

11/09/1983

BY-LAWS

OF

DEL MAR HIGHLANDS NEIGHBORHOOD HOMEOWNERS' ASSOCIATION

ARTICLE I

NAME AND LOCATION

The name of the corporation is DEL MAR HIGHLANDS NEIGHBORHOOD HOMEOWNERS' ASSOCIATION, hereinafter referred to as the "Association". The principal office of the corporation shall be located in the City of San Diego, County of San Diego, State of California, but meetings of Members and Directors may be held at such places within the State of California, County of San Diego, as may be designated by the Board of Directors.

ARTICLE II

DEFINITIONS

Section 1. "Articles" shall mean and refer to the Articles of Incorporation of the Association as they may from time to time be amended.

Section 2. "Association" shall mean and refer to DEL MAR HIGHLANDS NEIGHBORHOOD HOMEOWNERS' ASSOCIATION, a California nonprofit mutual benefit corporation, its successors and assigns.

Section 3. "Board" or "Board of Directors" shall mean and refer to the governing body of the Association.

Section 4. "Common Area" shall mean and refer to (i) all real property (including any improvements thereon) owned or to be owned by the Association for the common use, where a right to use has been granted, and enjoyment of the Owners, (ii) all real property (including the improvements thereto) over which the Associations owns or will own an easement for the maintenance of the area for the visual benefit of the Owners and (iii) all real property (including the improvements thereto) in the public right-of-way over which the City of San Diego has granted or will grant an encroachment permit to the Association for the purpose of maintenance of the area for the visual benefit of the Owners.

Section 5. "Declarant" shall mean and refer to Pardee Construction Company, a California corporation, its successors and assigns if such successors or assigns should acquire more than one (1) undeveloped lot in the Real Property from the Declarant for the purpose of development.

Section 6. "Declaration" shall mean and refer to the Declaration or Declaration of Covenants, Conditions and Restrictions of Del Mar Highlands recorded with the Office of the County Recorder of San Diego County, California, covering the Property, including such amendments thereto as may from time to time be recorded.

Section 7. "Eligible Insurer or Guarantor" shall mean and refer to an insurer or governmental guarantor of a first Mortgage on the Property or any portion thereof who has requested notice of certain matters in accordance with ARTICLE X of the Declaration.

Section 8. "Eligible Mortgage Holder" or "Eligible Holder" shall mean and refer to a holder of a first Mortgage on the Property or any portion thereof who has requested notice of certain matters from the Association in accordance with ARTICLE X of the Declaration.

Section 9. "Member" shall mean and refer to a person entitled to membership in the Association as provided in the Declaration.

Section 10. "Mortgage" shall mean and refer to a deed of trust as well as a mortgage encumbering any Subdivision Interest.

Section 11. "Mortgagee" shall mean and refer to the beneficiary under or holder of a deed of trust, its successors and assigns, as well as a mortgagee of a Mortgage encumbering a Subdivision Interest.

Section 12. "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of fee simple title to any Subdivision Interest, including contract buyers but excluding those having such interest merely as security for the performance of an obligation.

Section 13. "Project" shall mean and refer to the entire Real Property described in the Declaration, including all structures and improvements erected or to be erected thereon, and such additions as may hereafter be brought within the jurisdiction of the Association.

Section 14. "Property" shall mean and refer to that certain real property located in San Diego County, California, more particularly described as Lots 1 through 94, inclusive, of N.C.W. Neighborhood 3 Unit No. 1 in the City of San Diego, County of San Diego, as per Map No. 10395 thereof, filed May 26, 1982, in the Office of the County Recorder of San Diego County, California, and Lots 95 through 106, inclusive, of N.C.W. Neighborhood 3 Unit No. 2 in the City of San Diego, County of San Diego, as per Map No. 10546 thereof, filed December 22, 1982, in the Office of the County Recorder of San Diego County, California, Owners of which are required to be Members of the Association, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 15. "Subdivision Interest" shall mean and refer to each of (i) Lots 1 through 94, inclusive, of N.C.W. Neighborhood 3 Unit No. 1 in the City of San Diego, County of San Diego, State of California, as per Map No. 10395 recorded on May 26, 1982 in the Office of the County Recorder of San Diego County, State of California, (ii) Lots 95 through 106, inclusive, of N.C.W. Neighborhood 3 Unit No. 2 in the City of San Diego, County of San Diego, as per Map No. 10546 thereof, filed December 22, 1982, in the Office of the County Recorder of San Diego County, California, and (iii) such additional lots or units as may hereafter be brought within the jurisdiction of the Association.

