

AMENDED AND RESTATED BYLAWS

OF

**ALTAMIRA MANAGEMENT ASSOCIATION NO. 1
A Planned Development**

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AMENDED AND RESTATED BYLAWS
OF
ALTAMIRA MANAGEMENT ASSOCIATION NO. 1

ARTICLE 1 - NAME, LOCATION AND APPLICABILITY

1.1 *Name.* The name of this corporation is Altamira Management Association No. 1 ("Association").

1.2 *Principal Office.* The principal office of the Association shall be located in San Diego County, California or within a reasonable distance from said County. The Board shall have the full power and authority to change the principal office of the Association from one location to another for a proper business purpose. Any such change shall be adopted by a resolution of the Board and noted in the meeting minutes.

1.3 *Applicability.* These Bylaws are applicable to the residential condominium development known as Altamira No. 1 ("Development"), located in the City of Carlsbad, County of San Diego, State of California. These Bylaws are also applicable to all Members of the Association and all tenants, guests, family members, employees, and other persons who use the facilities of the Development in any manner. These Bylaws amend and restate, in their entirety, the original Bylaws, approved June 1, 1979 as the same has been amended from time to time.

1.4 *Conflicts.* If there is any conflict between the Articles and these Bylaws, the Articles shall control; and if there is any conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE 2 - DEFINITIONS

Unless otherwise defined herein, capitalized terms or words used in these Bylaws shall have the same definitions as those found in the Association's Declaration of Covenants, Conditions and Restrictions ("Declaration") recorded in the Official Records of the County Recorder of San Diego County, or in the Davis-Stirling Common Interest Development Act (California Civil Code Section 1350 *et seq.*). Words not defined in the Declaration or these Bylaws or in the Civil Code shall be understood in their ordinary and popular sense, as determined by the context in which they are used, unless the context indicates that the term or word is a defined term which was inadvertently not capitalized.

Statutes or administrative regulations that are shown in brackets at the beginning of a section or paragraph in these Bylaws are intended to show that the respective section or paragraph is based on the particular statute or administrative regulation referred to in the brackets. Unless otherwise noted, all references are to statutes and administrative regulations of the State of California. Any issues not addressed expressly by the Governing Documents of the Association shall be controlled by relevant provisions of the Corporations Code and by judicial interpretations of it, whether the Association is incorporated or not.

When used in these Bylaws, the terms below shall be defined as follows:

"Separate Interest" shall have the same meaning as Lot."

[Corp. Code §5079] "Written" or "In Writing" includes facsimile and telegraphic communication.

ARTICLE 3 - MEMBERSHIP

3.1 *Membership.* The qualifications for membership are set forth in the Declaration and are hereby incorporated by reference.

3.2 *Limitation on Membership Rights.* 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 the Governing Documents. Furthermore, Members may be disciplined by limiting or suspending the Member's rights, as provided in Section 7.6 hereof.

ARTICLE 4 - MEETINGS OF MEMBERS

4.1 *Place of Meetings; Conduct.* [Corp. Code §§7510(a) & 7511; DRE Reg. 2792.17(b)] All meetings of the Members shall be held at a place designated by the Board. This meeting place shall be within the Development or as close to it as reasonably possible. If said meeting day falls upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday. If no meeting place is designated, the meetings shall be held at the principal office of the Association. No meeting of the Members shall be held outside of the City of Carlsbad, California, unless unusual conditions exist. The Board may establish reasonable rules and procedures for the conduct of Membership meetings and elections.

[Civil Code §1363] At Membership meetings, no substantive matter may properly be presented for a vote of the Members, either by the Board or by any Member, unless the notice of the meeting has stated the general nature of each issue on which a vote will be taken at the Membership meeting. By way of example and not limitation, substantive matters include votes to elect or remove Directors, to approve amendments to the Governing Documents, and to increase or impose assessments which require a vote of the Membership. Non-substantive matters include votes concerning meeting procedures, such as closing or limiting debate, amending motions, nominating candidates not previously nominated, adjournment, and other matters affecting meeting procedures.

4.2 *Annual Meetings.* [Corp. Code §7510(a) & (b)] The annual meeting of the Members shall be held on the last Saturday of June. If the annual meeting is adjourned due to lack of a quorum, it shall be held as soon thereafter as practical.

4.3 *Special Meetings.* [Corp. Code §§7151(e) & 7510(e); DRE Reg. 2792.17(c)] Special meetings of the Members may be called for any lawful purpose by a majority of a quorum of the Board, the President of the Association, or by a written request signed by Members representing at least five percent (5%) of the total Voting Power of the Members. The special meeting shall be held not less than thirty-five (35) nor more than ninety (90) days after adoption of the resolution or receipt of the request by an officer of the Association. Only that business stated in the notice of meeting given pursuant to Section 4.4 of these Bylaws shall be transacted at the special meeting.

4.4 *Notice of Meetings.* [Corp. Code §§ 7511(a) & (b); DRE Reg. 2792.17(d)] The Secretary of the Association shall give written notice of any Members' meeting to each Member of record in accordance with the following:

- 4.4.1 Except as otherwise provided in this Article, the notice shall be given at least ten (10) but not more than ninety (90) days before the meeting, by first class mail or by personal delivery.
- 4.4.2 The notice shall be addressed to the Member at the address appearing on the books of the Association, or the address supplied by the Member to the Association for this purpose. If there is no such address, the Member's address shall be deemed to be the property address of the Member's Separate Interest.
- 4.4.3 [Civil Code §1363] The notice shall state the place, date, and time of the meeting. If Directors are to be elected at the meeting, the notice shall include the names of all those who are nominees at the time the notice is given. The notice shall also state those matters that the Board, or anyone else, intends to present for action by the Members at the time the notice is given.
- 4.4.4 [Corp. Code §7510(e)] In the case of a special meeting which is called by Members pursuant to Section 4.3 of these Bylaws, the notice shall be given by the Board within twenty (20) days after receipt of the request for the meeting. If that twenty (20) day requirement is not satisfied, the Members who called the meeting may give the notice.
- 4.4.5 Any approval of the Members required for those items listed in Sections 4.8.1 to 4.8.5, other than unanimous approval by those entitled to vote, shall be valid only if the general nature of the matter to be voted upon was stated in the notice of meeting or any written waiver of notice.
- 4.4.6 An affidavit of the mailing or other means of giving any notice of any Members' meeting may be executed by the Secretary, and if so executed, shall be filed with the corporate records or made a part of the minutes of the meeting. Such affidavit shall constitute prima facie evidence of the giving of notice.

4.5 **Voting Rights.** Members shall have the power to exercise their voting rights as set forth in the Declaration, subject to the following provisions:

- 4.5.1 Fractional votes shall not be allowed. If there is more than one (1) record Owner of a Separate Interest ("co-owners"), all of the co-owners shall be Members, but only one (1) of them shall be entitled to cast the single vote attributable to the Separate Interest. Co-owners may designate in writing one (1) of their Owners to vote. If no such designation is made or if it is revoked, the co-owners shall decide among themselves, by majority vote, how the vote of that Separate Interest is to be cast. Unless the Board receives a written objection in advance from a co-owner, it shall be conclusively presumed that the voting co-owner is acting with the consent of his or her co-owners. No vote shall be cast for the Separate Interest on a particular matter if a majority of the co-owners present in person or by proxy cannot agree on a vote.
- 4.5.2 [Corp. Code §5034] Any provision of the Governing Documents which requires the approval of a specified percentage of the Voting Power of the Association shall require the approval of the specified percentage of the Voting Power of the

Membership. If no percentage of the Voting Power is specified in the Governing Documents or by California law, approval by a majority of the Voting Power of those voting, in person or by proxy, so long as a quorum is present or represented at the meeting, shall constitute approval.

