

BYLAWS

OF

**PROMENADE AT SPECTRUM
HOMEOWNERS ASSOCIATION**

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BYLAWS
OF
PROMENADE AT SPECTRUM HOMEOWNERS ASSOCIATION

ARTICLE I

OFFICE

The principal office of this corporation shall be located in the County of San Diego, State of California.

ARTICLE II

DEFINITIONS

Section 2.1. **Declaration.** "Declaration" shall mean and refer to that certain Declaration of Restrictions for Promenade At Spectrum ("**Declaration**") recorded with the Office of the County Recorder of San Diego County, California (including such amendments thereto as may from time to time be recorded), which requires Owners of Condominiums to be Members of this corporation.

Section 2.2. **Other Definitions.** The definitions of terms set forth in the Declaration shall also apply to these Bylaws.

ARTICLE III

VOTING RIGHTS IN ASSOCIATION

The Association shall have three (3) classes of voting membership as set forth in Article III of the Declaration, which is incorporated herein by this reference.

ARTICLE IV

MEMBERSHIP ASSESSMENTS AND LIEN RIGHTS

The Association shall have the right to impose assessments as set forth in the Declaration.

ARTICLE V

MEMBERSHIP RIGHTS, PRIVILEGES AND PENALTIES

Section 5.1. **Rights of Use.** Members shall have the rights to use the Association Property as set forth in the Declaration.

Section 5.2. Suspension; Penalties.

(a) The membership rights and privileges, together with the voting rights of any Member of the Association, may be suspended by the Board for the periods set forth in the Declaration.

(b) The Board may adopt rules and regulations imposing reasonable monetary penalties for such breach or noncompliance.

(c) Should the Board decide to meet to consider or impose discipline on a Member, the Board shall comply with the requirements of Civil Code Section 1363(h) and Corporations Code Section 7341, or any successor statutes or laws.

(d) No suspension shall affect the rights of such Member to access to the Owner's Living Unit nor the Owner's right to use of any Exclusive Use Area appurtenant to his Living Unit. A monetary penalty, other than a penalty for non-payment of assessments, shall not be a lien against the Member's Condominium.

Section 5.3. Adoption of Monetary Penalty; Distribution of Policy to Members. If the Board adopts a policy imposing any monetary penalty, including any fee, on any Member for a violation of the Declaration or the Board's policies, including any monetary penalty relating to the activities of a guest or invitee of a Member, the Board shall adopt and distribute to each Member, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with these Bylaws and the Declaration. The Board shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was previously adopted and distributed to Members.

ARTICLE VI

MEETINGS OF MEMBERS

Section 6.1. Place of Meeting. All meetings of Members shall be held at the Project or at such other location in San Diego County, California, as close to the Project as reasonably possible as may be designated in the notice of meeting.

Section 6.2. Annual Meetings of Members. The first annual meeting of Members shall be held no later than six (6) months after the first close of escrow for the sale of a Condominium to a First Purchaser; provided, however, if the Phase in which the first closing occurs includes fifty (50) or more Condominiums, then the first meeting of Members shall be no later than forty-five (45) days after the close of escrow for sale of fifty-one percent (51%) of the Condominiums in that Phase to First Purchasers. Subsequent regular annual meetings of the Members shall be held on the date determined by the Board provided that such annual meeting is held during the period commencing on the annual anniversary of the first annual meeting and ending four (4) weeks thereafter. Such meeting shall be held at the time determined by the Board. An election of directors shall be held at the first annual meeting of Members and all positions of director shall be filled at that election.

Written notice of each such annual meeting shall be given to each Member, director and officer of the Association and, to all first Mortgagees who request notice, either personally or by sending a copy of the notice through the mail, first class, registered or certified, charges prepaid, or by electronic transmission, to his address appearing on the books of the Association or supplied

by him to the Association for the purpose of notice. If no address is supplied, notice shall be deemed to have been given to him if mailed to the address of the Condominium owned by such Member or encumbered by the first Mortgagee, or published at least once in some newspaper of general circulation in the county of said principal office. Any notice given by electronic transmission shall comply with the requirements of CORPORATIONS CODE Sections 20 and 7511(b). All such notices shall be sent not less than ten (10) days and not more than ninety (90) days before each annual meeting, and shall specify the place, day and hour of such meeting, and those matters which the Board at the time of mailing the notice intends to present for action by the Members; however, except as otherwise provided by law, any proper matter may be presented at the meeting for action. A first Mortgagee shall be entitled to designate a representative who shall have the right to attend all meetings of Members.

Section 6.3. Special Meeting. Special meetings of Members, for any purpose or purposes whatsoever, may be called at any time by the president or by a majority of a quorum of the Board, and shall be called by the Board upon receipt of a written request for a special meeting signed by Members representing at least five percent (5%) or more of the total voting power of the Members. Except in special cases where other express provision is made by statute, notice of such special meetings shall be given in the same manner as for annual meetings of Members. Notices of any special meeting shall specify in addition to the place, day and hour of such meeting, the general nature of the business to be transacted.