ARTICLE III

MEMBERS

This Association shall have two (2) classes of voting membership as set forth in the Articles and Declaration.

ARTICLE IV

MEETINGS OF MEMBERS

Section 1. Annual Meetings and Notice Thereof. The first annual meeting of Members shall be held within six (6) months after the close of escrow for the sale of the first Subdivision Interest by Declarant, or within forty-five (45) days after close of escrow for the sale by Declarant of fifty-one percent (51%) of the Subdivision Interests, whichever shall first occur. Subsequent annual meetings of Members shall be held on the last Tuesday in July at the hour of 7:30 o'clock p.m. Should any annual meeting day fall upon a legal holiday, then such annual meeting of Members shall be held at the same time and place on the next day thereafter ensuing which is not a legal holiday.

Written notice of each such annual meeting shall be given to each Member and, upon written request therefor, to all first Mortgagees either personally or by sending a copy of the notice through the mail or by telegraph, charges prepaid, to his address appearing on the books of the Association or supplied by him to the Association for the purpose of notice. If no address is supplied, notice shall be deemed to have been given him if mailed to the address of the Subdivision Interest owned by such Member or encumbered by the first Mortgagee, or published at least once in some newspaper of general circulation in the county of said principal office. All such notices shall be given not less than ten (10) days and not more than ninety (90) days before each annual meeting; provided, however, if notice is given by mail and the notice is not mailed by first-class, registered or certified mail, then notice shall be given not less than twenty (20) days before the annual meeting.

Such notices shall specify:

- (a) the place, the date, and the hour of such annual meeting;
- (b) those matters which the Board, at the time the notice is given, intends to present for action by the Members;
- (c) if Directors are to be elected, the names of nominees intended at the time of the notice to be presented for election.

Section 2. Special Meetings and Notice Thereof. Special meetings of Members for any purpose or purposes shall be promptly called by the Directors upon the vote for such a meeting by a majority of the Directors present at a meeting duly held; provided, however, those Directors present represent at least a quorum of the Board or upon receipt of a written request for a special meeting signed by Members representing at least five percent (5%) of the total voting power of the Association.

Written notice of each such special meeting shall be given to each Member and, upon written request therefor, to all first Mortgagees either personally or by sending a copy of the notice through the mail or by telegraph, charges prepaid, to his address appearing on the books of the Association or supplied by him to the Association for the purpose of notice. If no address is supplied, notice shall be deemed to have been given him if mailed to the address of the Subdivision Interest owned by such Member or encumbered by the first Mortgagee, or published at least once in some newspaper of general circulation in the county of said principal office. All such notices shall be given not less than ten (10) days and not more than ninety (90) days before each special meeting; provided, however, if notice is given by mail and the notice is not mailed by first-class, registered or certified mail, then notice shall be given not less than twenty (20) days before the regular meeting. Such notices shall specify the place, day and hour of such special meeting and the nature of the business to be undertaken thereat.

Section 3. Quorum. The presence in person or by proxy of a majority of the voting power entitled to vote at any meeting shall constitute a quorum for the transaction of business. 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 voting power to leave less than a quorum. In the event any meeting of Members cannot be held because a quorum is not present, the Members present, either in person or by proxy, may adjourn the

meeting to a time not less than five (5) days nor more than thirty (30) days from the time of the original meeting date, at which meeting the quorum requirement shall be twenty-five percent (25%) of the voting power of the membership of the Association; provided, however, that the only matters which may be voted upon at any adjourned annual meeting actually attended, in person or by proxy, by less than thirty-three and one-third percent (33-1/3) of the voting power of the membership of the Association, are matters notice of the general nature of which which was duly given.

