and Members, with the time and place of holding, whether regular or special, and if special how authorized, the notice thereof given, the names of those persons present at the Directors' meetings, the number of Members present or represented at Members' meetings and the proceedings thereof.

The Secretary shall give, or cause to be given, notice of all the meetings of the Members and of the Board required by these Bylaws or by law to be given, except that notice of the organization meeting may be given by the Declarant, and he 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 these Bylaws.

The Secretary shall keep, or cause to be kept, at the principal executive office, as determined by resolution of the Board, a record of the Association Members, showing the names of all Members, their addresses, and the class of membership held by each.

Section 7.9 Chief Financial Officer. The Chief Financial Officer shall keep and maintain, or cause to be kept or maintained, adequate and correct accounts of the properties and business transactions of the Association, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital and surplus. The books of account shall at all times be open to inspection by any Director. The Chief Financial Officer shall sign all checks and promissory notes of the Association and shall deposit all 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 shall disburse the funds of the Association as may be ordered by the Board, shall render to the President and Directors, whenever they request it, an account of all of his transactions as Chief Financial Officer and of the financial condition of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws. The Board may delegate the performance of the foregoing duties, subject to supervision by the Chief Financial Officer, to a professional manager retained by the Association.

ARTICLE VIII.

INDEMNIFICATION OF DIRECTORS, OFFICERS,

EMPLOYEES, AND OTHER AGENTS

Section 8.1 Definitions. For the purpose of this Article,

(a) "agent" means any person who is or was a Director, Officer, employee, or other agent of this Association, or is or was serving at the request of this Association as a

Director, Officer, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise;

(b) "proceeding" means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative or investigative; and

(c) "expenses" includes, without limitation, all attorneys' fees, costs, and any other expenses incurred in the defense of any claims or proceedings against an agent by reason of his position or relationship as agent and all attorneys' fees, costs, and other expenses incurred in establishing a right to indemnification under this Article.

Section 8.2 Successful Defense By Agent. To the extent that an agent of this Association has been successful on the merits in the defense of any proceeding referred to in this Article, or in the defense of any claim, issue, or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection with the claim. If an agent either settles any such claim or sustains a judgment rendered against him, then the provisions of Sections 8.3 through 8.5 shall determine whether the agent is entitled to indemnification.

Section 8.3 Actions Brought By Persons Other Than The Association. Subject to the required findings to be made pursuant to Section 8.5 below, this Association shall indemnify any person who was or is a party, or is threatened to be made a party, to any proceeding other than an action brought by, or on behalf of, this Association, or by an Officer, Director or person granted related status by the Attorney General, or by the Attorney General on the ground that the defendant Director was or is engaging in self-dealing within the meaning of California Corporations Code Section 5233, by reason of the fact that such person is or was an agent of this Association, for all expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with the proceeding.

Section 8.4 Action Brought By Or On Behalf Of The Association.

(a) **Claims settled out of court.** If any agent settles or otherwise disposes of a threatened or pending action brought by or on behalf of this Association, with or without approval, the agent shall receive no indemnification for either amounts paid pursuant to the terms of the settlement or other disposition or for any expenses incurred in defending against the proceeding.

(b) **Claims and suits awarded against agent.** This Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action brought by or on behalf of this Association by reason of the fact that the person is or was an agent of this Association, and for all expenses actually and reasonably incurred in connection with the defense of that action, provided that both of the following are met:

(i) The determination of good faith conduct required by Section 8.5 must be made in the manner provided for in that section; and

(ii) Upon application, the court in which the action was brought must determine that, in view of all of the circumstances of the case, the agent should be entitled to indemnity for the expenses incurred. If the agent is found to be so entitled, the court shall determine the appropriate amount of expenses to be reimbursed.

Section 8.5 Determination Of Agent's Good Faith Conduct. The indemnification granted to an agent in Sections 8.3 and 8.4 is conditioned on the following:

(a) **Required standard of conduct.** The agent seeking reimbursement must be found, in the manner provided below, to have acted in good faith, in a manner he believed to be in the best interest of this Association, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use in similar circumstances. The termination of any proceeding by judgment, order, settlement, conviction, or on a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith or in a manner which he reasonably believed to be in the best interest of this Association or that he had reasonable cause to believe that his conduct was unlawful. In the case of a criminal proceeding, the person must have had no reasonable cause to believe that his conduct was unlawful.

(b) **Manner of determination of good faith conduct.** The determination that the agent did act in a manner complying with Paragraph (a) above shall be made by:

(i) the Board by a majority vote of a quorum consisting of Directors who are not parties to the proceeding; or

(ii) the affirmative vote or written ballot of a majority of the votes of the Members 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), with the persons to be indemnified not being entitled to vote thereon; or

(iii) the court in which the proceeding is or was pending. Such determination may be made on application brought by this Association or the agent or the attorney or other person rendering a defense to the agent, whether or not the application by the agent, attorney or other person is opposed by this Association.