Section 6.4. Adjourned Meetings and Notice Thereof. Any membership meeting, annual or special, whether or not a quorum is present, may be adjourned from time to time by the vote of a majority of the voting power present in person or represented by proxy, but in the absence of a quorum no other business may be transacted at any such meeting. When any membership meeting, either annual or special, is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. It shall not be necessary to give any other notice of an adjournment or of the business to be transacted at an adjourned meeting other than by an announcement at the meeting at which such adjournment is taken.

Section 6.5. Mortgagee Representation. First Mortgagees shall have the right to attend all membership meetings through a representative designated in writing and delivered to the Board but, except as otherwise provided in the Declaration or Bylaws, the first Mortgagee shall have no voting rights.

Section 6.6. Voting. Except for matters that are subject to the Open Meeting Act (defined below), voting of the Members may be by voice or by ballot.

Section 6.7. Voting on Matters Subject to the Open Meeting Act. Member Elections relating to the following matters shall be by secret written ballot and shall be subject to and comply with the provisions of the Common Interest Development Open Meeting Act, as set forth in California CIVIL CODE §§1363.03 - 1363.09 ("**Open Meeting Act**"): (i) the election of directors; (ii) elections regarding assessments; (iii) amendments to the governing documents; and (iv) elections required prior to the Association's grant of exclusive use easements over Common Area to Members (collectively, "**Covered Elections**"). All Covered Elections shall also be consistent with any election rules adopted by the Board in conformance with the Open Meeting Act. The provisions of the Open Meeting shall be operative upon the adoption of these Bylaws, notwithstanding the effective date of the Open Meeting Act of July 1, 2006. The following procedures shall, to the extent such procedures comply with the Open Meeting Act, apply to Covered Elections:

(a) **Election Meeting.** As required by the Open Meeting Act, the votes for any Covered Election shall be counted and tabulated and the election results determined by an independent inspector (or inspectors) of elections at a properly noticed open meeting of the Board or the Members (the "**Election Meeting**").

(b) **Pre-Ballot Procedures for the Election of Directors.** With respect to the election of directors, a pre-ballot ("**Pre-Ballot**") shall be mailed or delivered to each Member at least seventy-five (75) days prior to the Election Meeting. The purpose of the Pre-Ballot is to solicit nominations for candidates for the office of director. Members who wish to nominate themselves or other Members shall complete and return the Pre-Ballot to the Secretary within the timeframe prescribed in the Pre-Ballot, but in no even later than forty-five (45) days prior to the Election Meeting. The Board may, in its discretion, also call a special meeting of Members at which Members may nominate candidates (including themselves) for the office of director; provided, however, such special meeting of Members must be held no later than forty-five (45) days prior to the Election Meeting. This Section 6.7(b) only applies to the election of directors and is not applicable to any of the other Covered Elections.

(c) **Election Ballot.** As required by the Open Meeting Act, the Board shall send by first-class mail or hand deliver to each Member an election ballot ("**Election Ballot**") no later than thirty (30) days prior to the Election Meeting. With respect to the election of directors, the Election Ballot shall contain the list of all candidates nominated for the office of director, whether such candidate was submitted by the Board or by an individual Member. The following provisions shall also apply to the delivery and return of the Election Ballot:

(i) Return Instructions. The Election Ballot shall be accompanied by a list of instructions for completing and returning the Election Ballot and two preaddressed envelopes as required by the Open Meeting Act. The Election Ballot may be returned by mail or hand delivered to the inspector of elections; provided, however, the Election Ballot must be received by the inspector of elections by the date and time of the Election Meeting.

(ii) Proxies. Any instructions given in a proxy issued for a Covered Election that directs the manner in which the proxy holder is to cast the vote shall be set forth on a separate page of the proxy that can be detached and given to the proxy holder to retain. The proxy holder shall cast the Member's vote by secret ballot.

(d) **Election Results.** The election results shall be promptly reported to the Board by the inspector of elections and shall be recorded in the minutes of the next meeting of the Board. The election results shall also be available for review by any Member and Board shall publicize the election results in a communication directed to all Members within fifteen (15) days of the Election Meeting.

Section 6.8. Results of Membership Votes. Except as provided by the Open Meeting Act, for a period of sixty (60) days following the conclusion of an annual or special meeting of Members, the Association shall, upon written request from a Member, forthwith inform the Member of the result of any particular vote of Members taken at the meeting, including the number of membership votes for, the number of membership votes against, and the number of memberships abstaining or withheld from voting. If the matter voted on was the election of directors, the Association shall report the number of memberships, or votes if voted cumulatively, cast for each

nominee for director. If more than one class of membership voted, the report shall state the appropriate numbers by class of membership.