Section 4. Adjourned Meetings and Notice Thereof. Any membership meeting, annual or special, whether or not a quorum is present may be adjourned from time to time by the vote of a majority of the voting power present in person or represented by proxy, but in the absence of a quorum no other business may be transacted at any such meeting.

When any membership meeting, either annual or special, is adjourned for more than thirty (30) days, notice of the adjourned meeting shall be given as in the case of an original meeting. Unless otherwise provided herein, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting other than by an announcement at the meeting at which such adjournment is taken of the time and place of the adjourned meeting. An adjournment for lack of a quorum by those in attendance shall be to a date not less than five (5) days nor more than thirty (30) days from the original meeting date. If a time and place for the adjourned meeting is not announced 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 herein for annual meetings.

Section 5. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Subdivision Interest. Subject to the foregoing, the use and form of a proxy shall be in compliance with the provisions of Section 7613 of the California Corporations Code.

Section 6. Place of Meetings. Members' meetings shall be held within the Project or at a meeting place as close thereto as possible and unless unusual conditions exist, a meeting shall not be held outside the county in which the Project is situated.

Section 7. Membership Approval. Except as otherwise provided in ARTICLE X, Section 6 of the Declaration, if there are any provisions in these By-Laws or the Declaration calling for membership approval of action to be taken by the Association then such approval shall be by the prescribed percentages of each class of membership during the time that there are two outstanding classes of membership.

Section 8. Mortgagee Representation. First Mortgagees shall have the right to attend all membership meetings through a representative designated in writing and delivered to the Board.

Section 9. Action Without a Meeting. Any action which may be taken by the vote of Members at an annual or special meeting, except the election of Directors where cumulative voting is a requirement, may be taken without a meeting if done in compliance with the provisions of Section 7513 of the California Corporations Code.

Section 10. Consent of Absentees. The transactions of any meeting of Members, either 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 be present either in person or by proxy and if, either before or after the meeting, each of the Members entitled to vote, not present in person or by proxy, 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 or made a part of the minutes of the meeting.

Section 11. Voting. The voting of the Members may be viva voce or by ballot; provided, however, all elections for Directors shall be by secret written ballot.

ARTICLE V

BOARD OF DIRECTORS: ELECTION AND TERM OF OFFICE

Section 1. Number. The affairs of this Association shall be managed by a Board of five (5) Directors, who need not be Members of the Association.

Section 2. Term of Office. At the first annual meeting of Members, the Members shall elect 5 Directors as follows: 3 Directors for a term of one year and 2 Directors for a term of 2 years; and at each annual meeting thereafter the Members shall elect the appropriate number (3 or 2) Directors for a term of two years.

Section 3. Vacancies. Vacancies in the Board, except for a vacancy created by the removal of a Director, may be filled by a majority of the remaining Directors, though less than a quorum, and each Director so elected shall hold office until his successor is elected at an annual meeting of Members or at a special meeting called for that purpose.

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 at any adjournment thereof, to elect the additional Directors so provided for, or in case the Members fail at any time to elect the full number of authorized Directors.

The Members may at any time elect Directors to fill any vacancy not filled by the Directors, and may elect the additional Directors at the meeting at which an amendment by the By-Laws is voted authorizing an increase in the number of Directors.

If any Director tenders his resignation to the Board, the Board shall have power to elect a successor to take office at such time as the resignation shall become effective. No reduction of the number of Directors shall have the effect of removing any Director prior to the expiration of his term of office.

ARTICLE VI

NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting of the Members. The Nominating Committee shall consist of a Chairman, who shall be a Director, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. 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 that are to be filled. Such nominations may be made from among Members or nonmembers.

Section 2. Voting. All elections for Directors shall be by secret written ballot. Cumulative voting is required for all elections in which more than two (2) Directors are to be elected. A member shall be entitled to cumulate his or her votes for one or more

