

BYLAWS
OF
THE PRESERVE AT DEL MAR
HOMEOWNERS ASSOCIATION

Table of Contents

FIRST AMENDED AND FULLY RESTATED BYLAWS OF THE PRESERVE AT DEL MAR HOMEOWNERS ASSOCIATION, INC. A California Nonprofit Mutual Benefit Corporation

Article I. Name and Location

Section 1.1	Name	1
Section 1.2	Location	1

Article II. Definitions

Section 2.1	Incorporation	1
Section 2.2	Declaration	1

Article III. Membership

Section 3.1	Eligibility	1
Section 3.2	Membership Classes and Voting Rights	2
	(a) Class A Members	2
	(b) Class B Members	2
Section 3.3	Shared Membership Rights	2
Section 3.4	Transfer of Membership	2
	(a) Required Disclosures to New Members	2

Article IV. Meetings of Member

Section 4.1	Place of Meetings	3
Section 4.2	Annual Meetings	3
Section 4.3	Special Meetings	3
Section 4.4	Notice and Place of Meetings	4
Section 4.5	Quorum	4
Section 4.6	Loss of Quorum	5
Section 4.7	Adjournment of Meetings	5
Section 4.8	Proxy Votes	5
Section 4.9	Action by Written Ballot Without A Meeting	5
Section 4.10	Conduct of Meetings	6
Section 4.11	Open Meeting Act Requirements	6
Section 4.12	Waiver of Notice or Consent by Absent Members	7
	(a) Written Waiver or Consent	7
	(b) Eligibility to Vote in Annual Election of Directors	7
	(c) Waiver by Attendance	7
Section 4.13	Record Dates	8
	(a) Record Dates Established by the Board	8
	(b) Failure to Board to Fix a Record Date	8
Section 4.14	Suspension of Privileges	9
	(a) Suspension of Privileges	9
	(b) Written Complaint	9
	(c) Notice of Hearing	10

	(d) Hearing	10
Section 4.15	Inspection of Election	10
Section 4.16	Order of Business	11
Section 4.17	Meeting Requirements for Actions Against Declarant.....	11

Article V. Directors

Section 5.1	Number and Qualification	12
Section 5.2	Powers and Duties	12
Section 5.3	Prohibitions.....	14
Section 5.4	Self-Dealing Transactions	15
Section 5.5	Election Process.....	15
	(a) Nominating Committee	15
	(b) Election.....	16
Section 5.6	Term of Office	16
Section 5.7	Vacancies.....	16
Section 5.8	Removal and Resignation of Directors.....	16
Section 5.9	Fees and Compensation	17
Section 5.10	Restriction on Interested Directors	17
Section 5.11	Annual Meeting	17
Section 5.12	Regular Meetings.....	17
Section 5.13	Special Meetings.....	18
Section 5.14	Open Meetings.....	18
Section 5.15	Executive Session.....	18
Section 5.16	Waiver of Notice.....	18
Section 5.17	Quorum	18
Section 5.18	Action Without Meeting	19
Section 5.19	Meetings with Members	19

Article VI. Committees

Section 6.1	Committees of Directors.....	19
Section 6.2	Meetings and Action of Committees	20
Section 6.3	Design Review Committee	20

Article VII. Officers

Section 7.1	Designation	20
Section 7.2	Election of Officers.....	20
Section 7.3	Removal of Officers	21
Section 7.4	President	21
Section 7.5	Vice President.....	21
Section 7.6	Secretary	21
Section 7.7	Treasurer	21
Section 7.8	Resignation of Officers.....	21
Section 7.9	Vacancies in Offices	21

Article VIII. Records and Reports

Section 8.1	Inspection Rights	21
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Section 8.2	Maintenance and Inspection of Articles of Incorporation and Bylaws	22
Section 8.3	Maintenance and Inspection of Other Corporate Records.....	22
Section 8.4	Inspection by Director	23
Section 8.5	Annual Report.....	23
 Article IX. Fiscal Management		
Section 9.1	Fiscal Year	23
Section 9.2	Budgets and Financial Statements	23
Section 9.3	Review of Fiscal Affairs.....	26
Section 9.4	Execution of Association Documents.....	26
 Article X. Indemnification		
Section 10.1	26
 Article XI. Condemnation		
Section 11.1	27
 Article XII Construction and Definitions		
		28
 Article XIII. Notices		
		28
 Article XIV. Noncompliance and Enforcement		
Section 14.1	Attorneys Fess and Costs.....	28
Section 14.2	Policies and Procedures	28
 Article XV. Amendments		
Section 15.1	Amendment.....	28
Section 15.2	Amendment to California Statutes.....	29

**FIRST AMENDED AND FULLY RESTATED
BYLAWS OF
THE PRESERVE AT DEL MAR HOMEOWNERS ASSOCIATION, INC.
A California Nonprofit Mutual Benefit Corporation**

**ARTICLE I
NAME AND LOCATION**

Section 1.1. Name. The name of this corporation is The Preserve at Del Mar Homeowners Association, Inc., (the "Association"). The Association shall govern, through its board of directors ("Board of Directors," "Board," or "Directors") and its management company, if any, property commonly known as The Preserve at Del Mar, consisting of a subdivision divided into thirty-two (32) residential lots, improved or to be improved, with primary residential structures (the lots and any improvements thereon shall individually and collectively be referred to as "Lots") and other attendant buildings, together with certain customary appurtenances and facilities (the "Project").

Section 1.2. Location. The principal office for the transaction of the business of the Association ("Principal Executive Office") is located at 2270 Camino Vida Roble, Suite P, Carlsbad, California, 92009. The Board of Directors of the Association may change the Principal Executive Office from one location to another within the County of San Diego. A Declaration of Conditions, Covenants, and Restrictions, and any amendments thereto (the "Declaration"), has been recorded against the Project in accordance with California law.

**ARTICLE II
DEFINITIONS**

Section 2.1. Incorporation. The definitions contained in the Declaration are incorporated by reference herein.

Section 2.2 Declaration. "Declaration" shall mean the First Amended and Fully Restated Enabling Declaration of Conditions, Covenants and Restrictions for The Preserve at Del Mar Homeowners Association, Inc. as recorded on November 22, 2004, in the official records of the County Recorder for the County of San Diego, California, as document number 04-1104521.

**ARTICLE III
MEMBERSHIP**

Section 3.1. Eligibility. The owners of each Lot, including Declarant, shall constitute the Association, in accordance to the Classes provided for in Section 3.2. Each Owner shall be a member of the Association. Membership in the Association shall be appurtenant to Lot ownership, and each Owner shall automatically become a Member upon the close of escrow for the purchase of such Owner's Lot. Ownership of a Lot shall be the sole qualification for Membership. Membership shall not be denied to any Owner because of race, sex, color, religion, creed, marital status, sexual orientation, national origin, AIDS, ancestry, or conditions of physical or mental disability.

Section 3.2 Membership Classes and Voting Rights. Membership shall be held as provided in the Declaration. Voting rights attributable to Lots shall not vest until assessments against those Lots have been levied by the Association. The Association shall have two classes of voting membership:

(a) **Class A Members.** Class A Members shall be all Owners, with the exception of Declarant, and shall be entitled to one vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

(b) **Class B Members.** Class B Member(s) shall be Declarant who shall be entitled to three (3) votes for each Lot owned. The Class B Membership shall cease to exist and irreversibly converted to Class A membership on the happening of the earliest of the following to occur:

(1) On the second anniversary of the first close of escrow of a Lot, in a Phase covered by the most recently issued Public Report for any Phase of the Project;

(2) The fourth anniversary of the first close of escrow of a Lot covered by the original Public Report for the first Phase of the Project.