4.5.3 For purposes of exercising membership rights and incurring membership obligations when an Owner is a corporation, any director, officer, employee or agent designated by corporate resolution may exercise the membership rights attributable to the corporation. When an Owner is a trust, the trustee may exercise the membership rights attributable to the trust unless otherwise designated in writing by the trustee.

4.6 *Quorum.* [Corp. Code §7512; DRE Reg. 2792.17(e)(1)] At any meeting, the presence either in person or by proxy of Members entitled to cast votes equal to at least twenty-five percent (25%) of the total Voting Power of the Members shall constitute a quorum for any action except as otherwise provided in the Articles, these Bylaws, or the Declaration. As required by Corporations Code Section 7512(b), the only matters that may be voted upon at any meeting, if the Members present or represented by proxy constitute less than one-third (1/3) of the total Voting Power, are matters the general nature of which was given in the notice of the meeting. The Members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment notwithstanding the withdrawal of enough Members to leave less than a quorum, if the action taken, other than adjournment, is approved by at least a majority of the Voting Power of the Members required to constitute a quorum.

4.7 *Adjustment of Voting Power and Quorum.* For purposes of establishing a quorum and determining the total Voting Power of the Association, if a Member's voting rights are suspended as provided in the Governing Documents, the total Voting Power of the Association shall be reduced for the period of time for which the suspension is in effect by an amount equal to the number of Separate Interests for which Membership voting rights have been suspended.

4.8 *Proxies.* [Corp. Code §§5069, 7514 & 7613; DRE Reg. 2792.17(g)] At all meeting of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary of the Association. A proxy shall be deemed signed if the Member's name is placed on the proxy (whether by manual signature, typewriting, telegraphic transmission, or otherwise) by the Member or the Member's attorney in fact. Any form of proxy or written ballot distributed by any person or entity to the Membership shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted on which are known at the time the proxy is prepared. The proxy or written ballot shall provide that, when the Member specifies a choice, the vote shall be cast in accordance with that choice. Every proxy shall be revocable and shall automatically cease upon conveyance of its maker's Membership, or upon receipt of written notice by the Secretary of the maker's death or judicially declared incapacity. No proxy shall be valid after the expiration of eleven (11) months from its date of execution, unless otherwise provided in the proxy, but in no event may the maximum term of any proxy exceed three (3) years from its date of execution. The maker of a proxy may revoke it by delivering a written revocation to the Association, by executing a subsequent proxy and presenting it to the meeting, or by attending any meeting and voting in person.

Any revocable proxy may not be used to vote on any of the following matters unless it sets forth the general nature of the matter to be voted upon:

4.8.1 Removing a Director without cause, pursuant to Section 5.6.2 of these Bylaws;

- 4.8.2 Filling Director vacancies pursuant to Section 5.9 of these Bylaws;
- 4.8.3 Entering into or approving a contract or transaction between the Association and one (1) or more of the Directors, or between the Association and any entity in which one (1) or more of the Directors has a material financial interest, except as allowed by Section 7233 of the California Corporations Code;
- 4.8.4 Amending the Articles of Incorporation, as provided in Section 7812 of the California Corporations Code;
- 4.8.5 Electing to dissolve the Association, by approval of a majority of all Members or by approval of both the Board and Members pursuant to Section 8610 of the California Corporations Code;
- 4.8.6 Amending the Articles or these Bylaws to repeal, restrict, create, or expand proxy rights;
- 4.8.7 Disposing of assets other than in the usual and regular course of corporate activities pursuant to Section 7911(a)(2) of the California Corporations Code; and
- 4.8.8 Agreements for corporate merger, and amendments thereof, in accordance with the provisions of Sections 8012 and 8015(a) of the California Corporations Code.

4.9 **Action Taken Without a Meeting.** [Corp. Code §7513; DRE Reg. 2792.17(f)] Any action that may be taken at a meeting of the Members may be taken without a meeting provided the following ballot requirements are satisfied:

- 4.9.1 The Association shall distribute a written ballot to every Member entitled to vote on the matter. The ballot shall be solicited in the same manner as provided in Section 4.4 of these Bylaws for the giving of notice of meetings of Members.
- 4.9.2 The written ballot shall (1) set forth the proposed action; (2) provide an opportunity to specify approval or disapproval of any proposal, including confirmation that, if the Member specifies a choice, the vote shall be cast in accordance with that Member's choice; and (3) provide a reasonable time within which to return the ballot. The solicitation accompanying the written ballot or the written ballot itself (1) shall state the date and time by which the ballot must be received (not sent) to be counted; (2) shall indicate the number of responses needed to meet the quorum requirement; and (3) shall state the percentage of approvals necessary to pass the measure submitted.
- 4.9.3 The proposed action shall be considered approved if:
 - (a) The number of votes cast by ballot within the specified time period equals or exceeds the quorum required to be present at a meeting authorizing the action; and

- (b) The number of approvals equals or exceeds the number of votes that would be required for approval at a meeting at which the total number of votes cast was the same as the number of ballots received in response to the ballot solicitation.

4.9.4 No written ballot may be revoked.

4.9.5 Any deadline stated for return of the ballots may be extended for successive reasonable periods with the approval of a majority of the Board. If not addressed at the time the written ballot is mailed, notice of any extension must be sent to the Members within thirty (30) days after the previously noticed deadline date.

4.10 **Record Date for Notice of Meetings.** [Corp. Code §7611(a)] The Board may fix, in advance, a date as the record date for the purpose of determining the Members entitled to notice of any meeting of the Members. Such record date shall not be more than ninety (90) nor less than ten (10) days before the date of the meeting. 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 a meeting of Members. A determination of Members entitled to notice of a meeting of Members shall also apply to any adjournment of the meeting unless the Board fixes a new record date for the adjourned meeting.

4.11 **Record Date for Eligibility to Vote.** [Corp. Code §7611(b)] The Board may fix, in advance, a date as the record date for the purpose of determining the Members entitled to vote at a meeting of the Members. Such record date shall not be more than sixty (60) days before the date of the meeting. If no record date is fixed, Members on the day of the meeting who are otherwise eligible to vote at the meeting, or, in the case of an adjourned meeting, Members on the day of the adjourned meeting who are otherwise eligible to vote are entitled to vote at the adjourned meeting.

4.12 **Record Date for Eligibility to Cast Written Ballot.** [Corp. Code §7611(c)] The Board may fix, in advance, a date as the record date for the purpose of determining the Members entitled to cast a written ballot in lieu of holding a meeting of Members. Such record date 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 of the first written ballot is mailed or solicited who are otherwise eligible to vote are entitled to cast written ballots.

4.13 **Record Date for Exercise of Other Rights.** [Corp. Code §7611(d)] The Board may fix, in advance, a date as the record date for the purpose of determining the Members entitled to exercise any rights in respect to any other lawful action. Such record date shall not be more than sixty (60) days prior to such other action. If no record date is fixed, Members at the close of business on the day the Board adopts the resolution relating thereto, or the sixtieth (60th) day prior to the date of such other action, whichever is later, are entitled to exercise such rights.

ARTICLE 5 - BOARD OF DIRECTORS

5.1 **Number; Qualification.** The affairs of this Association shall be managed and its duties and obligations performed by a Board of five (5) Directors, all of whom shall be Members of the Association in good standing. Good standing shall mean that all the candidate's assessments must be paid in full at the time of election and that the candidate's membership rights must not be suspended at the time of election.