candidates for the governing body, if the candidate's name has been placed in nomination prior to voting, and if the member has given notice at the meeting prior to the voting of his or her intention to cumulate votes. If any one Member has given such notice, all members at any election for Directors, subject to the foregoing, shall have the right to cumulate votes and give one (1) candidate a number of votes equal to the number of Directors to be elected multiplied by the number of votes to which he or she is entitled, or to distribute his or her votes on the same principle among as many candidates as he or she shall think fit. The candidates receiving the highest number of votes up to the number of Directors to be elected shall be elected. Unless the entire Board is removed from office by the vote of the Members, an individual Director shall not be removed prior to the expiration of his or her term of office if the number of votes cast against his or her removal or not consenting in writing to his or her removal would be sufficient to elect him or her 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 governing Board member were then being elected. Any Director elected to office solely by the votes of Members other than Declarant as provided below may be removed from office prior to the expiration of his term only upon the vote of a simple majority of the voting power of Members other than Declarant. Notwithstanding the foregoing, if at the first election of Directors by Members and thereafter for so long as (a) Declarant holds a majority of the voting power of the Association or (b) two (2) classes of membership are outstanding, Members other than Declarant do not have sufficient voting power (when cumulating their votes to the maximum number) to elect at least twenty percent (20%) of the incumbents on the Board, then upon the vote of a majority of the voting power of Members other than Declarant, at least twenty percent (20%) of the incumbents on the Board shall be elected solely by the voting power of said Members. The election of Directors may be held at any meeting of Members and each Member shall have the right to nominate from the floor candidates for the office of Director.

ARTICLE VII

MEETINGS OF DIRECTORS

Section 1. Annual Organizational Meeting. An annual meeting of the Board for the purpose of organization, election of officers and the transaction of other business shall be held immediately following the adjournment of the annual meeting of the Members. Notice of such meeting is hereby dispensed with.

Section 2. Regular Meetings and Notice Thereof. At each annual organizational meeting, the Board shall adopt a schedule setting forth the time, date and place of other regular meetings of the Board to be held at least monthly during the forthcoming year; provided, however, that if the business to be transacted by the Board does not require such frequent meetings, then the Board may meet as infrequently as every six (6) months. Notice of the time, date and place of a regular meeting shall be posted at a prominent place or places within the Common Area and shall be communicated to the Directors not less than four (4) days prior to such meeting; provided, however, that notice of a regular meeting need not be given to any Director who has signed a waiver of notice or a written consent to holding of the meeting.

Section 3. Special Meetings and Notice Thereof. Special meetings of the Board may be called at any time by the President or, if he is unable or refuses to act, by any Vice-President or by any two (2) Directors. Written notice of the time and place of special meetings and the nature of any special business to be considered shall be posted in the same manner set forth above for regular meetings and shall be sent to all Directors by first-class mail not less than four (4) days prior to the scheduled time of the meeting, or delivered personally or by telephone or telegraph not less than seventy-two (72) (72) hours prior to the scheduled time of the meeting; provided, however, that notice of a special meeting need not be given to any Director who has signed a waiver of notice or a written consent to holding of the meeting.

Section 4. Quorum. A majority of the authorized number of Directors shall be necessary to constitute a quorum for the transaction of business, except to adjourn as hereinafter provided. 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 the act of the Board; unless the law, the Articles, the Declaration or the By-Laws require a greater number.

Section 5. Adjournment. A quorum of the Directors may adjourn any Directors' meeting to meet again at a stated time and hour; provided, however, that in the absence of a quorum, a majority of 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.

Section 6. Entry of Notice. Whenever any Director has been absent from any special meeting of the Board, an entry in the minutes to the effect that notice has been duly given shall constitute a rebuttable presumption that due notice of such special meeting was given to such Director as required by law and these By-Laws.

Section 7. Notice of Adjournment. Notice of any adjournment of any Directors' meeting, either regular or special, to another time or place shall be given prior to the time of the adjourned meeting to the Directors who were present at the time of the adjournment.

Section 8. Meeting Place. All regular and special meetings of the Board shall be held within the Project except that an annual organizational meeting held in conjunction with a meeting of the membership may be held outside the Project in a convenient place within San Diego County when there is not an adequate meeting place for all of the Members within the Project.

Section 9. Waiver of Notice. The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though had at a meeting to be held after regular call and notice if a quorum be present and if, either before or after the meeting, each of the Directors not present signs a written waiver of notice or a consent to holding such meeting or an approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Nothing contained herein shall remove the obligation to post the notice of all Directors' meetings on the Common Area.