Section 3.3. Shared Membership Rights. Membership rights may be shared between and exercised jointly by the members of a household, provided that there shall be only one Membership per Lot and only one vote per Membership.

Section 3.4. Transfer of Membership. Membership shall be appurtenant to the Lot giving rise to such Membership and shall not be assigned, transferred, pledged, conveyed, or alienated in any way, except upon the transfer of title to said Lot, and then only to the transferee of title to said Lot. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Lot shall operate automatically to transfer Membership in the Association appurtenant to the New Owner of the Lot.

(a) **Required Disclosures to New Members.** A selling Member shall provide the following to prospective purchasers of the Membership:

(1) A copy of the Association's "Governing Documents," including, but not limited to, the Association's Articles of Incorporation, Bylaws, Declaration, Design Guidelines, Rules and Regulations and Policies and Procedures, if any;

(2) A copy of the Association's most recent financial statement;

(3) A statement from an authorized representative of the Association as to the amount of the Association's current Assessments (as set forth in the Declaration) and fees, the amount of any unpaid Assessments owed by the departing Member, and the amounts of any pending increases in Assessments;

(4) A copy or a summary of any notice previously delivered to the selling Member by the Board that sets forth any alleged violation of the Governing Documents that remains unresolved at the time of delivery of the documents set forth in this Section 3.3(a); and

(5) A copy of the preliminary list of defects, if any, that has been delivered to any builder, developer, or general contractor in an effort to commence an action for damages for defect in design or construction against such builder, developer, or general contractor. The preliminary list of defects must also include a statement that a final determination has not been made regarding whether the preliminary list of defects is accurate and complete.

ARTICLE IV **MEETINGS OF MEMBERS**

Section 4.1. Place of Meetings. Meetings of the Membership shall be held at the principal office or place of business of the Association or at such other suitable place convenient to the Membership as may be designated by the Board of Directors.

Section 4.2. Annual Meetings. The first meeting of the Members (organizational meeting), whether an annual or special meeting, shall be held within one (1) year from the date of the incorporation of the Association or within forty-five (45) days after the closing of the sale of the Project interest which represents the fifty-first (51st) percentile interest authorized for sale under the first public report for the Project, which ever occurs first, but in no event later than six (6) months after the close of escrow on the sale of the first Lot in the Project. The date, time and place of the next annual meeting, shall be set by the Board at the organizational meeting so as to occur no later than ninety (90) days after the close of the Association's fiscal year. Subsequent annual meetings of the Association shall be held within thirty (30) days of the same day of the same month of each year thereafter at such time as the Board directs. At the annual meeting there shall be elected a Board of Directors by written ballot of the Members in accordance with the requirements of Section 4.8 and Section 5.5 of these Bylaws. The Members may also transact such other business of the Association as may properly come before them.

Section 4.3. Special Meetings. Special meetings of the Membership shall be promptly scheduled at any time by the Board 1) in response to the vote of a majority of the Board of Directors, 2) in response to a request by the President, or 3) upon written request of the Members representing five percent (5%) of the total voting power of the Association.

Within twenty (20) days after receipt of a resolution or request demanding a special meeting, the Secretary shall give written notice thereof to all of the Members as herein provided, which shall specify the date, time, and place of the meeting and the matters to be considered at such meeting. Except in cases of emergency, the meeting shall be set for a date not fewer than fifteen (15) days nor more than thirty (30) days after the receipt of the request. The provisions relating to a Special Meeting in the Declaration shall be incorporated herein by reference as though fully set forth herein.

Section 4.4. Notice of Meetings. Written notice of each meeting of Members, annual or

special, shall be given by or at the direction of the Secretary or person authorized to call the meeting, by mailing a copy of such notice, first class mail, postage prepaid, at least ten (10) days but not more than ninety (90) days before such meeting (except in emergency situations) to each First Lender requesting such notice and to all Members, addressed to the Members' addresses last appearing on the books of the Association or supplied by such Members to the Association for the purpose of notice. The notice shall specify the place, date, and hour of the meeting and (i) in the case of a special meeting, the general nature of the business to be transacted, and no other business may in that case be transacted, or (ii) in the case of the annual meeting and general membership meeting, those matters which the Board of Directors, at the time of giving the notice, intends to present for action by the Members.

In the case of the organizational meeting hereinabove referred to, written notice of the meeting may be given by Declarant. If action is proposed to be taken at any meeting for approval for any of the following proposals, the notice shall also state the general nature of the proposal. Member action on such items is invalid unless the notice or written waiver of notice states the general nature of the proposal(s): (1) removing a director without cause, (2) filling vacancies on the Board of Directors by the Members, (3) amending the Articles of Incorporation, (4) approving a contract or transaction in which a director has a material financial interest, or (5) approving a plan of distribution of assets, other than case, in liquidation. Meetings shall be held within the Project or at a meeting place within the same county, as close to the Project as possible.

Section 4.5. Quorum. The presence, either in person or by proxy, of Members entitled to cast at least fifty-one percent (51%) of the total voting power of the Association shall constitute a quorum for any action except as otherwise provided in the Declaration. In the absence of a quorum at Association meetings, a majority of those Members present in person or by proxy, may adjourn the meeting, but may not transact any other business. The meeting adjourned for lack of a quorum shall be to a date not less than five (5) nor more than thirty (30) days from the original date and the quorum for such later meeting shall be one-third ($\frac{1}{3}$) of the total voting power (excluding the number of votes as to which voting rights are suspended at the time of the subject meeting).

The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that twenty-five percent (25%) of the total voting power of the Association remains present in person and/or by proxy, and provided further that any action taken shall be approved by a majority of the Members required to constitute a quorum, and that the only matters that may be voted upon at said adjourned meeting are matters the general nature of which was noticed not less than ten (10) nor more than ninety (90) days before the date of the meeting to each Member entitled to vote at the meeting. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed for regular meetings.

Section 4.6. Loss of Quorum. 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 any action taken (other than adjournment) is approved by at least a majority of the Members required to constitute a quorum or, if required by this division, by the Articles of Incorporation or the Bylaws, the vote of the greater number or voting class.

Section 4.7. Adjournment of Meetings. In the absence of a quorum, any meeting of Members may be adjourned from time to time by the vote of a majority of the votes represented either in person or by written ballot pursuant to Section 4.10 below, but no other business may be transacted, except as provided in Section 4.6.

If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed for regular meetings; provided, however, that any adjournment for lack of a quorum shall be to a date not less than five (5) but not more than thirty (30) days from the original date.

Section 4.8. Proxy Voting. Every person entitled to vote or execute consents shall have the right to do so either in person or by an agent(s), duly authorized by a written proxy, executed by such person or his duly authorized agent or agents and filed with the Secretary of the Association prior to the commencement of the meeting, at which the proxy is to be exercised. Every proxy shall be revocable by the person granting it, announcing its revocation to the Secretary of the meeting at which it would otherwise be exercised prior to the exercise thereof, and shall automatically cease upon sale or conveyance by the person granting the proxy of his interest in the Manufactured Home Space, or upon written notice to the Secretary of the death or judicially declared incompetence of a member prior to the counting of the vote, or upon the expiration of eleven (11) months.