Section 8.6 Limitations. No indemnification or advance shall be made under this Article, except as provided in Sections 8.2 or 8.5(b)(iii), in any circumstance when it appears:

(a) that the indemnification or advance would be inconsistent with a provision of the Articles, a resolution of the Members, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(b) that the indemnification would be inconsistent with any condition expressly imposed by a court in approving a settlement.

Section 8.7 Advance Of Expenses. Expenses incurred in defending any proceeding may be advanced by this Association before the final disposition of the proceeding upon receipt

of an undertaking by or on behalf of the agent to repay the amount of the advance unless it is determined ultimately that the agent is entitled to be indemnified as authorized in this Article.

Section 8.8 Contractual Rights Of Nondirectors And Nonofficers . Nothing contained in this Article shall affect any right to indemnification to which persons other than Directors and Officers of this Association, or any subsidiary hereof, may be entitled by contract or otherwise.

Section 8.9 Insurance. The Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of the Association against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not this Association would have the power to indemnify the agent against that liability under the provisions of this Section.

ARTICLE IX. MISCELLANEOUS

Section 9.1 Checks, Drafts, Etc. All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the Association, shall be signed by the Chief Financial Officer and co-signed by the President.

Section 9.2 Contracts, Etc.; How Executed. The Board, except as otherwise provided in these Bylaws, may authorize any Officer or Officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Association, and such authority may be general or confined to specific instances; and unless so authorized by the Board, no Officer, agent or employee shall have any power or authority to bind the Association by a contract or engagement or to pledge its credit or to render it liable for any purpose or to any amount.

Section 9.3 Maintenance And Inspection Of Articles And Bylaws. The Association shall keep in its principal office the original or a copy of the Articles of Incorporation and these Bylaws, as amended or otherwise altered to date, certified by the Secretary, which shall be open to inspection by the Members at all reasonable times during office hours.

Section 9.4 Maintenance And Inspection Of Other Corporate Records. Commencing not later than ninety (90) days after the close of escrow of the first Unit in the Project, copies of the documents listed below, as soon as readily attainable, shall be delivered by the Declarant to the Board at the office of the Association, or at such other place as the Board shall prescribe. The obligation to deliver the documents listed below shall apply to any documents obtained by the Declarant no matter when obtained, provided, however, such obligation shall terminate upon the earlier of (a) the conveyance of the last Unit in the Project covered by a Final Subdivision Public Report, or (b) three years after the expiration of the most recent Final Subdivision Public Report, for the Project:

- (1) The recorded subdivision map or maps for the Project.
- (2) The recorded condominium plan, if any, and all amendments thereto.

(3) The deeds and easements executed by the Declarant conveying the Association Area or other interest to the Association, if any.

(4) The Declaration, including all amendments and annexations thereto.

(5) The Association's filed Articles of Incorporation, and all amendments thereto.

(6) The Association's Bylaws, and all amendments thereto.

(7) All Architectural Standards and all other rules regulating the use of an Owner's interest in the Project.

(8) The plans approved by the County for the construction or improvement of Common Area improvements; provided, however, the plans need not be as-built plans and that the plans may bear appropriate restrictions on their commercial exploitation or use and may contain appropriate disclaimers regarding their accuracy.

(9) All notice of completion certificates issued for the Common Area (other than residential structures).

(10) Any current bond or other security device in which the Association is the beneficiary.

(11) Any written warranty being transferred to the Association for Common Area equipment, fixtures or improvements.

(12) Any current insurance policy procured for the benefit of the Association, the Board or the Common Area.

(13) Any current lease or contract to which the Association is a party.

(14) The membership register, including mailing address and telephone numbers, books of account and minutes of meeting of the members, of the Board, and of committees of the Board.

(15) Any instrument, not described above, which establishes or defines the common, mutual or reciprocal rights or responsibilities of members of the Association.

Commencing not later than ninety (90) days after the annexation of additional phases to the Project, copies of those documents listed in items (1) through (15) above which are applicable to that phase, shall, as soon as readily obtainable, be delivered by the Declarant to the Board at the office of the Association, or at such place as the Board shall prescribe. The obligation to deliver the documents listed in items (1) through (15) above shall apply to any documents obtained by the Declarant no matter when obtained provided, however, such obligation shall terminate upon the earlier of (a) the conveyance of the last Unit in the Project

covered by a Final Subdivision Public Report, or (b) three years after the expiration of the most recent Final Subdivision Public Report, for the Project.

The Association shall keep the following records at such place or places designated by the Board or, in the absence of such designation, at its principal executive office:

- (a) Adequate and correct books and records of account;
- (b) Minutes of the proceedings of the Members, Board of Directors and any committee(s) of the Board; and
- (c) A record of the names, mailing addresses, telephone numbers and the class of membership of each Member.