Section 10. Open Meetings. Regular and special meetings of the Board shall be open to all Members; provided, however, that Members who are not on the Board may not participate in any deliberations or discussion unless expressly so authorized by the vote of a majority of a quorum of the Board.

Section 11. Executive Sessions. The Board may, with the approval of a majority of a quorum of the Directors 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 and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session. Only Directors shall be entitled to attend Executive Sessions.

Section 12. Action Without Meeting. The Board may take action without a meeting if all of its members consent in writing to the actions to be taken. If the Board resolves by unanimous written consent to take an action, an explanation of the action to be taken shall be given by the Board to the Members of the Association within three (3) days after all written consents have been obtained in the manner provided in Article VII, Section 2 hereof for the giving of notice of regular meetings of the Board.

ARTICLE VIII

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board shall have power to:

- (a) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws, the Articles, or the Declaration, which powers, duties and authority so vested or delegated shall not be inconsistent with law; and
- (b) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties; and
- (c) contract for goods and services for the Common Areas.

Section 2. Duties. It shall be the duty of the Board to:

- (a) cause to be kept a complete record of all its acts and corporate affairs, said records to include but not be limited to a membership register, books of account and minutes of meetings of the Members, and of the Board, and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class A Members who are entitled to vote;
- (b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;
- (c) as more fully provided in the Declaration, to:
 - (1) fix the amount of the annual assessment against each Subdivision Interest at least thirty (30) days in advance of each annual assessment period;
 - (2) send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and

- (3) foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the Owner personally obligated to pay the same.
- d) furnish or cause an appropriate officer to furnish, upon demand by any person, a certificate signed by an officer of the Association setting forth whether the assessments on a specified Subdivision Interest have been paid. A properly executed certificate of the Association as to the status of assessments on a Subdivision Interest is binding upon the Association as of the date of its issuance;
- (e) procure and maintain adequate liability insurance on property owned by the Association;
- (f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;
- (g) cause the Common Area to be maintained;
- (h) at least forty-five (45) days prior to the commencement of the second and each succeeding fiscal year of the Association, prepare and distribute to Members a budget and prior to the commencement of the fiscal year, the Board shall adopt a budget for the Association consisting of at least the following information:
 - (1) Estimated revenue and expenses on an accrual basis.
 - (2) The amount of the total cash reserves of the Association currently available for replacement or major repair of common facilities and for contingencies.
 - (3) An itemized estimate of the remaining life of, and the methods of funding to defray repair, replacement or additions to major components of the common areas and facilities for which the Association is responsible.
 - (4) 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.
- (i) cause a financial statement (including a balance sheet and income and expense statement) of the affairs of the Association to be made:
 - (1) as of the last day of the month closest in time to the date six (6) months following close of escrow for the sale of the first Subdivision Interest by Declarant to an Owner. Said financial statement shall reflect the financial condition of the Association as of said date and shall summarize the financial transactions in which the Association was involved during the period between the close of the first sale and the date of the financial statement. The financial statement shall include a schedule of assessments received and receivable itemized by Subdivision Interest and shall include the name of the person or entity assessed. A copy of said financial statement shall be distributed personally or by mail to

each of the Members of the Association and, upon written request, to all first Mortgagees, within sixty (60) days after the date of such financial statement.

- (2) as of the last day of each fiscal year of the Association. Said financial statement shall reflect the financial condition of the Association as of said date and shall summarize the financial transactions in which the Association was involved during the period between the close of the first sale of a Subdivision Interest or the last of such financial statements and the date of the current financial statement and shall include a statement of changes in financial position and any information required to be reported under Section 8322 of the California Corporations Code. Said financial statement shall be prepared in accordance with generally accepted accounting principles, by an independent public accountant and shall include an external audit by an independent public accountant for each fiscal year, and a copy of the financial statement shall be distributed personally or by mail to each Member of the Association and upon written request, to all first Mortgagees within one hundred twenty (120) days following the end of each fiscal year. In addition to financial statements, the governing body shall annually distribute within 60 days prior to the beginning of the fiscal year a statement of the Association's policies and practices in enforcing its remedies against members for defaults in the payment of regular and special assessments including the recording and foreclosing of liens against members' subdivision interests.
- (j) Make available to any prospective purchaser of a Subdivision Interest, any Owner of a Subdivision Interest, any first Mortgagee, and the holders, insurers and guarantors of a first Mortgage on any Subdivision Interest, current copies of the Declaration, the Articles, these By-Laws, the rules and regulations governing the Subdivision Interest and all other books, records and financial statements of the Association.