If a Member is a corporation, partnership, trust or some other entity that is not a human being, any officer, director, principal or duly authorized agent of such Member shall be qualified to serve as a Director.

5.2 **Nomination of Directors.** [Corp. Code §§ 7520, 7521, 7522, 7523 & 7524.] There shall be available to the Members reasonable nomination and election procedures given the nature, size and operations of the Association. Such procedures shall be adopted, or amended from time to time, by the Board, and may, but do not necessarily need to include the following:

- (a) A reasonable means of nominating persons for election as Directors.
- (b) A reasonable opportunity for a nominee to communicate to the Members the nominee's qualifications and the reasons for the nominee's candidacy.
- (c) A reasonable opportunity for all nominees to solicit votes.
- (d) A reasonable opportunity for all Members to choose among the nominees.

When there is a meeting to elect Directors, any Member who is present at the meeting, in person or by proxy, shall be entitled to nominate one or more candidates for the Board.

5.3 **Election.** At each annual meeting of the Association, the Members shall fill, by election, all vacant positions on the Board. However, if an annual meeting is not held or does not include an election, the election may be held at a special meeting of Members called for that purpose. In any contested election, or upon the request of any Member, voting for Directors shall be by secret written ballot. At an election, the Member or the Member's proxyholder may cast, in respect to each vacancy, as many votes as the Member is entitled to exercise under the provisions of these Bylaws.

In each election, no cumulative voting shall be permitted. Specifically, each Member, or the Member's proxyholder, may cast only one vote for each candidate and may vote for as many candidates as there are vacancies to be filled. The candidates receiving the highest number of votes, up to the number of vacancies to be filled, shall be elected.

5.4 **Inspectors of Election.** [Corp. Code §7614] In advance of any meeting of Members, the Board may appoint inspectors of election to act at the meeting and any adjournment thereof. If inspectors of election are not so appointed, or if any persons so appointed fail to appear or refuse to act, the chair of the meeting may, and on the request of any Member shall, appoint inspectors of election at the meeting. The number of inspectors shall be either one (1) or three (3). If appointed at a meeting on the request of one or more Members or proxies, a majority of Members represented in person or by proxy shall determine whether one (1) or three (3) inspectors are to be appointed. In the case of any action by written ballot, the Board may similarly appoint inspectors of election to act with powers and duties as set forth below.

The inspectors of election shall determine the number of Memberships outstanding and the Voting Power of each, the Voting Power represented at the meeting, the existence of a quorum, and the authenticity, validity, and effect of proxies. The inspectors shall also receive votes, ballots or consents, hear and determine all challenges and questions in any way arising in connection with the right to vote, count and tabulate all votes or consents, determine when the polls shall close, determine the result, and do such acts as may be proper to conduct the election or vote with fairness to all Members. The inspectors shall have the right to consult with and to rely on the advice of the Association's legal counsel, if the Association's legal counsel is present at the meeting.

The inspectors of election shall perform their duties impartially, in good faith, to the best of their ability and as expeditiously as is practical. If there are three (3) inspectors of election, the decision, act or certificate of a majority is effective, in all respects, as the decision, act or certificate of all. Any report or certificate made by the inspectors of election is *prima facie* evidence of the facts stated therein.

5.5 **Term.** [Corp. Code §7220(b)] The term of office of each Director shall be two (2) years, and each Director shall serve until his or her successor is elected or appointed. The terms of office of Directors shall be staggered with three (3) Director terms ending in each odd-numbered year, and two (2) Director terms ending in each even-numbered year. Directors elected at the annual meeting shall take office on July 1, or if the annual meeting cannot be held before July 1, then Directors shall take office as soon upon their election when the annual meeting is held. There shall be no limit to the number of consecutive terms to which a Director may be reelected. Each Director shall hold office until the election of his or her successor or until the Director's death, resignation, removal, or judicial adjudication of mental incompetence. Directors shall be elected at each annual meeting to fill the vacancies of those Directors whose term then expires.

Whenever Directors are to be elected to terms of different lengths at the same election, due to vacancies or any similar reason, each candidate elected shall be entitled to select his or her term of office from the terms available, starting with the candidate who receives the greatest number of votes and then to the remaining candidates in descending order of votes received.

5.6 **Removal.** Directors may be removed as follows:

5.6.1 [Corp. Code §7221] The Board may declare vacant the office of a Director and may appoint a qualified successor on the occurrence of any of the following events:

- (a) The Director ceases to be a Member of the Association;
- (b) The Members fail to elect the full number of authorized Directors at any meeting at which such election is to take place;
- (c) The Director is declared of unsound mind by a final order of Court;
- (d) The Director is convicted of a felony;
- (e) The director has failed to cure all assessment delinquencies within ninety (90) days after the date the Association first notifies the director in writing of any such delinquency; or
- (f) The Director has failed to attend three (3) consecutive regular meetings of the Board.

5.6.2 [Corp. Code 7222] One (1) or more Directors may be removed prior to the expiration of their terms, with or without cause, at an annual or special meeting of the Members. Any removal without cause shall be approved by a majority vote of the Members represented and voting at a meeting at which a quorum is represented.

If a Director is removed, his or her successor shall be selected by a vote of the Members at a meeting held at least thirty (30) but not more than forty (40) days after the date of removal and shall serve for the unexpired term of his predecessor.

5.6.3 By a majority vote, the Board may remove any Director who was appointed by the Board to fill a vacancy on the Board.

5.7 **Resignation of Directors.** [Corp. Code §7224] Any Director may resign at any time by giving written notice to the Board, the President, or the Secretary, or by giving verbal notice at a Board meeting such that the resignation is recorded in the minutes of the meeting. 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.

5.8 **Return of Association Materials.** Upon resignation, removal or expiration of term, directors shall return to the Association those Association materials in their possession.

5.9 **Filling Vacancies.** [Corp. Code §§7220(b) & 7224] Vacancies on the Board of Directors, caused by reason other than the removal of a Director by a vote of the Members, shall be filled by a vote of a majority of the remaining Directors, even though they may constitute less than a quorum. Each person so elected shall serve for the unexpired term of his predecessor.

If the Board accepts the resignation of a Director which is scheduled to take effect at a future date, the Board may appoint a successor to take office when the resignation becomes effective, and the resigning Director may participate in the appointment of a successor.

5.10 **Compensation.** [DRE Reg. 2792.21(b)(4)] No Director shall receive any compensation for any service he or she may render to the Association. However, a Director may be reimbursed for actual out of pocket expenses incurred by the Director in the performance of his or her duties.

ARTICLE 6 - MEETINGS OF DIRECTORS

6.1 **Regular Meetings.** [Corp. Code §7211(a)(2); DRE Reg. 2792.20(a) & (b)] Regular meetings of the Board of Directors shall be held at least every other month at a time and place fixed by resolution of the Board. If said meeting day falls upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday. The meeting place shall ordinarily be within the Development unless, in the judgment of the Board, a reasonable meeting place does not exist or a larger meeting room is required than exists within the Development. Any other meeting place selected by the Board shall be as close as possible to the Development. Notice of the time and place of any Board meeting shall be communicated to the directors not less than four (4) days prior to the meeting; provided, however, that notice need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

6.2 **Special Meetings.** [Corp. Code §7211(a)(1) & (2); DRE Reg. 2792.20(c)] Special meetings of the Board shall be held when called by written notice signed by the President, any Vice President, or the Secretary of the Association, or by any two (2) Directors other than the President. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. Notice of any special meeting shall be posted in the manner provided for notice of regular meetings, and all Directors shall be given at least four days' notice by first-class mail or at least 48 hours' notice by telephone, telephone

message system, telegraph, facsimile or electronic mail other electronic means prior to the scheduled time of the special meeting.