Any form of proxy or written ballot distributed by any person to Members shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon. The proxy or written ballot shall provide that, where Member specifies a choice, the vote shall be cast in accordance with that choice. The proxy shall also identify the person or persons authorized to exercise the proxy and the length of time it will be valid, not to exceed eleven (11) months.

Section 4.9. Action by Written Ballot Without a Meeting. Any action which may be taken at any regular or special meeting of Members may be taken without a meeting if the Association distributes a written ballot to every Member entitled to vote on the matter. The ballot shall set forth the proposed action, provide an opportunity to specify approval or disapproval of each proposal, provide that where the person solicited specifies a choice with respect to any such proposal the vote shall be cast in accordance therewith, and provide a reasonable time within which to return the ballot to the Association. Ballots shall be mailed or delivered in the manner required for giving notice in Section 4.4 above.

All written ballots shall also indicate the number of responses needed to meet the quorum requirement and, except for ballots soliciting votes for the election of Directors, shall state the

percentage of approvals necessary to pass the measure submitted. The ballots must specify the time by which they must be received by the Association in order to be counted.

Approval of action by written ballot shall be valid only when the number of votes cast by ballot within the time period specified equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the action at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

A written ballot may not be revoked after its receipt by the Association or its deposit in the mail, whichever occurs first.

Section 4.10. Conduct of Meetings. Meetings shall be governed by *Roberts' Rules of Order*, as such rules may be revised from time to time, insofar as such rules are not inconsistent with or in conflict with these Bylaws, with the Articles of Incorporation or any other Governing Documents, or with any provision of law.

Section 4.11 Open Meeting Act Requirements. Notwithstanding any other language included herein, in accordance with California Civil Code Section 1363.05, the following requirements and provisions of the Common Interests Development Open Meeting Act shall apply:

(a) Any member of the association may attend meetings of the Board of Directors of the association, except when the board adjourns to executive session to consider litigation, matters relating to the formation of contracts with third parties, member discipline, personnel matters, or to meet with a member, upon the member's request, regarding the member's payment of assessments, as specified in Civil Code Sections 1367 or 1367.1. The Board of Directors of the association shall meet in executive session, if requested by a member who may be subject to a fine, penalty, or other form of discipline, and the member shall be entitled to attend the executive session.

(b) Any matter discussed in executive session shall be generally noted in the minutes of the immediately following meeting that is open to the entire membership.

(c) The minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the Board of Directors of an association, other than an 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 of the association upon request and upon reimbursement of the association's costs for making that distribution.

(d) Members of the association shall be notified in writing at the time that the pro forma budget required in Civil Code Section 1365 is distributed, or at the time of any general mailing to the entire membership of the association, of their right to have copies of the minutes of meetings of the Board of Directors, and how and where those minutes may be obtained.

(e) As used in this section, "meeting" includes any congregation of a majority of the members of the board at the same time and place to hear, discuss, or deliberate upon any item of business scheduled to be heard by the board, except those matters that may be discussed in executive session.

(f) Unless the time and place of meeting is fixed by the Bylaws, or unless the Bylaws provide for a longer period of notice, members shall be given notice of the time and place of a meeting as defined in subsection (e) above, except for an emergency meeting, at least four (4) days prior to the meeting. Notice shall be given by posting the notice in a prominent place or places within the common area and by mail to any owner who had requested notification of board meetings by mail, at the address requested by the owner. Notice may also be given, by mail or delivery of the notice to each unit in the development or by newsletter or similar means of communication.

(g) An emergency meeting of the Board may be called by the President of the Association, or by any two (2) members of the Board other than the President, if there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the Board, and which of necessity make it impracticable to provide notice as required by this section.

(h) The Board of the Association shall permit any Member of the Association to speak at any meeting of the Association or the Board of Directors, except for meetings of the board held in executive session. A reasonable time limit for all members of the Association to speak to the Board of Directors or before a meeting of the Association shall be established by the Board of Directors.

Section 4.12. Waiver of Notice or Consent by Absent Members.

(a) **Written Waiver or Consent.** The transactions of any meeting of Members, however called or noticed, and wherever held, shall be valid as though taken at a meeting duly held after regular call and notice, if a quorum be present, and if, either before or after the meeting, each person entitled to vote, who was not present, signs a written waiver of notice or a consent to a holding of the meeting, or an approval of the minutes. All such waivers, consents, or approvals shall be filed with the Association records or made a part of the minutes of the meeting.

(b) **Eligibility to Vote in Annual Election of Directors.** Notwithstanding any contrary provision of this Section 4.12, the provisions of Section 4.13 shall apply in determining eligibility to vote in the annual election of the Board of Directors and the procedures set forth in of Section 5.5 shall apply to determining the process of the annual election of the Board of Directors.

(c) **Waiver by Attendance.** Attendance by a person at a meeting shall also constitute a waiver of notice of that meeting, except when the person objects at the beginning of such meeting to the transaction of any business due to the inadequacy or illegality of the notice. Also, attendance at a meeting is not a waiver of any rights to object to the consideration of

matters not included in the notice of the meeting, if that objection is expressly made at the meeting.

Section 4.13 Record Dates.

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

(1) **Record Date for Notice of Meetings.** In the case of determining those Members entitled to notice of a meeting, the record date shall be no more than ninety (90) nor less than ten (10) days before the date of the meeting;

(2) **Record Date for Voting.** In the case of determining those Members entitled to vote at a meeting, the record date shall be no more than sixty (60) days before the date of the meeting;

(3) **Record Date for Action by Written Ballot without Meeting.** In the case of determining Members entitled to cast written ballots, the record date shall be no more than sixty (60) days before the day on which the first written ballot is mailed or solicited; and

(4) **Record Date for Other Lawful Action.** In the case of determining Members entitled to exercise any rights in respect to other lawful action, the record date shall be no more than sixty (60) days prior to the date of such other action.

(b) **Failure of Board to Fix a Record Date.** If the Board, for any reason, fails to establish a record date, the following rules shall apply:

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

(2) **Record Date for Voting.** The record date for determining those Members entitled to vote at a meeting of Members shall be the day of the meeting, or in the case of an adjourned meeting, the day of the adjourned meeting.

(3) **Record Date for Action by Written Ballot without Meeting.** The record date for determining those Members entitled to vote by written ballot on proposed Association actions without a meeting, when no prior action by the Board has been taken, shall be the day on

which the first written ballot is mailed or solicited. When prior action of the Board has been taken, it shall be the day on which the Board adopts the resolution relating to that action.

(4) **Record Date for Other Lawful Action.** The record date for determining those Members entitled to exercise any rights in respect to any other lawful action shall be no more than sixty (60) days prior to the date of such other action.

(5) **"Record Date" Means as of Close of Business.** For purposes of this subparagraph (b), a person holding a membership as of the close of business on the record date shall be deemed the Member of record.

Section 4.14 Suspension.