Section 3. Restrictions on Powers of Board.

- (a) The Association shall be prohibited from taking any of the following actions without the vote or written assent of Members representing fifty-one percent (51%) or more of the voting power of each class of Members; provided, however, in the event the Class B membership has been converted to Class A membership, then fifty-one percent (51%) or more of the total voting power of the association comprised of at least fifty-one percent (51%) of the votes of Members other than Declarant shall then be necessary:
 - (1) Entering into a contract with a third person wherein the third person will furnish goods or services for the Common Area or the Association for a term longer than one (1) year with the following exceptions:
 - (i) a management contract, the terms of which have been approved by the Veterans Administration;

- (ii) a contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;
 - (iii) prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration provided that the policy permits for short rate cancellation by the insured.
- (2) Paying compensation to Directors or to officers of the Association for services performed in the conduct of the Association's business; provided; however, that the Board may cause a Director or officer to be reimbursed for expenses incurred in carrying on the business of the Association.
 - (3) Filling of a vacancy on the Board created by the removal of a Director.
 - (4) Incurring aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.
 - (5) Selling during any fiscal year property of the Association.
- (b) The Association shall be prohibited from taking any of the following actions without the vote or written assent of two-thirds (2/3) of the voting power of each class of Members of the Association:
- (1) hypothecating any or all of the real or personal property owned by the Association as real security for money borrowed or debts incurred.

Notwithstanding the foregoing, for so long as there is any lot, parcel, area, apartment or unit for which this Association is obligated to provide management, maintenance, preservation or control, then, without the approval of one hundred percent (100%) of the members, this Association or any person acting on its behalf shall not transfer all or substantially all of its assets or file a certificate of dissolution.

ARTICLE IX

OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of this Association shall be a President and Vice President, who shall at all times be Directors, a Secretary, and a Chief Financial Officer and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first organizational meeting of the Board following each annual meeting of the Members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect 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 the Board may, from time to time, determine.

Section 5. Removal and Resignation. Any officer may be removed either with or without cause, by a majority of the Directors at the time in office, at any regular or special meeting of the Board, or except in case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board.

Any officer may resign at any time giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of 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.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of Secretary and Chief Financial Officer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

President

- (a) The President shall be the chief executive officer of the Association, and subject to the control of the Board, have general supervision, direction and control of the business and officers of the Association. He shall preside at all meetings of the Members and at all meetings of the Board. He shall be ex-officio a Member of all standing committees, including the Executive Committee, if any, and shall have the general powers and duties of management usually vested in the office of president of a corporation, and shall have such other powers and duties as may be prescribed by the Board or by these By-Laws. The President shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes of the Association. The President shall see that orders and resolutions of the Board are carried out.

Vice-President

- (b) The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board

Secretary

- (c) The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board.

Chief Financial Officer

- (d) The Chief Financial Officer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the Members.

ARTICLE X

COMMITTEES

The Association shall appoint a Nominating Committee, as provided in these By-Laws. In addition, the Board shall appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE XI

BOOKS AND RECORDS

Section 1. Inspection. The original or a copy of these By-Laws as amended or otherwise altered to date, certified by the Secretary, the membership register, books of account and minutes of meetings of the Members, the Board and of committees of the Board shall be kept at the office of the Association or at such other place within the Project as the Board shall prescribe and shall be made available for inspection and copying by any Member of the Association, or by his duly-appointed representative and by all first Mortgagees, at any reasonable time and for a purpose reasonably related to his interest as a Member or as a first Mortgagee, whatever the case may be. The governing body shall establish reasonable rules with respect to:

- (a) notice to be given to the custodian of the records by the Member desiring to make the inspection;
- (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.

Section 2. Inspection by Directors. Every 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 shall include the right, at his expense, to make extracts and copies of documents.