6.3 *Emergency Meetings.* [Civil Code §1363.05] An emergency meeting of the Board may be called if there are circumstances that could not reasonably have been foreseen that require immediate attention and possible action by the Board and that make it impractical to provide the notice required for Regular or Special Meetings of the Board.

6.4 *Waiver of Notice.* [Corp. Code § 7211(a)] Notice of a meeting need not be given to any Director who signed a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting the lack of notice to such Director, either prior to the meeting or at its commencement. All such waivers shall be filed with the corporate records or made a part of the minutes of the meetings.

6.5 *Organizational Meeting.* Immediately after the annual meeting, described in Section 4.2 of these Bylaws, or as soon thereafter as reasonably practicable, the Board shall meet to elect the officers of the Association and conduct any other business of the Association as the Board, in its discretion, shall determine is necessary. No other notice of meeting, other than this Bylaw, shall be required for any such meeting held immediately after the annual meeting.

6.6 *Quorum.* [Corp. Code §7211(a)(7) & (8)] A majority of the authorized number of Directors shall constitute a quorum, and if a quorum is present, the decision of majority of the Directors present shall be the act of the Board. The Board may continue to transact business, at a meeting at which a quorum was present initially, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for such meeting, or such greater number as may be required for the particular action taken.

6.7 *Member Attendance at Board Meetings.* [Civil Code §1363.05; DRE Reg. 2792.20(d)] Regular and special meetings of the Board shall be open to all Members of the Association; provided, however, that Members who are not on the Board may not participate in any deliberation or discussion unless expressly authorized to do so by the vote of the majority of a quorum of the Board. The Board shall set a reasonable time for Members to speak to the Board at any Association meeting or Board meeting, except for Board meetings held in Executive Session. Notice of the time and place of a Board meeting, except for emergency meetings and executive sessions, shall be communicated to Members not less than four (4) days prior to the meeting. Notice may be given by posting the notice in a prominent place or places within the Common Area, by mail, by delivery to all Separate Interests in the Development, or by newsletter or similar means of communication.

6.8 *Executive Session.* [Civil Code §1363.05; DRE Reg. 2792.20(d)] The Board may adjourn a meeting and reconvene in executive session to meet with its legal counsel, or to discuss (a) litigation in which the Association is or may become involved, (b) matters that relate to the formation of contracts with third parties, (c) personnel matters, and (d) matters 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. If the Executive Session does not follow an open session, the Board may conduct an Executive Session, if the nature or agenda of such Executive Session is announced at the next regularly scheduled Board meeting. Nothing herein contained shall be construed to obligate the Board to first call an open meeting before meeting in Executive Session. An Executive Session which does not follow an open meeting may be called and noticed in the same manner as a special meeting. Any matter discussed in Executive Session shall be generally noted

in the Association minutes. The Board shall be entitled to exclude Members from attending Executive Sessions.

6.9 *Action Without a Meeting.* [Corp. Code §7211(b); DRE Reg. 2792.20(e)] Any action required or permitted to be taken by the Board may be taken without a meeting, if all Directors, individually or collectively, consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. An explanation of the action taken shall be communicated to the Members in any manner provided in these Bylaws for giving notice of Regular Meetings of the Board.

6.10 *Meeting by Telephone.* [Corp. Code §7211(a)(6)] Members of the Board may participate in a meeting through the use of conference telephone or similar communications equipment, so long as all Directors participating in such meeting can hear one another, and such participation shall constitute attendance of a Director at such meeting.

6.11 *Adjournment.* [Corp. Code §7211(a)(4)] A majority of the Directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than twenty-four (24) hours, notice of the adjournment shall be given, prior to the time of the adjourned meeting, to the Directors who were not present at the time of the adjournment.

6.12 *Board Deliberation Regarding Member Discipline.* [Civil Code §1363.05] In any matter relating to the disciplining of a Member, the Board shall meet in Executive Session if requested by that Member or by the Board, and the Member shall be entitled to attend that portion of the Executive Session in which the Board discusses the discipline of that Member.

6.13 *Meeting Minutes.* [Civil Code §1363.05, Corp. Code §8320] The Board shall keep accurate written minutes of its meetings, and shall retain them in the permanent records of the Association. The minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any Board meeting, other than Executive Session, shall be available to Members within thirty (30) days of the meeting. The minutes, proposed minutes, or summary minutes shall be distributed to any Member upon request and upon reimbursement for the costs in making that distribution.

ARTICLE 7 - POWERS AND DUTIES OF THE ASSOCIATION AND BOARD OF DIRECTORS

7.1 *Powers of the Association.* [Civil Code §1363; Corp. Code §7140; C.C.P. §383] The Association may exercise the powers granted to a nonprofit mutual benefit corporation, as enumerated in Corporations Code Section 7140, the powers granted to the Association by Code of Civil Procedure Section 383 and the powers granted to the Association in the Davis-Stirling Common Interest Subdivision Act, Civil Code Section 1350 *et seq.*, as each may be amended from time to time hereafter.

7.2 *Powers of the Board.* [Corp. Code §7210] The Board shall exercise for the Association all powers and duties vested in or delegated to the Board or the Association by the Governing Documents and the California Corporations Code governing nonprofit mutual benefit corporations. Said powers and duties shall be subject to the limitations of the Governing Documents, and shall include, but not be limited to, the requirements of Section 7.5 and the following:

- 7.2.1 Formulating Rules and Regulations for the use and operation of the Lots (Separate Interests), the Common Area, and common facilities and facilities owned or controlled by the Association as provided in the Declaration and these Bylaws;
- 7.2.2 Enforcing the applicable provisions of the Governing Documents and any other instruments governing the ownership, management, and control of the Development;
- 7.2.3 Initiating and executing disciplinary proceedings against Members for violations of provisions of the Governing Documents in accordance with procedures set forth in Section 7.6 herein;
- 7.2.4 Suspending the voting rights of a Member and the right to use of any Recreational Facilities during any period in which such Member is in default in the payment of any assessment levied by the Association;
- 7.2.5 Paying taxes and assessments that are, or could become, a lien on all or a portion of the Common Area;
- 7.2.6 Contracting for casualty, liability, and other insurance on behalf of the Association;
- 7.2.7 Contracting for goods and services for the Common Area facilities, and interests of the Association, subject to the limitations set forth in Section 7.3 herein;
- 7.2.8 Borrowing money, pledging the right to exercise its assessment powers in connection with obtaining funds to repay a debt of the Association, selling property of the Association, incurring indebtedness and executing promissory notes or other evidences of debt for the Association, subject to the limitation set forth in Section 7.3 below;
- 7.2.9 [Corp. Code §7212] Creating committees pursuant to resolution adopted by a majority of the Board; provided that if a committee will exercise any power or authority of the Board, it shall consist of two (2) or more Directors, and as many other Members as the Board may designate, to serve at the pleasure of the Board. No Directors need to serve on any committee which does not exercise any power or authority of the Board (e.g. a social committee);
- 7.2.10 [Corp. Code §7210] Delegating its authority, duties, and responsibilities to its officers, employees, committees, or agents, including a professional management agent; provided however, that the activities and affairs of the Association shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board;
- 7.2.11 Employing attorneys, accountants, independent contractors, or such other agents and employees as they deem necessary, and prescribing their duties;
- 7.2.12 [Vehicle Code §21107.7] Petitioning the local governmental body having jurisdiction for application of the California Vehicle Code to any privately owned

and maintained roads in the Development in the manner prescribed by California Vehicle Code Section 21107.7, as amended from time to time;