Section 6.9. Quorum. Except as stated otherwise in the Declaration, the Articles or these Bylaws, the presence in person or by proxy of twenty-five percent (25%) of the voting power entitled to vote at any meeting shall constitute a quorum for the transaction of business. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough voting power to leave less than a quorum. In the event any meeting of Members cannot be held because a quorum is not present, the Members present, either in person or by proxy, may adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the time of the original meeting date, at which meeting the quorum requirement shall be twenty percent (20%) of the voting power of the membership of the Association; provided, however, if after adjournment a new date is fixed for the adjourned meeting, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed for regular meetings; provided further, that the only matters that may be voted upon at any meeting actually attended in person or by proxy by one-third (1/3) or less of the voting power are matters the general nature of which was set forth in the notice of meeting.

Section 6.10. Consent of Absentees. The transactions of any meeting of Members, either annual or special, however called and noticed, shall be as valid as though had at a meeting duly held after regular call and notice if a quorum be present either in person or by proxy and if, either before or after the meeting, each of the Members entitled to vote, not present in person or by proxy, signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 6.11. Action Without Meeting. Any action which may be taken at a meeting of the Members may be taken without a meeting if done in compliance with the provisions of Section 7513 of the California CORPORATIONS CODE.

Section 6.12. Proxies. Every person entitled to vote or execute consents shall have the right to do so either in person or by a written proxy executed by such person and filed with the secretary of the Association. All proxies shall be revocable and shall automatically terminate upon transfer of title of a Condominium by the Owner. Any such form of proxy or written ballot shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon, except that a candidate for election to the Board need not be named in a proxy or written ballot. The proxy or written ballot shall provide that, where the Member specifies a choice, the vote shall be cast in accordance with that choice. The proxy shall also identify the person or persons authorized to exercise the proxy and the length of time it will be valid.

Section 6.13. Parliamentary Procedures. Meetings of the Members shall be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Association may adopt.

ARTICLE VII

DIRECTORS

Section 7.1. Number. Until the first election of directors by the Members, the affairs of the Association shall be managed by a Board of three (3) directors, who need not be Members of

the Association. Thereafter, the affairs of the Association shall be managed by a Board of five (5) directors, who need not be Members of the Association.

Section 7.2. Term of Office; Election of Directors Before And At First Annual Meeting.

(a) ***Before First Annual Meeting.*** The initial directors shall be appointed by the Incorporator. Until the first annual meeting of Members, any director so appointed by Declarant may be removed and replaced by Declarant.

(b) ***At First Annual Meeting of Members.*** At the first annual meeting of Members, the Class C Member shall elect three (3) directors ("**Class C Elected Directors**") and the Class A Members shall elect two (2) directors ("**Class A Elected Directors**"). The three (3) Class C Elected Directors shall have terms of three (3) years. The two (2) Class A Elected Directors shall have terms of one (1) year.

(c) ***Termination of Class C Membership.*** The Class C membership shall terminate immediately after the first annual meeting of members for all purposes except for those purposes described in the Section below entitled "**Removal and Replacement of Directors During First Three Years**".

Section 7.3. Term of Office; Election of Directors At Second and Third Annual Meetings. At the second and third annual meetings of Members, the Class A Members shall elect directors to fill the vacancies of Class A Elected Directors. The directors so elected shall have one-year terms.

Section 7.4. Term of Office; Election of Directors At Fourth Annual Meeting. At the fourth annual meeting of Members, all of the directors shall be elected by the Class A Membership. Each of the three (3) directors who received the greatest number of votes shall hold office for a two (2) year term and each of the remaining two (2) directors shall hold office for a one (1) year term. Thereafter, directors shall be elected at each annual meeting of Members to fill the vacancies of those directors whose term expires, and each directors so elected shall hold office for a two (2) year term.

Section 7.5. Minimum of Two Non-Declarant Elected Directors. So long as a majority of the voting power of Members is held by Declarant, or so long as there are two or more outstanding classes of voting membership, not fewer than two (2) directors shall be elected solely by the votes of Members other than Declarant. Any directors elected pursuant to this Section shall be deemed "Class A Elected Directors" for purposes of replacement.

Section 7.6. Removal and Replacement of Directors During First Three Years.

(a) ***Class A Elected Directors.*** Any vacancy in the Board created by the death or resignation of a director elected solely by the Class A Members shall be filled by the remaining Class A Elected Directors. If there are no remaining Class A Elected Directors, any vacancy in the Board created by the death or resignation of a director elected solely by the Class A Members shall be filled by the Class A Members. Class A Elected Directors may be removed from office only by the Class A Members. Any vacancy in the Board created by the removal of a director elected solely by the Class A Members may be filled only by the vote of

the Class A Members. A replacement Class A Elected Director shall serve for the unexpired term of his or her predecessor.

(b) **Class C Elected Directors.** Declarant shall have the right to remove from office any Class C Elected Director. Any vacancy in the Board created by the death, resignation or removal of a Class C Elected Director shall be filled by the Class C Member. Unless the Class C Member terminates its remaining Class C membership rights, each director so elected shall hold office for the unexpired portion of the original three (3) year term of the Class C directorship which is vacant. During the three-year term of the Class C directorship, Class C Elected Directors may be removed from office only by the Class C Member. If the Class C Member terminates its remaining Class C membership rights, (i) the replacement directors shall be appointed by the Class A Elected Directors then in office and (ii) the replacement directors shall hold office only until the next annual meeting of Members.