ARTICLE XII

ASSESSMENTS

Membership Assessments and Lien Rights

Section 1. Regular Assessments. Subject to the limitations set forth in ARTICLE III, Section 3, of the Declaration, the Board shall fix and determine from time to time regular assessments to be paid by each Owner for the purpose of operating, maintaining and repairing the Common Area, paying the necessary expenditures of the Association as provided in these By-Laws and the Declaration, and establishing an operating reserve fund and reserve for replacement, all as set forth in the Declaration.

Section 2. Special Assessments. In addition to the regular assessments authorized above, the Board may levy special assessments for the purpose of defraying, in whole or in part, the cost of any capital improvement to the Common Area, including the cost of major repair or rebuilding, to reimburse the Association for costs and expenses incurred in enforcing compliance by an Owner or his Subdivision Interest with the provisions of the Declaration, the Articles, these By-Laws and rules and regulations adopted by the Board, or such other purpose as may be determined by the Board, all as set forth in ARTICLE III, Sections 4 and 6 of the Declaration provided, however, that any such assessment shall have the vote or written assent of fifty-one percent (51%) or more of each class of Members of the Association.

Section 3. Lien Rights. As provided in the Declaration, the Association shall have a lien against the interest of each Owner in the Property to secure the full and prompt payment of certain assessments levied by the Association in compliance with these By-Laws, and in the event of default by any Owner, said interest of such Owner may be foreclosed by the Association in the same manner as a realty mortgage or may be enforced by sale pursuant to Sections 2932, 2924(a), 2924(b), 2924(c) and 1356 of the Calif-

ornia Civil Code and Section 11003.3 of the California Business and Professions Code, and to that end a power of sale is hereby conferred upon the Association, and any redemption thereafter shall be subject to the lien hereby created as to other or future events of default; provided, however, that the lien hereby created shall, at all times, be subordinate and inferior to the lien of any first Mortgage placed on the Property or any part thereof.

Any assessments which are not paid when due shall be delinquent. If the assessments are not paid within thirty (30) days after the due date, the assessments shall bear interest from the due date at the rate of six percent (6%) per annum, and the Association may bring an action at law against the Member personally obligated to pay the same and, in addition thereto or in lieu thereof, may foreclose the lien above provided, and interest, costs and reasonable attorney's fees incurred in any such action shall be added to the amount of such assessments. No Member may waive or otherwise escape liability for the assessments provided for hereby by non-use of the Common Area or abandonment of his Subdivision Interest.

Section 4. Payment of Assessments by Declarant. The Declarant shall pay all assessments levied by the Association against any Subdivision Interest owned by it at the same time, in the same manner and in the same amounts as any other Owner.

Section 5. Commencement of Regular Assessments. The regular assessments shall commence as to all Subdivision Interests in each phase of development of the Property as set forth in the Declaration on the first day of the calendar month following the conveyance of the first Subdivision Interest by Declarant to an Owner in the phase, or on the first day of the month following the conveyance of Parcel A of N.C.W. Neighborhood 3, Unit No. 2 and Parcel B of said N.C.W. Neighborhood 3, Unit No. 1 to the Association, whichever shall first occur.

ARTICLE XIII

CORPORATE SEAL

The Association shall have a corporate seal, which shall be circular in form, and shall have inscribed thereon the name of the Association, the date of its incorporation and the word "California".

ARTICLE XIV

AMENDMENTS

Except as otherwise provided herein, new By-Laws may be adopted or these By-Laws may be amended or repealed by the vote of the Members entitled to exercise fifty-one percent (51%) or more of the voting power of each class of Members of the Association or by the written assent of such Members, unless the Class B membership has been converted to Class A membership in which event, fifty-one percent (51%) of the total voting power of the Association comprised of at