- 7.2.13 [Civil Code 1365.5(b)] Authorizing the withdrawal of moneys from the Association's reserve accounts, upon the signatures of two (2) Directors. The Board shall take reasonable precautions to insure that the appropriate signature authorization cards are delivered to the institution or institutions holding the Association's Reserve accounts or shall obtain verification from such institution or institutions that the signature authorization cards on file contain only the signatures of those persons who were authorized to withdraw monies from the Reserve accounts;
- 7.2.14 Authorizing any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Association, unless otherwise provided in the Governing Documents. Such authority may be general or confined to specific instances. Unless so authorized by the Board, no officer, agent or employee shall have any power or authority to bind the Association by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount;
- 7.2.15 Entering any Lot to perform necessary construction, maintenance, or emergency repair work as required by the Governing Documents or for the benefit of the Common Area or the Members in the aggregate;
- 7.2.16 Filling vacancies on the Board, except for a vacancy created by the removal of a Director by Members;
- 7.2.17 Extending the time for return of written ballots when an action is taken without a meeting pursuant to Section 4.9 herein, by majority approval of the Board;
- 7.2.18 [Civil Code §1360(a)(2)] Authorizing a modification of the Common Area as provided by law to facilitate access for persons who are blind, visually handicapped, deaf, or otherwise eligible to receive such an accommodation; and
- 7.2.19 [Civil Code §1368] Providing any Owner with the following documents within ten (10) days of the mailing or delivery of a written request therefor and receipt of the costs to prepare and reproduce said documents:
- (a) A copy of the Governing Documents;
 - (b) A copy of the most recent financial statement;
 - (c) A written statement from an authorized representative of the Association specifying (i) the amount of the Association's current Regular and Special Assessments other fees; (ii) the amount of any Assessments levied on the Owner's Separate Interest that are unpaid on the date of the statement; and (iii) the amount of late charges, interest, and costs of collection that, as of the date of the statement, are or may be made a lien on the Owner's Separate Interest as provided in Civil Code Section 1367; and

- (d) A statement noting any change in the Association's current Assessments and fees which have been approved by the Board, but which have not become due and payable as of the date disclosure is provided pursuant to this Section.

7.3 **Limitations on Powers.** [DRE Reg. 2792.21(b)] Notwithstanding the provisions of Section 7.2, the Board shall be prohibited from taking any of the following actions, except with the vote or written assent of a majority of the total Voting Power of those Members voting, so long as a quorum is present or represented at the meeting:

- 7.3.1 Entering into a contract with a third person under which 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:
 - (a) A management contract the terms of which have been approved by the Federal Housing Administration or Veterans Administration or which provides that the Association may terminate such contract with or without cause upon thirty (30) days written notice; provided however, that the term of any management contract may be renewable by agreement of the parties for successive one year (1 yr.) periods;
 - (b) A contract with a public utility if the rates charged are regulated by the Public Utilities Commission; provided, however, that the term shall not exceed the shortest term for which the utility will contract at the regulated rate; and
 - (c) Prepaid casualty and/or liability insurance of not more than three years (3 yrs.) duration; provided that the policy permits short rate cancellation by the insured.
- 7.3.2 [DRE Reg. 2792.21(b)(2)] 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;
- 7.3.3 Selling during any fiscal year property of the Association having an aggregate fair market value in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, except as part of another transaction to trade-in or replace the property being sold or for a Separate Interest obtained through foreclosure of the Association's lien or purchased to protect the Association's lien rights;
- 7.3.4 Borrowing money, pledging the right to exercise its assessment powers in connection with obtaining funds to repay a debt of the Association, incurring indebtedness and executing promissory notes or other evidences of debt for the Association, if the amount of the transaction exceeds five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;

- 7.3.5 [Corp. Code §7224] Filling a vacancy on the Board created by the removal or recall of a Director by the Members which vacancy shall be filled by a plurality vote of the Members;
- 7.3.6 Paying compensation to Directors or 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; or
- 7.3.7 [Civil Code Section 1365.5(c)] Expending funds designated as Reserve funds, except as permitted by Civil Code Section 1365.5(c), as amended from time to time.

7.4 **General Duties of the Board.** It shall be the duty of the Board to:

- 7.4.1 [Corp. Code §8320] Cause to be kept a complete record of all its acts and corporate affairs (including adequate and correct books and records of account, minutes of the proceedings of its Members, Board and committees of the Board, a record of the Members giving their names and addresses and the class of Membership held by each), and to present a general statement of its acts and corporate affairs 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 Voting Power of Members;
- 7.4.2 Supervise all Officers, agents and employees of this Association, if any, and to see that their duties are properly performed;
- 7.4.3 [Civil Code §1365.7] Procure and maintain adequate fire, casualty, liability and hazard insurance, as required by the Declaration, in at least the minimum limits established by Civil Code Section 1365.7, and otherwise to insure adequately the property which is owned either by the Association or by its Members in common;
- 7.4.4 Cause all Officers or employees entitled to withdraw funds of the Association to be bonded;
- 7.4.5 Invest Reserve funds and any other surplus funds of the Association only in the name of the Association and only in financial obligations of the United States of America or in financial institutions whose deposits are insured by an agency of the United States of America, including, by way of illustration and not limitation, F.D.I.C. and F.S.L.I.C.;
- 7.4.6 Maintain, repair and restore those portions of the Development which are required by the Governing Documents;

7.5 **Financial Documentation; Preparation, Reporting and Review Responsibilities of the Board.** With regard to the preparation, reporting and review of the Association's financial documentation, the Board shall have the following responsibilities:

- 7.5.1 [Civil Code §1365(a); DRE Reg. 2792.22(a)(1)] Preparing a pro forma operating budget for each fiscal year, and distributing a copy thereof to each Owner not less

than forty-five (45) and not more than sixty (60) days prior to the beginning of the fiscal year. The budget shall contain at least the following:

- (a) The estimated revenue and expenses on an accrual basis;
- (b) A summary of the Association's reserves based upon the most recent review or study conducted pursuant to Section 1365.5 of the California Civil Code, which shall be printed in bold type and include all of the following:
 - (i) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component;
 - (ii) As of the end of the fiscal year for which the study is prepared: (1) the current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components, and (2) the current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain those major components; and
 - (iii) The percentage that the amount determined for purposes of clause (2) of subparagraph (ii), above, is of the amount determined for purposes of clause (1) of subparagraph (ii), above.

The summary of the Association's reserves disclosed pursuant to this Section shall not be admissible in evidence to show improper financial management of the Association, provided that other relevant and competent evidence of the financial condition of the Association is not made inadmissible by this provision;

- (c) A statement as to whether the Board has determined or anticipates that the levy of one or more Special Assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor; and
- (d) A general statement addressing the procedures used by the Board for the calculation and establishment of those Reserves to defray the future repair, replacement, or additions to those major components that the Association is obligated to maintain, or other components identified by the Board.
- (e) [Civil Code §1363.05] A statement informing Members of their right to obtain copies of the minutes of meetings of the Board, and how and where those minutes may be obtained. If not mailed with the annual budget materials, this statement may be sent at the time of any general mailing to the entire Membership.
- (f) In lieu distributing the pro forma budget, the Board may elect to distribute a summary of the statement to each Owner with a written notice, in at least 10-point bold type on the front page of the summary, that the statement is

available at the business office of the Association or other designated location and that copies will be provided upon written request and at the expense of the Association. The Association shall provide the copy to the Owner within five (5) working days after receipt of the Owner's written request by first-class United States mail.