The minutes shall be available to Members, upon request, within thirty (30) days of the meeting and shall be kept in written or typed form, and the other accounting books and records shall be kept either in written or typed form or in any other form capable of being converted into written, typed or printed form. Members shall be notified in writing of their right to obtain copies of the minutes (upon payment of a reproduction charge) which shall be distributed to all Members along with the pro forma operating budget which is required to be distributed to all Members pursuant to Section 9.6 herein. These records shall be open to inspection and copying on the written demand of any Member, at any reasonable time during usual business hours, for a purpose reasonably related to the Member's interests as a Member. The inspection may be made in person or by an agent or attorney, and shall include the right to copy and make extracts.

The Board shall establish reasonable rules with respect to:

- (a) Notice to be given to the custodian of records by the Member desiring to make the inspection. A Member who wishes to inspect and copy the record of all Members' names, addresses and voting rights, must give five (5) business days' prior written demand to the Association which demand shall state the purpose for which the inspection rights are requested.
- (b) Hours and days of the week when such an inspection may be made.
- (c) Payment of the cost of reproducing copies of documents requested by a Member.

Each Director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extracts and copies of documents.

Section 9.5 Accounting Year. The accounting year of the Association shall terminate on December 31 of each year.

Section 9.6 Reports to Members. The annual report to Members referred to in the California Nonprofit Mutual Benefit Corporation Law is expressly dispensed with, but nothing in

these Bylaws shall be interpreted as prohibiting the Board from issuing annual or other periodic reports to the Members as they consider appropriate. The Board will comply with the provisions of Sections 1365 and 1365.5 of the Civil Code as they may be amended from time to time.

ARTICLE X.

EVIDENCE OF MEMBERSHIP, SEAL

Section 10.1 Evidence Of Membership. The Board shall have the power, but not the obligation, to cause the issuance of evidence of membership in the Association to the Members in such form as the Board shall determine.

Section 10.2 Seal. The Association may, but shall not be required to, have a seal in circular form having within its circumference the name of the Association, its date of incorporation and such other matters as may be required by the laws of California.

ARTICLE XI.

AMENDMENTS, CONFLICTS

Section 11.1 Amendments. These Bylaws may be amended from time to time by vote at any duly called, noticed and held regular or special meeting of the Members at which a quorum is present or by written assent of the Members. Until the close of escrow of the first Unit in the Project, amendments or modifications shall be effective when executed by Declarant. Thereafter as long as there is a Class B membership, any amendments shall require the affirmative written consent or vote of a majority of a quorum of the voting power of the Association. After the Class B membership has been converted to Class A membership, amendments to these Bylaws may be enacted only by the vote or written assent of Members representing both a majority of a quorum of the voting power of the Association and a majority of a quorum of the voting power of the Association residing in Members other than the Declarant.

An amendment or modification that requires the vote and written assent of the Members as hereinabove provided shall be effective when executed by the President and Secretary of the Association who shall certify that the amendment or modification has been approved as hereinabove provided. The notarized signature of the Members shall not be required to effectuate an amendment of these Bylaws. Notwithstanding the foregoing, any amendment or modification which impacts any of the rights of Declarant contained herein shall not be effective unless approved by Declarant.

Notwithstanding the foregoing, any provisions of these Bylaws which expressly requires the approval of a specified percentage of the voting power of the Association for action to be taken under said provision can be amended only with the affirmative vote or written assent of not less than the same percentage of the voting power of the Association.

Notwithstanding the foregoing, any amendment or modification which impacts any of the rights of Declarant contained herein shall not be effective unless approved by Declarant.

The Association, or any Owner, may petition the County superior court for an order reducing the percentage of the affirmative votes necessary to amend these Bylaws. The petition

shall describe the effort that has been made to solicit approval of the Association members in the manner provided in these Bylaws. The petition shall also describe the number of affirmative and negative votes actually received, the percentage of affirmative votes required to effect the amendment in accordance with these Bylaws, and other matters the petitioner considers relevant to the court's determination. The petition shall also contain as exhibits thereto, copies of all of the following: (1) the governing documents, (2) a complete text of the amendment, (3) copies of solicitation and notice materials utilized in the solicitation of owner approvals, (4) a short explanation of the reason for the amendment, and (5) any other documentation relevant to the court's determination.

Notwithstanding any other provisions of these Bylaws, at any time prior to the first anniversary of the close of the first escrow of a Unit in the Project, Declarant may unilaterally amend these Bylaws.

Notwithstanding any other provisions of this Section, for so long as Declarant owns any portion of the Project, Declarant may unilaterally amend these Bylaws in order to conform these Bylaws to the requirements of City, the County, the DRE, or any of the Federal Agencies then in effect.

Section 11.2 Conflicts. In the event of any inconsistency between these Bylaws and the Articles, the Articles shall control, and in the event of any inconsistency between these Bylaws or the Articles and the Declaration, the Declaration shall control.

CERTIFICATE OF SECRETARY

THIS IS TO CERTIFY:

That I am the duly elected, qualified and acting Secretary of Dolphin Bay Property Owners Association, a California Nonprofit Mutual Benefit Corporation, and that the above and foregoing Bylaws were adopted as the Bylaws of said corporation by the Board of Directors at a special meeting held _____, 200_.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 200_.

_____, Secretary