Section 7.7. Replacement of Directors After Initial Three Years. Following the termination of the three-year terms of Class C Elected Directors or after voluntary termination of Class C Membership by Declarant, the provisions of this Section shall apply to replacement of directors. Vacancies in the Board created by death or resignation may be filled by a majority of the remaining directors, though less than a quorum, and each director so elected shall hold office until a successor is elected at an annual meeting of Members or at a special meeting called for that purpose. Vacancies created by the removal of any director may be filled only by the vote of the membership. Subject to the provisions of the Open Meeting Act, the Members may at any time elect directors to fill any vacancy not filled by the directors, and may elect the additional directors at the meeting at which an amendment of the Bylaws is voted, authorizing an increase in the number of directors. Any election of directors by written consent shall require the consent of a majority of the outstanding voting power entitled to vote; provided, however that no director shall be elected by written consent to fill a vacancy created by removal except by the unanimous written consent of all Members entitled to vote for the election of directors. If any director tenders a resignation from the Board, the Board shall have the power to elect a successor to take office at such time as the resignation shall become effective. The term of any replacement director shall expire at the next annual meeting of Members. No reduction of the number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

Section 7.8. Removal After Initial Three Years. Following termination of the three-year terms of Class C Elected Directors, the provisions of this Section shall apply to the removal of directors. The entire Board may be removed, with or without cause, by a vote for removal by a majority vote of the Members. In the event of removal of a director, his or her successor shall be selected by a vote of the Members. Any director elected to office solely by the votes of Members other than Declarant pursuant to the Section above entitled "**Minimum of Two Non-Declarant Elected Directors**" may be removed from office prior to the expiration of his or her term only upon the vote of a simple majority of the voting power of Members other than Declarant. A replacement director shall serve for the unexpired term of his predecessor.

Section 7.9. Voluntary Termination of Class B or C Membership. Declarant shall have the right to voluntarily terminate the Class B or C memberships or membership rights at any time. Furthermore, Declarant shall at any time have the right to voluntarily terminate its right to replace Class C Elected Directors.

Section 7.10. Election Meeting. The annual meetings of Members shall serve as the Election Meeting required under the Open Meeting Act and discussed in the Section above entitled "**Voting on Matters Subject to the Open Meeting Act**"; provided, however, in the event the

quorum requirement is not met for any such annual meeting of Members and a sufficient number of Election Ballots are returned to constitute valid approval by written ballot in compliance with Section 7513 of the California CORPORATIONS CODE, the organizational meeting of the Board (discussed below) scheduled immediately after such annual meeting of Members shall serve as the Election Meeting provided the quorum requirements are met for such Board meeting. The candidates receiving the highest number of votes up to the number of directors to be elected shall be elected. No Member shall be entitled to cumulate votes (i.e., cast for any one or more candidates a number of votes greater than the number of votes to which such membership is entitled). The candidates receiving the highest number of votes up to the number of directors to be elected shall be elected. No Member shall be entitled to cumulate votes (i.e., cast for any one or more candidates a number of votes greater than the number of votes to which such membership is entitled.)

Section 7.11. Organization Meeting. Immediately following each annual meeting of Members, the Board shall hold a regular meeting for the purpose of organization, election of officers and the transaction of other business. Notice of such meeting is hereby dispensed with.

Section 7.12. Other Regular Meetings. Regular meetings of the Board shall be held monthly unless the Board determines by its resolution to hold less or more frequent meetings. Regular Board meetings shall be held at least quarterly after the first annual meeting of Members. Board meetings shall be held at such place and hour within the Project as may be fixed from time to time by resolution of the Board. However, Board meetings may be held outside the Project if the Board determines that a larger meeting room is required, in which case the meeting room selected shall be as close as possible to the Project. Notice of all such regular meetings of the Board shall be posted at a prominent place within the Project and communicated to the directors not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to the holding of the meeting.

Section 7.13. Special Meetings. Special meetings of the Board for any purpose or purposes shall be called at any time by the president, or by any two (2) directors other than the president. Written notice of the time and place of special meetings and the nature of any special business to be considered shall be posted in the manner prescribed for notice of regular meetings and shall be sent to all directors by first class mail not less than four (4) days prior to the scheduled time of the meeting, or such notice shall be delivered personally or by telephone or telegraph not less than seventy-two (72) hours prior to the scheduled time of the meeting; provided, however, notice of the meeting need not be given to any director who has signed a waiver of notice or a written consent to the holding of the meeting.

Section 7.14. Compensation and Fees. Neither the directors nor the officers of the Association shall receive any monetary compensation for their services performed in the conduct of the business of the Association. Nothing herein contained shall be construed or preclude any director or officer from serving the Association in any other capacity as an agent, employee or otherwise and receiving compensation therefor. Directors and officers of the Association may be reimbursed for expenses incurred in carrying on the business of the Association; provided, however, that no such expenses in excess of \$50.00 during any fiscal year of the Association shall be reimbursed by the Association to any person without the approval of the Board.