7.5.2 [Civil Code §1365(b); Corp. Code §8321; DRE Reg. 2792.22(a)(3)] Preparing and distributing an annual report, within one hundred twenty (120) days after the close of each fiscal year, consisting of the following:

- (a) A balance sheet as of the end of the fiscal year;
- (b) An operating (income) statement for the fiscal year;
- (c) A statement of changes in financial position for the fiscal year; and
- (d) For any fiscal year in which the gross income to the Association exceeds \$75,000.00, a copy of an audit of the Association's financial statement prepared in accordance with generally accepted accounting principles by a Certified Public Accountant, licensed to practice in California. [Corp. Code §8321; DRE Reg. 2792.22(b)] If the gross income to the Association does not exceed \$75,000, and the annual report is not prepared by a Certified Public Accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the financial statements in the annual report were prepared from the books and records of the Association without independent audit or review.
- (e) [Corp. Code §8322] Information concerning loans, guarantees, and indemnifications involving Directors and Officers and such other information required to be reported under Corporations Code Section 8322.
- (f) [Corp. Code §8321(a) & DRE Reg. 2792.22] A statement of the place where the names and addresses of the current Members are located.

7.5.3 [Civil Code §1365(d); DRE Reg. 2792.22(c)] Preparing and distributing to the Owners, during the sixty (60) day period before the beginning of each fiscal year, a statement describing the Association's policies and practices in enforcing lien rights or other legal remedies for default in payment of its Assessments against Owners;

7.5.4 [Civil Code Section 1365.5] Causing, at least once every three (3) years, a study of the reserve account requirements of the Development to be conducted if the current replacement value of the major components which the Association is obligated to repair, replace, restore or maintain is equal to or greater than one-half (½) of the gross budget of the Association for any fiscal year. The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review. This study shall, at a minimum, include:

- (a) Identification of the major components which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years;
- (b) Identification of the probable remaining useful life of the components identified in (a), above, as of the date of the study;
- (c) An estimate of the cost of repair, replacement, restoration or maintenance of the components identified in (a), above, during and at the end of their useful life; and
- (d) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain the components identified in (a), above, during and at the end of their useful life, after subtracting total reserve funds as of the date of the study. (e.g. If a component costs \$100,000 to replace, \$50,000 is currently set aside in the reserves for its replacement, and it has an estimated 10 years of remaining useful life, then the estimate of the total annual contribution to reserves for this component should be \$5000).

As used herein, the term "reserve account requirements" means the estimated funds which the Board has determined are required to be available at a specified point in time to repair, replace, or restore those major components which the Association is obligated to maintain; and

7.5.5 [Civil Code §1365.5(a); DRE Reg. 2792.22(d)] Reviewing the following:

- (a) A current reconciliation of the operating and reserve accounts of the Association on at least a quarterly basis;
- (b) The actual reserve revenues and expenses for the current year compared to the budget for the current year on at least a quarterly basis;
- (c) An income and expense statement for the operating and reserve accounts of the Association on at least a quarterly basis; and
- (d) The most recent account statements prepared by the financial institution where the Association has its operating and reserve accounts.

7.6 Disciplinary Actions Against Owners. [Civil Code §§1363 & 1363.05; Corp. Code §7341; DRE Reg. 2792.26] In connection with the general power of enforcement described above, the Association may discipline Owners for violation of any of the provisions of the Governing Documents.

The Board may suspend a Member's rights and privileges of ownership, including the Member's voting rights and rights to use the Common Area and facilities, for any period of time during which the assessment, late charges, costs of collection or other related charges on his or her Separate Interest remains unpaid. The Board shall also be empowered to suspend a Member's rights and privileges, including the Member's voting rights and rights to use the Common Area and facilities, for a period not to exceed thirty (30) days, and to impose monetary penalties or other appropriate discipline for any other failure to comply

with the Governing Documents, provided that the procedures for notice and hearing, satisfying the minimum requirements of Corporations Code Section 7341, as amended from time to time, are followed before a decision to impose such discipline is reached.

Any procedure for Owner discipline must be carried out in good faith and in a fair and reasonable manner. While a court may find other procedures to be fair and reasonable, the following procedure is deemed to be fair and reasonable according to Corporations Code Section 7341, and Civil Code Section 1363 in effect at the time these provisions were drafted:

- 7.6.1 The accused Owner shall be given written notice of (1) the nature of any alleged violation, (2) the specific suspension, monetary fine, and/or other discipline proposed, and (3) the date, time, and place of the hearing, and (4) a statement that the member has a right to attend and address the board at the meeting.
- 7.6.2 The accused Owner shall be given an opportunity for a hearing before the Board at least five (5) days before the proposed suspension, monetary penalty or other discipline becomes effective;
- 7.6.3 If the Owner fails to respond to the notice, the opportunity for a hearing shall be deemed to be waived, and the Owner may be found guilty by default of any violations which were alleged.
- 7.6.4 The hearing, if not waived by the Owner, shall be conducted by the Board, or by another body or committee authorized by the Board, to determine whether or not the proposed discipline should be imposed.
- 7.6.5 If the Association imposes any disciplinary action against the Owner, the Association shall give the Owner written notice of any such disciplinary action, either by personal delivery or first-class mail, within 15 days after the hearing.
- 7.6.6 The notices required by this section may be given in any manner reasonably calculated to provide actual notice to the Owner, provided that any notice given by mail must be sent either by first class, certified or registered mail, postage prepaid, to the last address of the Owner as shown on the Association's records.
- 7.6.7 Notwithstanding the foregoing, under circumstances involving conduct that constitutes (a) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of neighboring Owners; (b) a traffic or fire hazard, (c) a threat of material damage to, or destruction of, the Common Area; or (d) a violation of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether a violation has occurred (e.g. parking violations), the Board or its agents may undertake immediate corrective or disciplinary action and conduct a hearing as soon thereafter as reasonably possible, if either (1) requested by the offending Owner within five (5) days following the Association's actions, or (2) on its own initiative;
- 7.6.8 The amount of any monetary penalty shall be established from time to time for each type of violation in an amount to be determined by the Board, and a schedule thereof shall be distributed to the Members by personal delivery or first class mail.

Distribution of additional schedules is not required unless there are any changes to an existing schedule;

7.6.9 Any suspension of an Owner's Membership privileges shall not exceed thirty (30) days for each violation, except for cases where the Owner has failed to pay assessments, late charges, costs of collection or other related charges on his or her Separate Interest.

7.6.10 Except as provided in the Declaration relating to foreclosure for failure to pay Assessments, or as a result of the judgment of a court or a decision arising out of arbitration, the Association shall in no way abridge the right of any Owner to the full use and enjoyment of his or her Separate Interest or the utilities serving such Separate Interest, and no Owner may be expelled from the Association.

The provisions of this section are not required with respect to the levying of late charges, interest or reasonable costs of collection (including attorney's fees) against an Owner who is delinquent in the payment of assessments.

7.7 *Expending Reserve Funds.* [Civil Code §§1365.5] The Board may not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement or maintenance of, or litigation involving the repair, restoration, replacement or maintenance of, major components which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established. However, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements or other expenses.