(a) **Suspension of Privileges.** In the event of an alleged violation of these Bylaws, the Declaration or the Rules and Regulations of the Association, and after written notice of such alleged failure is delivered personally or mailed to the Member or any agent of the Member alleged to be in default in the manner herein provided, by first class mail, or certified mail, return receipt requested, the Board of Directors shall have the right, after affording the Member an opportunity for an appropriate hearing as hereinafter provided, and upon an affirmative vote of a majority of all Directors on the Board to take any one or more of the following actions: (1) levy a Special Assessment; (2) suspend or condition the right of said Member to the use of the recreational facilities on the Project; (3) suspend said Member's voting privileges as a Member; or (4) record a Notice of Noncompliance against the Member's Lot. Any such suspension shall be for a period of not more than thirty (30) days for any non-continuing infraction, but in the case of a continuing infraction (including nonpayment of any assessment after the same becomes delinquent), may be imposed for as long as the violation continues. The failure of the Board to enforce the Rules and Regulations of the Association, its Declaration, or these Bylaws shall not constitute a waiver of the right to enforce the same thereafter. The remedies set forth above and otherwise provided by these Bylaws shall be cumulative, and none shall be exclusive. However, both the Association and an individual Member must exhaust all internal remedies of the Association prescribed by these Bylaws, or by the Rules and Regulations of the Association, before either may resort to a court of law for relief with respect to any alleged violation of these Bylaws or the Rules and Regulations of the Association.

(b) **Written Complaint.** A hearing to determine whether a right or privilege of the Member under these Bylaws should be suspended or conditioned, or whether a Special Assessment should be levied, shall be initiated by the filing of a written complaint by any Member or any Officer or Member of the Board of Directors with the President of the Association or other presiding member of the Board. The complaint shall constitute a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the Member is charged, and a reference to the specific provisions which the Member is alleged to have violated. A copy of the complaint shall be delivered to the Member in accordance with the notice procedures set forth in Subsection (a) above, together with a statement which shall be substantially in the following form:

"Unless a written request for hearing signed by or on behalf of the person named as respondent in the accompanying complaint is delivered or mailed to the Board of Directors within fifteen (15) days after the complaint was delivered or mailed to you, the Board of Directors may proceed upon the complaint without a hearing, and you will have thus waived your right to a hearing. The request for a hearing may be made by delivering or mailing the enclosed form entitled 'Notice of Defense' to the Board of Directors at the following address: The Preserve at Del Mar Homeowners Association, Inc. _____. You may, but need not, be represented by counsel at any or all stages of these proceedings. If you desire the names and addresses of witnesses or an opportunity to inspect any relevant writings or items on file in connection with this matter in the possession, custody or control of the Board of Directors, you may contact _____."

The Member shall be entitled to a hearing on the merits of the matter if the Notice of Defense is timely filed with the Board of Directors. The Member may file a separate statement by way of mitigation, even if he does not file a Notice of Defense.

(c) **Notice of Hearing.** The Board shall serve a notice of hearing, as provided herein, on all parties at least ten (10) days prior to the hearing, if such hearing is requested by the Member. The hearing shall be held no sooner than thirty (30) days after the complaint is mailed or delivered to the Member as provided in Subsection (b) hereinabove. The notice to Member shall be substantially in the following form but may include other information:

"You are hereby notified that a hearing will be held before the Board of Directors of The Preserve at Del Mar Homeowners Association, Inc. (the "Association") at _____ on the _____ day of _____, 20____, at the hour of _____, upon the charges made in the complaint served upon you. You may be present at the hearing, may, but need not, be represented by counsel, may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to request the attendance of witnesses and the production of books, documents, or other items by applying to the Board of Directors of the Association."

(d) **Hearing.** The hearing shall be held before the Board in executive session pursuant to this notice, affording the Member a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the Officer or Director who mailed or delivered such notice. The notice requirement shall be deemed satisfied if a violator appears at the meeting. The minutes of the hearing shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

Section 4.15. Inspectors of Election. 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

Chairman of any such meeting of Members may and, on the request of any Member, shall appoint inspectors of election (or persons to replace those who fail or refuse to become inspectors of election for any reason) 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 (1) or more Members, the majority of Members represented in person 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 in this Section 4.15. The inspectors of election shall determine the number of Memberships outstanding and the voting power of each, the number represented at the meeting, and the existence of a quorum; 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 results; and do such acts as may be proper to conduct the election or vote with fairness to all Members. 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.

Section 4.16. Order of Business. The order of business at the annual meeting of the Members shall be as follows:

- (a) Roll Call.
- (b) Proof of notice of meeting or waiver of notice.
- (c) Presentation of Agenda.
- (d) Reading of minutes of preceding meeting and approval of said minutes.
- (e) Reports of Officers.
- (f) Reports of Committees.
- (g) Election of Inspectors of Election
- (h) Election of Directors.
- (i) Unfinished Business.
- (j) New Business.

In the case of special meetings, items (a) through (d) shall be applicable and thereafter the agenda shall consist of the items specified in the notice of the meeting.

Section 4.17 Meeting Requirements for Actions Against Declarant. In accordance with California Civil Code Section 1368.4, not later than thirty (30) days prior to the filing of any

civil action by the Association against the Declarant or other developer of a common interest development for alleged damages to the Common Area, alleged damages to the separate interests that the Association is obligated to maintain or repair, or alleged damage to the separate interests that arises out of, or is integrally related to, damage to the Common Areas or Separate interests that the Association is obligated to maintain or repair, the Board shall provide written notice to each Member of the Association who appears on the records of the Association when the notice is provided. This notice shall specify all of the following:

(a) That a meeting will take place to discuss problems that may lead top the filing of a civil action.

(b) The options, including civil actions, that are available to address the problems.

(c) The time and place of this meeting.

(d) Notwithstanding language included in this Section 4.17, if the Association has reason to believe that the applicable statute of limitations will expire before the Association files the civil action, the Association may give the notice, as described herein, within thirty (30) days after the filing of the action.

ARTICLE V **DIRECTORS**

Section 5.1. Number and Qualification. The Association shall be governed by three (3) members of the Board of Directors. With the exception of the initial Directors appointed by the Declarant, all of the members of the Board must be Members of the Association in good standing. The initial Directors shall be appointed by the Declarant and shall hold office until their successors are elected at the first (organizational) meeting of the Members. To be in "good standing," a Member must be in compliance with these Bylaws, the Association's Rules and Regulations, the Declaration, and other applicable Governing Documents, ordinances, and statutes.

Section 5.2 Powers and Duties. The Board of Directors shall have all the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by these Bylaws to be directed or done by the Members. The powers of the Board of Directors shall include, but not be limited to:

(a) Causing to be kept a current record of Membership of the Association;

(b) Establishing Assessments as provided for in the Governing Documents, based on an operating budget formally adopted by the Board; such budget to provide for all costs, including maintenance, insurance, taxes, interest and principal payments, plus a reasonable amount for contingencies and capital reserve set aside;

(c) Adopting and amending the Association's Rules and Regulations, including provisions of the Governing Documents, in compliance with applicable ordinances and statutes;

(d) Borrowing money and incurring indebtedness for the purposes of the Association and to cause to be executed and delivered therefor, in the Association's name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, or other evidences of debt and securities therefor;

(e) Initiating and executing disciplinary proceedings against Members of the Association for violations of provisions of the Governing Documents in accordance with procedures set forth in the Governing Documents;

(f) Enforcing applicable provisions of the Articles, Bylaws, Declaration and other Governing Documents relating to the ownership, management, and control of the Association;

(g) Paying taxes and assessments which are, or could become, a lien on the common area or a portion thereof;

(h) Contracting for casualty, liability, and other insurance on behalf of the Association. The Board of Directors shall contract for general liability insurance on behalf of the Association; the minimum amount of which must comply with the requirements of California Civil Code Section 1365.9.