Section 7.15. Attendance at Meetings and Executive Sessions. Regular and special meetings of the Board shall be open to all Members. The Board may, with the vote of a majority of its members present at a meeting in which a quorum has been established, adjourn to executive

session in which Members of the Association may be excluded, to consider litigation, matters that relate to the formation of contracts with third parties, or personnel matters. The nature of any and all business to be considered in executive session shall first be announced in open session. Any matter discussed in executive session shall be generally noted in the minutes of the immediately following Board meeting open to the entire membership. In any matter relating to the discipline of a Member, the Board shall meet in executive session if requested by that Member, and the Member shall be entitled to attend the executive session. The Board shall permit any Member to speak at any meeting of the Members or the Board, except meetings of the Board held in executive session. A reasonable time limit for all Members of the Association to speak to the Board or before a meeting of Members shall be established by the Board.

Section 7.16. Quorum. A majority of the directors shall be necessary to constitute a quorum for the transaction of business, except to adjourn as hereinafter provided. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board.

Section 7.17. Adjournment. A quorum of the directors may adjourn any directors' meeting to meet again at a stated time and hour; provided, however, that in the absence of a quorum, a majority of directors present at the directors' meeting, either regular or special, may adjourn from time to time until the time fixed for the next regular meeting of the Board.

Section 7.18. Waiver of Notice. The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though had at a meeting to be held after regular call and notice if a quorum be present, and if, either before or after the meeting, each of the directors not present signs a written waiver of notice or a consent to holding such meeting or an approval of the minutes thereof. No notice of a meeting need be given to a director who attends the Board meeting without protesting, before or at the commencement of the meeting, the lack of notice to such director. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Nothing contained herein shall remove the obligation to post the notice of all directors' meetings within the Association Property.

Section 7.19. Entry of Notice. Whenever any director has been absent from any special meeting of the Board, an entry in the minutes to the effect that notice has been duly given shall constitute a rebuttable presumption that due notice of such special meeting was given to such director as required by law and these Bylaws.

Section 7.20. Notice of Adjournment. Notice of any adjournment of any directors' meeting, either regular or special, to another time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

Section 7.21. Action Without Meeting. Any action required or permitted to be taken by the Board 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. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. An explanation of the action to be taken or actually taken by the Board shall be given to the Members of the Association within three (3) days after all written consents have been obtained. The explanation shall be given in the same manner as provided in the Section of this Article entitled "**Other Regular Meetings**" for the giving of notice of regular meetings of the Board. Failure to give such notice shall not render the action to be taken or actually taken invalid.

Section 7.22. Indemnity. The Association shall indemnify any present or former director or officer of the Association to the fullest extent authorized under California CORPORATIONS CODE Section 7237, or any successor statute, and may advance to any such person funds to pay expenses that may be incurred in defending any action or proceeding on receipt of an undertaking by or on behalf of such person to repay such amount unless it is ultimately determined that such person was entitled to be indemnified under this provision.

ARTICLE VIII

OFFICERS

Section 8.1. Officers. The officers of the Association shall be a president, a vice president, a secretary and a chief financial officer and such other officers as the Board may from time to time by resolution create. Officers other than the president need not be directors. One (1) person may hold two (2) or more offices.

Section 8.2. Election. The initial officers shall be appointed by the Incorporator. Thereafter, the president, vice president, secretary and chief financial officer shall be chosen annually by the Board, and each shall hold his or her office until such officer shall resign, or shall be removed or otherwise disqualified to serve, or a successor shall be elected and qualified.

Section 8.3. Removal and Resignation. Any officer may be removed, either with or without cause, by a majority of the directors in office at the time, at any regular or special meeting of the Board. Any officer may resign at any time by giving written notice to the Board or the president, or to the secretary of the Association. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 8.4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in the Bylaws for regular appointments to such office.

Section 8.5. President. The president shall be the chief executive officer of the Association and shall, subject to the control of the Board, have general supervision, direction and control of the business and officers of the Association. The president shall preside at all meetings of the Members and at all meetings of the Board. The president shall be ex-officio a member of all standing committees, including the executive committee, if any, and shall have the general powers and duties of management usually vested in the office of president of a corporation, and shall have such other powers and duties as may be prescribed by the Board or by the Bylaws.

Section 8.6. Vice President. In the absence or disability of the president, the vice president shall perform all the duties of the president, and when so acting shall have all powers of and be subject to all the restrictions upon the president. The vice president shall have such other powers and perform such other duties as from time to time may be prescribed for him by the Board or by the Bylaws.