The transferred funds shall be restored to the reserve fund within one (1) year of the date of the initial transfer, except that the Board may, upon making a finding supported by documentation that a delay would be in the best interests of the Development, delay the restoration until the time which the Board reasonably determines to be necessary. The Board shall exercise prudent fiscal management in maintaining the integrity of the reserve funds, and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limits required by this Section. This Special Assessment is subject to the limitation imposed by Section 1366 of the California Civil Code.

When the Board decides to use reserve funds or to transfer money temporarily from the reserve fund to pay for litigation, the Board shall notify the Members of that decision in the next available mailing to Members and of the availability of an accounting of those expenses. The Association shall make an accounting of expenses related to the litigation on at least a quarterly basis. The inspection shall be available for inspection by Members at the Association's office.

ARTICLE 8 - OFFICERS

8.1 *Enumeration of Officers.* [Corp. Code §7213(a)] The officers of this Association shall be a President, a Vice-President, and a Secretary, each of whom shall be Directors. The Treasurer shall be a Member and may, but need not be a Director. Any number of offices may be held by the same person except for the offices of (a) President and Treasurer, and (b) President and Secretary.

8.2 *Other Officers.* 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 determine from time to time.

8.3 *Election of Officers.* The officers shall be elected annually by the Board, as soon as reasonably possible after the annual meeting of the Members.

8.4 *Term of Officers.* [Corp. Code §7213(b)] The Officers of this Association shall be elected annually by the Board, and each shall hold office until the new Directors take office after next annual meeting unless he or she shall sooner resign, or shall be removed, or otherwise become disqualified to serve.

8.5 *Resignation and Removal of Officers.* [Corp. Code §7213(b)] Any Officer may be removed from office by the Board, with or without cause. Any Officer may resign, at any time, by giving written notice to the Board, the President or the Secretary, or by giving verbal notice at a Board meeting such that the resignation is recorded in the minutes of the meeting. Such resignation shall take effect on the date of receipt of such notice, or at any later time specified therein. Unless otherwise specified in the notice, the acceptance of such resignation shall not be necessary to make it effective.

8.6 *Return of Association Materials.* Upon resignation, removal or expiration of term, officers shall return to the Association those Association materials in their possession.

8.7 *Vacancies in Offices.* 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 or she replaces.

8.8 *Duties.* Unless otherwise delegated by the Board to a management company or to other persons, the duties of each officer shall be as follows:

8.8.1 The President shall:

- (a) Preside over all meetings of the Members and of the Board;
- (b) Sign, as President, all deeds, contracts, and other written instruments that have been approved by the Board, unless the Board, by duly adopted resolution, authorizes the signature of a lesser officer;
- (c) Call meetings of the Board whenever he or she deems it necessary, in accordance with any rules and notice requirements imposed by the Board and the Governing Documents. The notice period shall not be less than seventy-two (72) hours except in the case of emergencies;
- (d) Have, subject to the approval of the Board, general supervision, direction, and control of the affairs of the Association; and
- (e) Discharge any other duties required of him or her by the Board.

8.8.2 The Vice-President shall:

- (a) Act in the place and in the stead of the President in his or her absence, inability, or refusal to act; and
- (b) Exercise and discharge any other duties required of him or her by the Board. In connection with any such additional duties, the Vice-President shall be responsible to the President.

8.8.3 The Secretary shall:

- (a) Record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members;
- (b) Keep the seal of the Association, if any, and affix it on all papers requiring the seal;
- (c) Serve all required notices of meetings of the Board and the Members;
- (d) Keep current records showing the names and addresses of all Members; and
- (e) Sign, as Secretary, all deeds, contracts, and other written instruments that have been approved by the Board, if the instruments that have been approved by the Board and signed by the President require a second Association signature and the Board has not passed a resolution authorizing another officer to sign in the place and stead of the Secretary.

8.8.4 The Treasurer shall:

- (a) Receive and deposit all of the funds of the Association in any bank or banks selected by the Board;
- (b) Be responsible for and supervise the maintenance of books and records to account for Association funds and other Association assets;
- (c) Sign all checks and promissory notes of the Association;
- (d) Disburse and withdraw Association funds in the manner specified by the Board; and
- (e) Prepare and distribute the financial statements for the Association required by Section 7.5.2.

8.9 **Compensation.** An officer shall not receive any compensation for any service he or she may render to the Association; provided, however, that any officer may be reimbursed for actual out of pocket expenses incurred by the officer in the performance of his or her duties.

8.10 **Delegation.** With Board approval, an officer may delegate his or her powers and duties to any committee, employee or agent of the Association, including, but not limited to a community association manager.

ARTICLE 9 - COMMITTEES

The Board may appoint any committees authorized by the Declaration, subject however, to the provisions of Section 7.2.9 above. In addition, the Board may appoint such other committees as it deems appropriate to carry out the purposes of the Association.

ARTICLE 10 - BOOKS AND RECORDS

10.1 **Required Books and Records.** [Corp. Code §8320] The Association shall maintain at its principal office:

10.1.1 Copies of the Governing Documents as last amended;

10.1.2 Adequate and correct books and records of account;

10.1.3 Written minutes of the proceedings of its Members, of its Board, and of committees of its Board; and

10.1.4 A Membership register containing each Member's name, mailing address and voting rights.

10.2 **Manner of Keeping Minutes and Other Records.** [Corp. Code §8320(b)] Minutes shall be kept in written form. Other books and records shall be kept either in written form or in any other form capable of being converted into written form.

10.3 **Inspection by Members.** [Civil Code §§1363 & 1363.05; Corp. Code §7160 & 8330; DRE Reg. 2792.23(a) & (b)] Subject to the limitations on inspection set forth in the Corporations Code, including those found in Section 8330 thereof, the required books and records of the Association identified in Section 10.1, shall be subject to inspection by any Member or by his or her duly appointed representative, at all times during reasonable business hours. Either minutes, minutes proposed for adoption marked to indicate draft status, or a summary of the minutes of any meeting of the Board, other than an Executive Session, shall be available to Members within 30 days after the meeting. The Governing Documents and minutes shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at a reasonable cost.

The Board shall establish reasonable rules with respect to:

10.3.1 Notice to be given to the custodian of the records by the Member desiring to make the inspection;

10.3.2 Hours and days of the week when such an inspection may be made; and

10.3.3 Payment of the costs of reproducing copies of documents requested by a Member.

10.4 **Inspection by Directors.** [Corp. Code §8334; DRE Reg. 2792.23(c)] Except to the extent limited by law, every Director of the Association shall have the absolute right, at any reasonable time, to

inspect the Common Area and all books, records and documents of the Association. The right of inspection by a Director shall include the right to make extracts and copies of documents at his or her expense.

ARTICLE 11 - NON-LIABILITY AND INDEMNIFICATION

11.1 *Definition of Agent.* For purposes of this Article, "Agent" means any present or former Director, officer, committee member or any other employee or agent of the Association.

11.2 *Non-liability.* [Corp. Code §7237; Civil Code §1365.7] Except as specifically provided in the Governing Documents or as required by law, no right, power or responsibility conferred on the Board or any committee by the Governing Documents shall be construed as a duty, obligation, or disability charged upon any Agent. No Agent shall be liable to any party (other than the Association or a party claiming in the name of the Association) for injuries or damage resulting from the Agent's acts or omissions within what the Agent reasonably believed to be the scope of his or her Association duties ("Official Acts"), except to the extent that the injuries or damage result from the Agent's willful or malicious misconduct. No Agent shall be liable to the Association (or to any party claiming in the name of the Association) for injuries or damage resulting from the Agent's Official Acts, except to the extent that the injuries or damage result from the Agent's negligence or willful or malicious misconduct.