(i) Contracting for goods and/or services for the common areas, facilities and interests for the Association, subject to the limitations set forth below;

(j) Delegating its powers to committees, Officers, or employees of the Association as expressly authorized by these Bylaws;

(k) Preparing budgets and financial statements for the Association as prescribed in the Governing Documents;

(l) Entering upon any Lot as necessary in connection with construction, maintenance, or emergency repair for the benefit of the Association, subject to the requirements of applicable ordinances and statutes;

(m) Electing Officers of the Board;

(n) Filling vacancies on the Board except for a vacancy created by the removal of a Director;

(o) Selecting and removing any of the Officers, agents, and employees of the Association, prescribe such powers and duties for them as may not be inconsistent with the law and the Governing Documents, and fixing their compensation and requiring from them security for faithful services; and

- (p) Exercising all other powers and duties as set forth in the Governing Documents.

Section 5.3 Prohibitions. The Board shall be prohibited from taking any of the following actions, except with the assent, by vote at a meeting of the Association or by written ballot without a meeting pursuant to California Corporations Code Section 7513, of a simple majority of the Members constituting a quorum consisting of more than fifty percent (50%) of the voting power of the Association residing in Members:

(a) Filling a vacancy on the Board created by the removal of a member of the Board by a vote of the Membership;

(b) 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 or, notwithstanding the term, where the amount to be paid to the vendor including, without limitation, amounts to be paid under contingent fee contracts, may reasonably be expected to exceed five percent (5%) of the budgeted gross expenses of the Association for the fiscal year in which the contract is signed, whichever is less, and the contract is other than for the maintenance, repair, replacement or reconstruction of one or more elements of the Common Area, with the following exceptions:

(1) A management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration (if either has jurisdiction over the Project) or by the Department of Real Estate during the period the Department of Real Estate has jurisdiction over the sale of the Project pursuant to a public report;

(2) 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;

(3) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years' duration, provided that the policy permits short rate cancellation by the insured;

(4) Lease agreements for laundry room fixtures and equipment of not to exceed five (5) years' duration, provided that the lessor under the agreement is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more;

(5) Agreements for cable television services and equipment or satellite dish television services and equipment of not to exceed five (5) years' duration, provided that the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more;

(6) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services of not to exceed five (5) years' duration, provided that the supplier or suppliers are not entities in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more; and

(7) A contract for a term not to exceed three (3) years that is terminable by the Association after no longer than one (1) year without cause, penalty, or other obligation upon ninety (90) days' written notice of termination to the other party.

(8) Agreements for electronic communications services and equipment not to exceed five (5) years duration provided that the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

(c) 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;

(d) Selling during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year; and

(e) Paying compensation to members of the Board of Directors or to the Officers of the Association for services performed in the conduct of the Association's business provided; however, that the Board of Directors shall cause a Member or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

Section 5.4 Self-Dealing Transactions. Except as provided below, the Board shall not approve a self-dealing transaction. A self-dealing transaction is one to which the Association is a party and in which one or more of the members of the Board has a material financial interest, or a transaction between the Association and any entity in which one or more of its Directors has a material financial interest. The Board may approve a self-dealing transaction if a majority of the Board finds that the circumstances of any of the following exist:

(a) The fact of the common directorship or financial interest is disclosed or known to the Board of Directors and noted in the minutes, and the Board authorizes, approves, or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of such Director or Directors having a material financial interest.

(b) The fact of the common directorship or financial interest is disclosed or known to the Members, and they approve or ratify the contract or transaction in good faith by a majority vote or written consent of Members entitled to vote.

(c) The contract or transaction is just and reasonable as to the Association at the time it is authorized or approved.

Section 5.5 Election Process.

(a) **Nominating Committee.** Nominations for election to the Board of Directors shall be made by a committee appointed by the Board pursuant to this Section 5.5 ("Nominating Committee"). Notice to the Members of the annual meeting during which the election is to occur

shall include the names of all those who are nominees at the time the notice is sent. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chair, who shall be a member of the Board of Directors, and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors not less than thirty (30) days prior to each annual meeting of the Members, to serve until the close of that annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. All candidates shall have reasonable opportunity to communicate their qualifications to Members and to solicit votes.

(b) Election. The first election of the Board shall be conducted at the first meeting of the Association. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. All Members shall be entitled to cumulate their votes for one (1) or more candidates for the Board, if the candidate's name has been placed in nomination prior to voting, and if a Member has given notice at the meeting prior to the voting of his or her intention to cumulate votes. Voting for directors shall be by secret written ballot. So long as a majority of the voting power of the Association resides in the Declarant, or so long as there are two (2) outstanding classes of membership in the Association, at least one (1) and not less than twenty percent (20%) of the incumbents on the Board shall have been elected solely by the votes of the Owners other than the Declarant, in accordance with the following special procedure. The collected ballots shall be segregated between ballots cast by Declarant, and ballots cast by other Members. The ballots received from other Members shall be counted first, and the person receiving the greatest number of votes from such Members shall be elected to the Board. The votes of Declarant shall then be added to the totals, and the persons receiving the highest number of votes (other than the person already elected) shall be elected to the remaining positions on the Board.

Section 5.6. Term of Office. The term of office of the Directors shall be two (2) years. A majority of the Directors shall be elected in even numbered years and the remaining Directors in odd numbered years. Each Director, including a Director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until a successor has been elected and qualified. At the first (organizational) meeting of the Members wherein the Members elect Directors, those two (2) Directors receiving the highest number of votes shall serve a two (2) year term, and the remaining Director shall serve a one (1) year term.

Section 5.7. Vacancies. Vacancies in the Board of Directors caused by any reason other than removal of a Director by a vote of the Membership shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum; and each person so elected shall be a Director until a successor is elected by the Members at the next annual meeting to serve out the unexpired portion of the term.

Section 5.8. Removal and Resignation of Directors. At any regular or special meeting duly called, any Director may be removed for cause by the affirmative vote of the majority of the entire regular Membership of record, and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the Members shall be

given an opportunity to be heard at the meeting. The term of any Director who becomes more than thirty (30) days delinquent in payment of his or her Assessments or who fails to attend four (4) consecutive regular meetings of the Board of Directors shall be automatically terminated, and the remaining Directors shall appoint his or her successor as provided in Section 5.7 above.

Any Director may resign at any given time by giving written notice to the other Directors of the Association. Any such resignation shall take effect at a time which must be specified in such notice, and unless specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5.9. Fees and Compensation. Directors shall serve without compensation, except that they shall be allowed reasonable advancement or reimbursement for expenses incurred in the performance of their regular duties as Directors. Directors may not be compensated for rendering services to the Association in any capacity other than Director unless such other compensation is reasonable and is allowable under the provisions of Section 5.4 of this Article.

Section 5.10. Restriction on Interested Directors. Not more than forty-nine percent (49%) of the persons serving on the Board of Directors at any time may be interested persons. An interested person is (1) any person compensated by the Association for services rendered to it within the previous twelve (12) months, whether as a full-time or part-time employee, independent contractor, or otherwise, excluding any reasonable compensation paid to a Director as Director; and (2) any brother, sister, ancestor, descendant, spouse, brother-in law, sister-in-law, mother-in-law, or father-in-law of any such person. However, any violation of the provisions of this Section 5.10 shall not affect the validity or enforceability of any transaction entered into by the Association.