Section 8.7. Secretary. The secretary shall keep, or cause to be kept, a book of minutes at the principal office or such other place as the Board may order of all meetings of directors and Members, with the time and place of holding, whether regular or special and if special how authorized, the notice thereof given, the names of those present at the directors' meetings, the number of memberships present or represented at Members' meetings and the proceedings

thereof. The secretary shall give, or cause to be given, notice of all the meetings of the Members and of the Board required by the Bylaws or by law to be given, and he shall have such other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

Section 8.8. Chief Financial Officer. The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Association, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital and surplus. The books of account shall at all times be open to inspection by any director. The chief financial officer shall deposit all moneys and other valuables in the name and to the credit of the Association with such depositories as may be designated by the Board. He or she shall disburse the funds of the Association as may be ordered by the Board, shall render to the president and directors, whenever they request it, an account of all of his or her transactions as chief financial officer and of the financial condition of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

Section 8.9. Deposits By Property Manager. The Board may designate a professional property management company to collect assessments and make deposits. A separate trust account shall be established for the Association so that the Association's deposits will not be commingled with non-Association funds. Another separate trust account, complying with the requirements of CIVIL CODE Section 1365.5, shall be established in the name of the Association for the deposit of reserves and the Association shall require its property manager, if one is designated, to deposit reserves in such separate account on at least a monthly basis. In the event the Association authorizes a property manager to collect assessments or make deposits, the Association shall maintain a fidelity bond in an appropriate amount naming the Association as obligee and insuring against loss by reason of the acts of the management agent and its employees. The fidelity bond shall be in an amount equal to not less than three (3) months' aggregate regular assessments (including reserves) by the Association against all Condominiums then subject to assessment.

Section 8.10. Signing Checks, Etc. All checks, notes, leases and deeds of trust of the Association shall be signed by at least two persons who hold offices of this Association, and one such person must be the president or the vice president. The Board may designate a professional property management company to pay the Association's operating expenses from the non-reserve trust account established pursuant to the Section above entitled "**Deposits By Property Manager**".

ARTICLE IX

POWERS AND DUTIES OF ASSOCIATION

Subject to the Declaration, the Articles of Incorporation and the California Nonprofit Corporation Law applicable to mutual benefit corporations, the Board shall have the following powers and duties:

Section 9.1. Right to Enforce. To enforce the provisions of the Declaration, the Articles of Incorporation and Bylaws of the Association, the rules and regulations adopted by the Board and the provisions of any agreement to which the Association is a party.

Section 9.2. Payment of Taxes on Common Area or Association Property. To pay any taxes and governmental special assessments which are or could become a lien on the Common Area or Association Property or any portion thereof.

Section 9.3. Insurance. To contract and pay for fire, casualty, liability, fidelity bonds and other insurance as required by the Declaration and such other insurance as the Board deems to be appropriate.

Section 9.4. Right to Contract. To contract and pay for goods and services relating to the Association Property, and to employ personnel necessary for the operation and maintenance of the same, including legal and accounting services. Anything herein to the contrary notwithstanding:

(a) The term of any contract with a third person for supplying goods or services to the Association Property or for the Association shall not exceed a term of one (1) year unless a longer term is, by vote at a meeting or by written ballot without a meeting pursuant to California CORPORATIONS CODE Section 7513, approved by a majority of the voting power of Members of the Association, other than Declarant, constituting a quorum consisting of more than fifty percent (50%) of the voting power of Members of the Association other than Declarant, with the following exceptions:

(i) A management contract, the terms of which have been approved by the Federal Housing Administration or the United States Department of Veterans Affairs;

(ii) A contract with the public utility company for materials or services the rates for which are regulated by the Public Utilities Commission may exceed a term of one (1) year so long as it does not exceed the shortest term for which the public utility will contract at the regulated rate;

(iii) A contract for prepaid casualty and/or liability insurance policies may be for a term of not to exceed three (3) years, provided that the policy permits short rate cancellation by the Association;

(iv) Agreements for cable television services and equipment, internet services or similar telecommunications services and equipment, or satellite dish television services and equipment, where the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more may exceed a term of one (1) year but may not exceed a term of five (5) years;

(v) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services, where the supplier or suppliers are not entities in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more may exceed a term of one (1) year but may not exceed a term of five (5) years; and

(vi) Contracts with a term not to exceed three (3) years which are terminable by the Association without cause, penalty or other obligation after one (1) year upon ninety (90) days' written notice of termination given by the Association to the other party.

(b) Any agreement for management of the Project and any other contract providing for services by Declarant shall be terminable for cause upon thirty (30) days' written notice, and without cause or payment of a termination fee upon not more than ninety (90)

days' written notice. Such agreements shall be renewable with the consent of the Board and the management agent.

(c) The Board shall not terminate professional management of the Project and assume self-management except in accordance with the Section of the Declaration entitled "Approval of First Mortgagees".

(d) No contract with the Association negotiated by Declarant shall exceed a term of one (1) year except as may otherwise be provided in this Section.

Section 9.5. Right to Delegate. To delegate any of its powers hereunder to others, including committees, officers and employees.

Section 9.6. Preparation of Budgets and Financial Statements. To prepare budgets and financial statements for the Association as provided in these Bylaws.