11.3 *Indemnification.* The Association shall pay all expenses actually and reasonably incurred by, and satisfy any judgment or fine levied against, any Agent as a result of any action or threatened action against the Agent to impose liability on the Agent for his or her Official Acts, provided that:

- 11.3.1 The Board determines that the Agent acted in good faith and in a manner the Agent reasonably believed to be in the best interests of the Association;
- 11.3.2 In the case of a criminal proceeding, the Board determines that the Agent had no reasonable cause to believe his or her conduct was unlawful;
- 11.3.3 In the case of an action or threatened action by or in the right of the Association, the Board determines that the Agent acted with the care (including reasonable inquiry) that an ordinarily prudent person in a like position would use under similar circumstances; and
- 11.3.4 Provided that there is no policy of insurance which is available to pay such expenses.

11.4 *Approval by Board.* Any determination of the Board required under this Article must be approved by a majority vote of a quorum consisting of Directors who are not parties to the action or threatened action giving rise to the indemnification. If the Board fails or refuses to make any such determination, the determination may be made by the court in which the proceeding is or was pending, or by the vote or written consent of a majority of a quorum of the Members, provided that the Agent to be indemnified shall not be entitled to vote.

11.5 *Payments.* Payments made pursuant to this Article shall include amounts paid and expenses incurred in settling the action or threatened action. This Article shall be construed to authorize payments and indemnification to the fullest extent now or hereafter permitted by applicable law.

11.6 *Insurance.* The Association may purchase and maintain insurance on behalf of and to indemnify its Agents, to the extent and under the circumstances provided in this Article or by law.

ARTICLE 12 - CORPORATE SEAL

The Association shall have a seal, in circular form, having within its circumference the words: Altamira Management Association No. 1, a California corporation.

ARTICLE 13 - MISCELLANEOUS

13.1 *Fiscal Year.* The fiscal year of the Association shall be set by the Board. The Board shall have the authority to change the fiscal year for any proper business purpose.

13.2 *Parliamentary Authority.* [Civil Code §1363] All meetings of this Association shall be conducted in accordance with a recognized system of parliamentary procedure or such special parliamentary procedures as the Board may adopt. Where the Board intends to adopt a particular text as its system of parliamentary authority, the Board shall note in the minutes the name, publisher and date of publication, which parliamentary authority shall control over any conflicts with any other parliamentary authority. If there is any conflict between any special parliamentary procedures the Board chooses to adopt and the Board's system of parliamentary authority, the special parliamentary procedures the Board has adopted shall control.

13.3 *Order of Business.* The order of business at all meetings of the Members shall be as follows:

- 13.3.1 Determination of Quorum
- 13.3.2 Proof of Notice of Meeting or Waiver of Notice
- 13.3.3 Reading (or Waiver of Reading) Minutes of Preceding Meeting
- 13.3.4 Reports of Officers
- 13.3.5 Election of Board (at Annual Meetings Only)
- 13.3.6 Unfinished Business
- 13.3.7 New Business

As provided in Section 6.7, there shall be a reasonable time for Members to speak to the Board at any meeting of the Members at a time to be set by the Board.

13.4 *Resale of Separate Interests; Documents To Be Provided To Prospective Purchasers; Penalties.* [Civil Code §1368(a)] The Owner of a Separate Interest shall provide to a prospective purchaser the following and such other information as may be required by Civil Code Section 1368, as amended from time to time hereafter:

13.4.1 A copy of the Governing Documents.

13.4.2 A copy of the most recent financial statement required to be distributed by Civil Code Section 1365 and Section 7.5.2 of the Bylaws.

13.4.3 A true statement in writing from an authorized representative of the Association as to the amount of any assessments levied upon the Owner's Separate Interest in the Common Interest Development which are unpaid on the date of the statement. The statement shall also include true information on late charges, interest, and costs of collection which, as of the date of the statement, are or may be made a lien upon the Owner's Separate Interest.

13.4.4 Any change in the Association's current regular and special assessments and fees which have been approved by the Board but have not become due and payable as of the date the Association provides the documents required by this section.

[Civil Code §1368(b)] Upon written request, the Association shall, within ten (10) days after the mailing or delivery of the request, provide the Owner, who made the request, with a copy of the items specified in the foregoing paragraph or which may hereafter be required by Civil Code Section 1368, as amended from time to time. The Association may charge a fee for this service which shall not exceed the Association's reasonable cost to prepare and reproduce the requested items, unless otherwise permitted by law.

[Civil Code §1368(c)] The Association shall not impose or collect any assessment, penalty, or fee in connection with a transfer of title or any other interest except the Association's actual costs to change its records and the costs authorized in providing the documents requested under the provisions set forth in the preceding paragraph.

[Civil Code §1368(d)] Any person or entity who willfully violates the provisions set forth in this section shall be liable to the purchaser of a Separate Interest for actual damages occasioned thereby and, in addition, shall be required to pay a civil penalty in an amount not to exceed five hundred dollars (\$500). In an action to enforce this liability, the prevailing party is entitled to be awarded reasonable attorney's fees.

[Civil Code §1368(e)] Nothing in this section affects the validity of title to real property transferred in violation of this section.

[Civil Code §1368(f)] In addition to the requirements set forth above and in Civil Code Section 1368, an Owner transferring title to a Separate Interest must comply with the standard real estate disclosure requirements set forth in Civil Code Sections 1102 *et seq.*, as amended from time to time hereafter.

ARTICLE 14 - AMENDMENTS

These Bylaws may be amended by the vote (or written consent) of a majority of the Voting Power of those Members voting, either in person or by proxy, at a regular or special meeting of the Members at which a quorum is present. Notwithstanding the foregoing, the percentage of the Voting Power of the Members necessary to amend a specific clause or provision in these Bylaws shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause or provision.

If the terms of these Bylaws are based on a statute or administrative regulation which is later amended, or if a statute or administrative regulation is enacted which establishes mandatory obligations on the Association, its Members, or the Board, then, after obtaining a legal opinion that an amendment of the Bylaws is required to conform to the requirements of the law, the Board, by majority vote, shall have the authority to amend the Bylaws to make the Bylaws conform to the requirements of the law. The Secretary

shall certify any such amendment to the Bylaws, and the Association shall provide copies of any such amendment to the Members.

These Bylaws may also be amended in any manner now or hereafter permitted by law.

Whenever an amendment or new Bylaw is adopted, it shall be placed in an appropriate location with the official copy of the Bylaws and shall recite the date of the meeting at which the amendment was enacted or written assent was filed. If any Bylaw is repealed, the fact of repeal, with the date of the meeting at which the repeal was enacted or written assent was filed, shall be stated in said Bylaws.

CERTIFICATE OF SECRETARY

OF

ALTAMIRA MANAGEMENT ASSOCIATION NO. 1
A California Nonprofit Mutual Benefit Corporation

I, the undersigned, do hereby certify the following:

- (a) I am the duly elected Secretary of Altamira Management Association No. 1, a California nonprofit mutual benefit corporation.
- (b) the foregoing Amended and Restated Bylaws of said Association received the required approval of the Membership of the Association; and
- (c) the foregoing Amended and Restated Bylaws have been duly adopted as the Amended and Restated Bylaws of the Association as of _____, 2____, which is the date on which a Membership meeting was held at which the Amended and Restated Bylaws amendments were approved or on which the written assents were filed approving the Amended and Restated Bylaws.

DATE: June 11, 2001

Eugene R. Kofler
Secretary