Section 5.11. Annual Meeting. A regular annual meeting of the Board of Directors shall be held within ten (10) days of the meeting at which Directors are elected, at such place as shall be fixed by the Directors, and no notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, providing a majority of the whole Board shall be present and providing that the date, time, and location of the meeting is announced at the annual meeting of Members. The purpose of the regular annual meeting of Directors shall be organization, the election of Officers, and the transaction of other business. The minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes of a regular annual meeting of the Board of Directors shall be available to the Members of the Association within thirty (30) days of the meeting.

Section 5.12. Regular Meetings. Meetings of the Board of Directors shall be held at its principal office. At least three (3) such regular meetings shall be held during each fiscal year. Emergency meetings may be held within or not more than five (5) miles from the principal office, as shall be determined by a majority of the Directors. Notice of regular meetings of the Board of Directors shall be posted at a prominent place or places within the common area, and by mail to any Member who requests notification of regular meetings of the Board of Directors at the address requested by the Member, at least four (4) days prior to the day named for such meeting and shall be communicated to each Director in person, by mail, or by telephone at least four (4) days prior to the day named for such meeting. Notice of a meeting need not be given to

any Director who has signed a waiver of notice or a written consent to hold the meeting. The minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes of a regular annual meeting of the Board of Directors shall be available to the Members of the Association within thirty (30) days of the meeting.

Section 5.13. Special Meetings. A special meeting of the Board of Directors may be called by written notice signed by the President or by any two (2) members of the Board 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 special meetings of the Board of Directors shall be posted at a prominent place or places within the common area and by mail to any Member who requests notification of regular meetings of the Board of Directors at the address requested by the Member at least four (4) days prior to the day named for such meeting and shall be communicated to each Director in person, by mail, or by telephone at least four (4) days prior to the day named for such meeting. Notice of a meeting need not be given to any Director who has signed a waiver of notice or a written consent to hold the meeting. The minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes of a regular annual meeting of the Board of Directors shall be available to the Members of the Association within thirty (30) days of the meeting.

Section 5.14. Open Meetings. Except as provided in Section 5.15 below, regular and special meetings of the Board shall be open to Members of the Association. However, Members who are not on the Board and any non-member may not participate in any deliberation or discussion unless expressly so authorized by the vote of the majority of a quorum of the Board.

Section 5.15. Executive Sessions. The Board may hold executive sessions to discuss issues related to personnel; matters relating to the formation of contracts with third parties, including loans; pending or threatened litigation; Member discipline; or to meet with a Member, upon the Member's request, regarding the Member's payment of Assessments; as specified in the California Civil Code Sections 1367 and 1367.1. Any matter discussed in an executive session shall be generally noted in the minutes of the immediately following meeting that is open to the entire Membership of the Association.

Section 5.16. Waiver of Notice. Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver by him or her of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 5.17. Quorum. At all meetings of the Board of Directors, a majority of the Directors in office shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. Except as otherwise provided in these Bylaws, the Articles of Incorporation of this Association, or by law, no business shall be considered by the Board at any meeting at which a quorum is not present, and the only motion which the President of the Board shall entertain at such meeting is a motion to adjourn. However, a majority of the Directors present at such

meeting may adjourn from time to time until the time fixed for the next regular meeting of the Board. When a meeting is adjourned for lack of a quorum, it shall not be necessary to give any notice of the time and place of the adjourned meeting or of the business to be transacted at such meeting, other than by announcement at the meeting at which the adjournment is taken.

The Directors present at a duly called and held meeting at which a quorum is initially present may continue to do business notwithstanding the loss of a quorum at the meeting due to a withdrawal of Directors from the meeting, provided that any action thereafter taken must be approved by at least a majority of the required quorum for such meeting or such greater percentage as may be required by law, the Articles of Incorporation or Bylaws of the Association.

Section 5.18. Action Without Meeting. Any action required or permitted to be taken by the Board of Directors may be taken without a meeting, if all members of the Board, individually or collectively, consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board of Directors. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

Section 5.19. Meetings with Members. As required by California Civil Code Section 798.53, the Board of Directors shall meet and consult with Members, upon written request, within thirty (30) days of the request, either individually, collectively, or with representatives of a group of Members who have signed a request to be so represented on the following matters:

- (a) Amendments to the Association's Rules and Regulations;
- (b) Standards for maintenance of physical improvements in the Project; or
- (c) Addition, alteration, or deletion of service, equipment, or physical improvements in the Project.

ARTICLE VI **COMMITTEES**

Section 6.1. Committees of Directors. The Board of Directors may, by resolution adopted by a majority of the Directors then in office, designate one or more committees, each consisting of two (2) or more Directors and, in the Board's discretion, other Members, to serve at the pleasure of the Board. Any committee, to the extent provided in the resolution of the Board, shall have all authority of the Board, except that no committee, regardless of Board resolution, may:

- (a) Take any final action on matters which, under these Bylaws or the California Nonprofit Corporation Law, also require Members' approval;
- (b) Fill vacancies on the Board of Directors or in any committee which has the authority of the Board of Directors;
- (c) Amend or repeal Bylaws or adopt new Bylaws;

(d) Amend or repeal any resolution of the Board of Directors which by its express terms is not so amendable or repealable;

(e) Appoint any other committees of the Board of Directors or the members of these committees;

(f) Expend Association funds which have not been previously budgeted or authorized by the Board;

(g) Approve any transaction (1) to which the Association is a party and one (1) or more Directors have a material financial interest; or (2) between the Association and one (1) or more of its Directors or between the Association or any person in which one or more of its Directors have a material financial interest; and

(h) Fix compensation of the Directors for serving on the Board of Directors or any committee.

Section 6.2. Meetings and Action of Committees. Meetings and action of committees shall be governed by, and held and taken in accordance with, the provisions of Article V of these Bylaws, concerning meetings of Directors, with such changes in the context of those Bylaws as are necessary to substitute the committee and its members, except that the time for regular meetings of committees may be determined either by resolution of the Board of Directors or by resolution of the committee. Special meetings of committees may also be called by resolution of the Board of Directors. Notice of special meetings of committees shall also be given to any and all alternate members, who shall have the right to attend all meetings of any committee. Minutes shall be kept of each meeting of any committee and shall be filed with the Association records. The Board of Directors may adopt rules for the government of any committee not inconsistent with the provisions of these Bylaws.

Section 6.3 Design Review Committee. The Design Review Committee shall be a permanent committee of the Board and have the powers and duties set forth in the Declaration and the Design Guidelines.

ARTICLE VII **OFFICERS**

Section 7.1. Designation. The principal officers of the Association shall be a President, a Secretary, and a Treasurer, all of whom shall be elected by and from the Board of Directors ("Officers"). The Directors may appoint a vice president, an assistant treasurer, and an assistant secretary, and such other Officers as in their judgment may be necessary.

Section 7.2. Election of Officers. The Officers of the Association shall be elected annually by the Board of Directors at the annual meeting of each new Board and shall hold office at the pleasure of the Board.

Section 7.3. Removal of Officers. Upon an affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and his or her successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board called for such purpose.

Section 7.4. President. The President shall be the chief executive officer of the Association. He or she shall preside at all meetings of the Members and of the Board of Directors. He or she shall have all of the general powers and duties which are usually vested in the office of President of an Association.

Section 7.5. Vice President. The Vice President, if any, shall take the place of the President and perform his or her duties whenever the President shall be absent or unable to act. The Vice President shall also perform other such duties as shall from time to time be imposed upon him or her by the Board of Directors.