Section 9.7. Adoption of Rules. To adopt reasonable rules not inconsistent with the provisions contained in the Declaration, and to amend the same from time to time relating to the use of the Common Area and Association Property and the facilities located thereon.

Section 9.8. Right of Discipline. To suspend the voting rights and right to use the recreational facilities (if any) located on the Association Property of a Member who is in default in the payment of any assessment, as provided in **Article V** of these Bylaws.

Section 9.9. Right to Enter. To enter onto any Living Unit and Exclusive Use Area subject to the limitations set forth in the Declaration.

Section 9.10. Selection of Officers. To select and remove all officers, agents and employees of the Association, prescribe such powers and duties for them as may not be inconsistent with law, the Declaration, the Articles of Incorporation or these Bylaws, and, subject to the provisions of the Section entitled "**Compensation and Fees**" of **Article VII** of these Bylaws, to fix their compensation.

Section 9.11. Fill Vacancies on Board. To fill vacancies on the Board, except as provided in **Article VII** above.

Section 9.12. Capital Expenditures. To make capital expenditures for and on behalf of the Association; provided, however, unless the Declaration allows otherwise, the Board shall not incur aggregate expenditures for capital improvements in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year unless the capital expenditure is, by vote at a meeting or by written ballot without a meeting pursuant to California CORPORATIONS CODE Section 7513, approved by a majority of the voting power of Members of the Association, other than Declarant, constituting a quorum consisting of more than fifty percent (50%) of the voting power of the Members of the Association other than Declarant.

Section 9.13. Borrowing of Money. To borrow money and incur indebtedness for the purposes of the Association, and to cause to be executed and delivered therefor, in the corporate name, promissory notes or other evidences of debt and, with the vote or written assent of two-thirds (2/3) of the voting power of each class of Members of the Association, to (a) hypothecate, mortgage, pledge or deed in trust any or all of the real or personal property owned by the Association as real security for money borrowed or debts incurred, and (b) sell any real or personal property

owned by the Association. After conversion of the Class B membership to Class A membership, the action herein requiring membership approval shall require the vote or written consent of (i) two-thirds (2/3) of the voting power of Members of the Association, and (ii) two-thirds (2/3) or more of the voting power of Members of the Association other than Declarant.

Section 9.14. Right to Sell. As permitted in the Declaration, to sell the Project for the benefit of all of the Owners and their Mortgagees, as their interests may then appear, at such price and upon such terms as the Board may determine reasonable; provided, however, the Board shall not sell in any fiscal year Association property having an aggregate fair market value in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year unless the sale is, by vote at a meeting or by written ballot without a meeting pursuant to California CORPORATIONS CODE Section 7513, approved by a majority of the voting power of Members of the Association, other than Declarant, constituting a quorum consisting of more than fifty percent (50%) of the voting power of Members of the Association other than Declarant.

Section 9.15. Management of Business. To conduct, manage and control the affairs and business of the Association, and to make such rules and regulations therefor not inconsistent with law, the Declaration, the Articles of Incorporation or these Bylaws as they deem best, including rules and regulations for the operation of the Association Property and the facilities owned or controlled by the Association.

Section 9.16. Management of Association Property. To manage, operate, maintain and repair the Association Property and all improvements located thereon, including the parking and drainage facilities and the restoration and replacement of any or all of the buildings, structures and improvements which are part of the Association Property at any time and from time to time as the Board may determine desirable or necessary.

Section 9.17. Notification to Mortgagee. Any Mortgagee, insurer or guarantor of a first Mortgage will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Condominium on which there is a first Mortgage held, insured or guaranteed by such Mortgagee, insurer or guarantor, as applicable.

(b) Any delinquency in the payment of assessments or other default by an Owner of a Condominium subject to a first Mortgage held, insured or guaranteed by such Mortgagee, insurer or guarantor, which remains uncured for a period of sixty (60) days.

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Any proposed action which would require the consent of a specified percentage of Mortgagees, insurers or guarantors of first Mortgages as required in these Bylaws or in the Declaration.

Such written notice shall be deemed properly given if deposited in the United States mail, postage prepaid, and addressed to the Mortgagee, insurer or guarantor at its address appearing of record in the first Mortgage (or assignment thereof, if applicable) unless such Mortgagee, insurer or guarantor has previously notified the Association in writing of a different address for purposes of notices under the Declaration or these Bylaws.

Section 9.18. Payment of Association Property Utilities. To pay all charges for water, electricity, gas, CATV, trash service and other utility services for the Association Property and, to the extent not separately metered or charged, for each Living Unit and Exclusive Use Area.

Section 9.19. Right to Permit Use of Common Area and Association Property. To permit utility suppliers to use portions of the Common Area or Association Property reasonably necessary to the on-going development or operation of the Project. So long as Class B membership remains in existence, the Board shall at Declarant's request, grant to utility suppliers reasonable easements and licenses over, under, upon and across the Common Area and Association Property for the installation and maintenance of utility systems within the Project.