least fifty-one percent (51%) of the votes of Members other than Declarant, shall be necessary to amend these By-Laws. Notwithstanding the foregoing, no material amendment to these By-Laws shall be made without (i) the approval of at least fifty-one percent (51%) of the Eligible Mortgage Holders and (ii) the consent (by vote or written consent) of Members representing fifty-one percent (51%) or more of the voting power of each class of Members of the Association, unless Class B Membership has been converted to Class A Membership, in which event, the consent of fifty-one percent (51%) of the total voting power of the Association comprised of at least fifty-one percent (51%) of the votes of Members other than Declarant. The term "material amendment" as used herein shall be defined to mean additions or amendments to provisions of these By-Laws which establish, provide for, govern or regulate any of the following: (a) voting; (b) assessments, assessment liens, or subordination of such liens; (c) reserves for maintenance, repair and replacement of Common Areas; (d) insurance or fidelity bonds; (e) rights to use of the Common Areas; (f) responsibility for maintenance and repair of the several portions of the Project; (g) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project; (h) boundaries of any Subdivision Interest; (i) the interests in the Common Areas; (j) convertibility of Subdivision Interests into Common Areas or of Common Areas into Subdivision Interests; (k) leasing of Subdivision Interests; (l) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Subdivision Interest; or (m) any provisions which are for the express benefit of Mortgage holders, Eligible Mortgage Holders or Eligible Insurers or Guarantors of first Mortgages on any Subdivision Interest. Any Eligible Mortgage Holder who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

Notwithstanding the above or any other section of these By-Laws, the percentage of the voting power of the Association or of Members other than the Declarant necessary to amend a specific clause or provision of these By-Laws shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause or provision.

ARTICLE XV

MISCELLANEOUS

Section 1. Fiscal Year. The fiscal year of the Association shall begin on September 1 of each calendar year and end on August 31 of the following calendar year except that the first fiscal year shall begin on the date of incorporation. However, the fiscal year is subject to change from time to time as the Board may determine.

Section 2. Checks, Draft, Etc. All checks, drafts or other orders for payment of money, notes or other evidence of indebtedness, issued in the name of or payable to the Association, shall be signed or endorsed by the President and Chief Financial Officer of the Association.

Section 3. Contracts, Etc., How Executed. The Board, except as in the By-Laws otherwise provided, may authorize any officer or officers or 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 engagement or to pledge its credit or to render it liable for any purpose or to any amount.

Section 4. Construction. Unless the context otherwise requires, the masculine gender includes the feminine and neuter, the singular number includes the plural and the plural number includes the singular.

ARTICLE XVI

MEMBERSHIP RIGHTS AND PRIVILEGES

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 by these By-Laws delegated to the Board as in Article VIII of these By-Laws more fully provided. Unless otherwise provided in the Declaration and subject to the rules and regulations adopted by the Board, each Member, his immediate family, guests and tenants shall have the right to use and enjoy the Common Area.

The membership rights and privileges, together with the voting rights, of any Member may be suspended by the Board for a period not to exceed thirty (30) days for any infraction of the provisions of the Declaration, the Articles, these By-Laws or the rules and regulations adopted pursuant to ARTICLE IV, Section 21 of the Declaration.

Notwithstanding the foregoing, membership rights and privileges, together with the voting rights of any Member, may be suspended by the Board for any period of time during which the assessment on his or her Subdivision Interest remains unpaid. No such suspension shall affect the rights of such Member to access to his or her Subdivision Interest. Reasonable monetary penalties may be adopted by the Association provided the adoption of such penalties is approved by seventy-five percent (75%) of the Owners, excluding Declarant.

A decision to impose discipline shall not be reached (i) prior to fifteen (15) days written notice, stating the reason or reasons for any such disciplinary action, being given to the accused Member personally or by first-class or registered mail sent to his or her last known address appearing on the books of the Association and (ii) without the accused Member having an opportunity to be heard, orally or in writing, by the Board at least five (5) days prior thereto. A two-thirds (2/3) vote of approval by the Board shall be necessary to impose disciplinary action.


CERTIFICATION

I, the undersigned, do hereby certify:

THAT I am the Incorporator of the DEL MAR HIGHLANDS NEIGHBORHOOD HOMEOWNERS' ASSOCIATION, a California nonprofit mutual benefit corporation; and

THAT the foregoing By-Laws, comprising 22 pages, constitute the original By-Laws of said Association, as duly adopted by written consent of the sole incorporator dated the 9th day of November, 1983.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 9th day of November, 1983.


Barbara L. Bail, Incorporator

SEAL