Section 7.6. Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the members of the Association; he or she shall have the custody of the seal of the Association; he or she shall have charge of the membership transfer books and of such other books and papers as the Board of Directors may direct; and he or she shall, in general, perform all the duties incident to the office of Secretary. In the event a Vice President has not been appointed, and the President is absent or unable to act for any reason, the Secretary shall take the place of the President and perform his or her duties.

Section 7.7. Treasurer. The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He or she shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board of Directors.

Section 7.8. Resignation of Officers. Any officer may resign at any time by giving written notice to the Board of Directors. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Association under any contract to which the officer is a party.

Section 7.9. Vacancies in Offices. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled only in the manner prescribed in these Bylaws for regular appointments to that office.

ARTICLE VIII **RECORDS AND REPORTS**

Section 8.1. Inspection Rights. Any Member of the Association may:

(a) Inspect and copy the records of all the Members' names, addresses and voting rights, at reasonable times, upon five (5) business days' prior written demand upon the Association, which demand shall state the purpose for which the inspection rights are requested.

(b) Obtain from the Secretary of the Association, upon written demand and tender of a reasonable charge, a list of the names, addresses, and voting rights of those Members entitled to vote for the election of Directors, as of the most recent record date for which that list has been compiled, or as of a date specified by the Member subsequent to the date of demand. The membership list shall be made available on or before the later of ten (10) days after the demand is received or after the date specified in the demand letter as the date on which the list is to be compiled.

(c) The Association may, within ten (10) business days after receiving a demand under Section 8.1(a) or (b), deliver to the person or persons making the demand a written offer of an alternative method of achieving the purpose identified in said demand without providing access to or a copy of the membership list. An alternative which reasonably and in a timely manner accomplishes the proper purpose set forth in a demand under Section 8.1(a) or (b) shall be deemed a reasonable alternative, unless within a reasonable time after acceptance of the offer the Association fails to do those things which it offered to do. Any rejection of the offer shall be in writing and shall indicate the reasons the alternative proposed by the Association does not meet the proper purpose of the demand made pursuant to this Section 8.1(a) and (b).

Any inspection and copying under this Section 8.1 may be made in person or by an agent or attorney of the Member and the right of inspection includes the right to copy and make extracts.

The individual files of Members and/or employees of the Association shall be reviewed by members of the Board of Directors only after a majority vote of the Board of Directors.

Association business and/or personnel files of individual Members and/or employees may be reviewed by the members of the Board of Directors solely at a duly called Board meeting, after an appropriate motion and majority vote of the Board in favor of such a review of the individual Member's and/or employee's file. Said individual Member and/or employee file may be viewed solely in furtherance of purposes of the Association. The review of any individual files shall be recorded in the minutes of the meeting.

Section 8.2. Maintenance and Inspection of Articles of Incorporation and Bylaws. The Association shall keep at its principal executive office the original or a copy of the Articles and Bylaws as amended to date, which shall be open to inspection by the Members at all reasonable times during office hours.

Section 8.3. Maintenance and Inspection of Other Corporate Records. The accounting books, records, and minutes of proceedings of the Members and the Board of Directors and any committee(s) of the Board of Directors shall be kept at such place or places designated by the Board of Directors, or, in the absence of such designation, at the Principal Executive Office of the Association. The minutes shall be kept in written or typed form, and the accounting books

and records shall be kept either in written or typed form or in any other form capable of being converted into written, typed, or printed form. The minutes and accounting books and records shall be open to inspection on the written demand of any Member, and at reasonable times during usual business hours, for a purpose reasonably related to the Member's interests as a Member. The inspection may be made in person or by an agent or attorney, and shall include the right to copy and make extracts.

Section 8.4. Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of every kind and the physical properties of the Association and each of its subsidiary corporations. This inspection by a Director may be made in person or by an agent or attorney, and the right of inspection includes the right to copy and make extracts of documents.

Section 8.5. Annual Report. The Association shall provide to the Members within one hundred twenty (120) days of the close of its fiscal year, an annual report containing the following information in reasonable detail:

- (a) A balance sheet as of the end of such fiscal year and an income statement and statement of changes in financial position for such fiscal year;
- (b) A statement of the place where the names and addresses of the current Members are located;
- (c) The report shall be accompanied by any report issued by independent accountants regarding such report, or, if there is no such report, the certificate of an authorized officer of the Association that such statements were prepared without audit from the books and records of the Association; and
- (d) Any information required by California Corporations Code Section 8322.

ARTICLE IX

FISCAL MANAGEMENT

Section 9.1. Fiscal Year. The fiscal year of the Association shall begin on January 1 of each year and end on December 31.

Section 9.2. Budgets and Financial Statements. The Association shall regularly prepare and distribute financial statements and related information to its Members in accordance with the following:

- (a) A pro forma operating budget for each fiscal year shall be distributed not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of the fiscal year. This budget shall contain at least the following:

- (1) The estimated revenues and expenses on an accrual basis;

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

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

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

(i) The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components.

(ii) The current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain major components.

(iii) If applicable, the amount of funds received from either a compensatory damage award or settlement by the Association from any person or entity for injuries to property, real or personal, arising out of any construction or design defects, and the expenditure or disposition of funds, including the amounts expended for the direct and indirect costs of repair of construction or design defects. These amounts shall be reported at the end of the fiscal year for which the study is prepared as separate line items under cash reserves pursuant to clause (ii) of Section 9.2(a)(2)(b).

(c) The percentage that the amount determined for purposes of clause (ii) of Section 9.2 (a)(2)(b) is of the amount determined for purposes of clause (i) of Section 9.2(a)(2)(b);

(3) A statement as to whether the Board of Directors of the Association has determined or anticipates that the levy of one (1) or more special Assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor; and

(4) A general statement addressing the procedures used 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.

(b) For any fiscal year in which the gross income to the Association exceeds seventy-five thousand dollars (\$75,000), a copy of a review of the financial statement prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy shall be distributed within one hundred twenty (120) days after the close of the fiscal year.

(c) In lieu of the distribution of the pro forma operating budget required by subsection (A) above, the Board of Directors may elect to distribute a summary of the pro forma operating budget to all the Members with a written notice that the pro forma operating budget is available at the business office of the Association or at another suitable location within the boundaries of the Project and that copies will be provided upon request and at the expense of the

Association. If any Member requests that a copy of the pro forma operating budget required by subsection (a) above be mailed or delivered to the Member, the Association shall provide the copy to the Member by personal delivery or first-class United States mail at the expense of the Association and delivered within five (5) days. The written notice that is distributed to each of the Members shall be in at least 10-point bold type on the front page of the summary of the budget.

(d) 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 its Members shall be annually delivered to the Members during the sixty (60) day period immediately preceding the beginning of the Association's fiscal year.

(e) A summary of the Association's property, general liability, and earthquake and flood insurance policies, which shall be distributed within sixty (60) days preceding the beginning of the Association's fiscal year, that includes all of the following information about each policy:

- (1) The name of the insurer.
- (2) The type of insurance.
- (3) The policy limits of the insurance.
- (4) The amount of deductibles, if any.

The Association shall, as soon as reasonably practicable, notify its Members by first-class mail if any of the policies described in Section 9.2(e) have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, as to any of those policies. If the Association receives any notice of nonrenewal of a policy, the Association shall immediately notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse.

To the extent that any of the information required to be disclosed pursuant to this Section 9.2(e) is specified in the insurance policy declaration page, the Association may meet its obligation to disclose that information by making copies of that page and distributing it to all of its Members.

The summary distributed pursuant to this Section 9.2 (e) shall contain, in at least 10-point boldface type, the following statement:

"This summary of the Association's policies of insurance provides only certain information, as required by California Civil Code § 1365(e), and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any Association Member may, upon request and provision of reasonable notice, review the Association's insurance policies and,

upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the Association maintains the policies of insurance specified in this summary, the Association's policies of insurance may not cover your property, including personal property, or real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association Members should consult with their individual insurance broker or agent for appropriate additional coverage."

Section 9.3. Review of Fiscal Affairs. The Board of Directors shall, on a quarterly basis, review the following:

- (a) A current reconciliation of the Association's operating accounts;
- (b) A current reconciliation of the Association's reserve accounts;
- (c) The current year's actual reserve revenues and expenses compared to the current year's budget;
- (d) An income and expense statement for the Association's operating and reserve accounts.

The Board of Directors shall also, on a regular basis, review the latest account statements for the Association's operating and reserve accounts.

Section 9.4. Execution of Association Documents. With the prior authorization of the Board of Directors, all notes and contracts, including the Governing Documents, shall be executed on behalf of the Association by either the President or the Vice President, and all checks shall be executed on behalf of the Association by two (2) people as designated by the Board, one (1) of which shall be either the President or the Treasurer.

ARTICLE X

INDEMNIFICATION

Section 10.1. The Association shall indemnify its Directors, Officers, employees, and agents, including persons formerly occupying any such position, to the fullest extent permitted by law, against all expenses, judgments, fines and other amounts actually and reasonably incurred by them in their capacity as Directors, Officers, employees, and agents in connection with any threatened, pending, or completed action or proceedings, whether it is civil, criminal, administrative, or investigative.

In all cases where indemnification is sought, the Association shall be subject to the following restrictions and requirements:

(a) Where the action or proceeding is brought on behalf of the Association or involves self-dealing transactions, as defined in Section 5.4 of these Bylaws, the Association shall not indemnify against amounts paid in settlement or judgment amounts, but shall, upon the express authorization of the Board, indemnify the Director, Officer, employee, or agent against expenses incurred in defense of an action arising from his or her relationship to the Association. To indemnify in such cases the Board must find the person met the statutorily prescribed standard of care by acting (1) in good faith, (2) in the best interests of the Association, and (3) with the care of an ordinarily prudent person.

(b) Where the person seeking indemnification under Section 10.1 A has been held liable to the Association, or has settled his or her liability to the Association, the Association shall not indemnify against expenses without the approval of the court or the Attorney General.

(c) The Board shall determine whether the person seeking indemnification has acted in accordance with the standard of care set forth in this Section 10.1 A by a majority vote of a quorum consisting of disinterested Directors. The termination of any proceeding in a manner adverse to the defendant seeking indemnification shall not create a presumption that such person failed to meet the standard of care.

(d) Where the person seeking indemnification has been successful on the merits in defense of any action or proceeding brought on behalf of the Association or in defense of any claim or issue involved in such action or proceeding, the Association shall indemnify against all expenses actually or reasonably incurred.

(e) The Association shall not advance any money to the person seeking indemnification for the purpose of defending against any action or proceeding without the receipt of an undertaking by such person to repay all advances unless it is ultimately determined that he or she is entitled to indemnification.

ARTICLE XI. CONDEMNATION

Section 11.1 In the event of any taking of the Project, or any part thereof, by eminent domain, the Association shall be entitled to receive the award of such taking. The Association shall use the proceeds of the taking in the following order:

(a) Payment of any amounts required by any mortgagee under the terms of the agreements between the mortgagee(s) and the Association;

(b) Establishment of an account in the name of the Association, funded in the amount necessary to repair or rebuild any facilities which have been taken or adversely affected by the taking;

(c) Purchase of Memberships from any Association Member whose Lot was taken or partially taken such that the Lot can no longer be occupied. If insufficient funds are available from the condemnation award to fully purchase all of the Memberships so affected, then the proceeds shall be allocated on a proportional basis to each Member so affected.

ARTICLE XII

CONSTRUCTION AND DEFINITIONS

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the California Nonprofit Corporation Law shall govern the construction of these Bylaws. Without limiting the generality of the above, the masculine gender includes the feminine and neuter, the feminine gender includes the masculine and neuter, the singular number includes the plural, the plural includes the singular, and the term "person" includes both the Association and a natural person.

ARTICLE XIII

NOTICES

All notices required or permitted under the Governing Documents must be in writing and may be served upon the Association or Member by any means permitted by law. The service of any other notice on Member, including but not limited to, a notice of Assessment increase and a notice of amendments to the Association's Rules and Regulations may be duly and validly served if the notice is mailed to the Member at his or her address in the Project by First Class United States mail, postage prepaid. Any such notice served upon Member in this manner shall be deemed served forty-eight (48) hours after its mailing. All notices to the Association shall be mailed to the Association's address by First Class United States mail, postage prepaid.

ARTICLE XIV

NONCOMPLIANCE AND ENFORCEMENT

Section 14.1. Attorneys Fees and Costs. In the event of default or any action to enforce these Bylaws, the non-prevailing party in any such action shall be responsible for all costs and expenses incurred as a result of such action, including reasonable attorneys' fees incurred by the prevailing party, all of which may be included as part of the judgment rendered in any such action.

Section 14.2. Policies and Procedures. Unless otherwise indicated in any other provisions of the Governing Documents, including these Bylaws, enforcement of such Governing Documents shall be governed by "Procedures and Policies for Enforcement of Association Governing Documents, Including the Rules."

ARTICLE XV. AMENDMENTS

Section 15.1. Amendment. These Bylaws and the Articles of Incorporation may be amended by the affirmative vote of two-thirds ($\frac{2}{3}$) of the entire membership of record at any regular or special meeting or by written ballot in conformity with California Corporations Code Section 7513.

Amendments may be proposed by the Board of Directors or by petition signed by at least twenty percent (20%) of the Members. A description of any proposed amendment shall

accompany the notice of any regular or special meeting at which such proposed amendment is to be voted upon.

Section 15.2. Amendment to California Statutes. Where a provision in these Bylaws makes reference to a California statute, or where a Bylaw provision is required by a California statute, any amendment to such statute shall be deemed to automatically amend the affected Bylaw provision, and the Association shall comply with the requirements of such amended law in place of any requirements set forth in these Bylaws.

I, the undersigned, do hereby certify that I am the incorporator of The Preserve At Del Mar Homeowners Association, Inc. that I asset to the within and foregoing First Amended and Fully Restated Bylaws and that the provisions of Corporation Code Section 7134, and that I have subscribed my name to these Bylaws on this 7th day of December, 2004.


Bradley Schlachter, Incorporator

CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify:

(1) That I am the duly elected and acting Secretary of The Preserve at Del Mar Homeowners Association, Inc., a California nonprofit mutual benefit corporation; and

(2) That the foregoing Bylaws, comprising of _____ () pages, constitute the Bylaws of such Association as duly voted upon and adopted by the membership of the Association on _____ 20__.

IN WITNESS THEREOF, I have hereunto subscribed my name, this ____ day of _____, 20__.

Secretary