Section 9.20. Authorization to Contract. To authorize any officer or officers or agent or agents to enter into any contract or execute any instrument in the name and on behalf of the Association. Such authority may be general or confined to specific instances, and unless so authorized by the Board, no officer, agent or employee shall have any power or authority to bind the Association by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 9.21. Common Area Licenses. To grant irrevocable licenses for Owners to exclusively use portions of the Common Area adjoining the Owners' Living Units provided that the granting of such licenses would not materially and adversely affect any Owner's use of the Common Area.

Section 9.22. Association Property Easements. To grant easements for Owners to exclusively use portions of the Association Property adjoining the Owners' Living Units provided that the granting of such easements would not materially and adversely affect any Owner's use of the Association Property.

Section 9.23. Checks. To cause to be issued checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, in the name of or payable to the Association, which shall be signed or endorsed by the president or vice president and another officer of the Association unless otherwise authorized by the Board or by these Bylaws.

Section 9.24. Information To Be Provided To Members. To provide those notices, information, statements and documentation required by California law to be provided to Members by the Board or the Association and, if the law so specifies, at the required time(s) and in the required form.

Section 9.25. Litigation.

(a) ***CIVIL CODE Section 1368.3.*** The Association has standing to institute, defend, settle or intervene in litigation, arbitration, mediation or administrative proceedings in its own name as the real party in interest and without joining with it the individual Owners, in those matters described in Civil Code Section 1368.3.

(b) ***Initiating Claims Under Title 7 of the CIVIL CODE.*** So long as a majority of the voting power of Members is held by Declarant, or so long as there are two or more outstanding classes of membership the Board's decision of whether to investigate or to initiate a claim under Title 7 of Part 2 of Division 2 of the California Civil Code ("**Construction Claim**") shall be decided by the Class A Elected Directors at a meeting in which the quorum requirement for Board meetings was satisfied.

(c) **Class A Member Approval.** If a Construction Claim is not resolved pursuant to the non-adversarial procedures (such as those set forth in California Civil Code Section 1375, and any successor statutes or laws), the Board shall not initiate litigation or binding arbitration, where applicable, with respect to a Construction Claim without first obtaining the approval of a majority of the voting power of Members other than Declarant. A special meeting of Members may be called for this purpose pursuant to the provisions of **Section 6.3** above.

(d) **Compliance With Statutes.** The Association shall comply with all applicable statutes in connection with any claim or action being considered by the Association, including without limitation, Civil Code Sections 1368.4, 1369.510-1369.590, 1366.3 and 1375.

Section 9.26. Corporations Code. Except as specifically limited by this Article, the Association shall have all the powers granted to a nonprofit mutual benefit corporation as enumerated in Section 7140 of the CORPORATIONS CODE.

ARTICLE X

BOOKS, RECORDS AND FINANCIAL STATEMENTS

Section 10.1. Availability of Documentation. The Board shall make available to any Owner of a Condominium, any first Mortgagee, and the holders, insurers and guarantors of a first Mortgage on any Condominium, or any of their duly appointed representatives, current copies of the Declaration, the Articles of Incorporation, the Bylaws, rules governing the Condominium and all other books, records and financial statements of the Association in accordance with the requirements and subject to the limitations of California law. "Available" as used in this Section shall mean available for inspection upon request at least during normal business hours or under other reasonable circumstances. The Board shall establish reasonable rules with respect to:

- (a) Notice to be given to the custodian of the records by the Member or Mortgagee desiring to make the inspection;
- (b) Hours and days of the week when such an inspection may be made; and
- (c) Payment of the costs of reproducing copies of documents requested.

Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and all physical property owned or controlled by the Association. The right of inspection by a director shall include the right at his expense to make extracts and copies of documents.

Section 10.2. Financial Statements. The Board shall do the following:

- (a) **Annual Reports.** Prepare and distribute an annual report in accordance with the requirements of Corporations Code Section 8321.
- (b) **Review of Financial Statements.** If required by Civil Code Section 1365(b), prepare and distribute a review of the financial statement of the Association prepared in accordance with the requirements of that statute.

(c) **Annual Budgets.** For the second and each subsequent fiscal year of the Association, the Board shall cause a pro forma operating statement (budget) for the Association to be prepared and distributed to Members in accordance with the requirements of Civil Code Sections 1365(a) and 1365(c), or any successor statutes, and any other applicable California law.

Section 10.3. Operating and Reserve Accounts. The Board shall comply with the requirements of Civil Code Section 1365.5 regarding the Association's operating and reserve accounts, including conducting and reviewing studies of the Association's reserve accounts as required by Civil Code Section 1365.5(e).

ARTICLE XI

AMENDMENT

Section 11.1. Prior to Escrow Closings. Prior to the date escrow closes for any sale of a Condominium to an Owner, these Bylaws may be unilaterally amended by Declarant.

Section 11.2. After Escrow Closings. The following provisions shall apply after the close of the first escrow for a sale of a Condominium to an Owner. During the period of time prior to conversion of the Class B membership in the Association to Class A membership, new Bylaws may be adopted or these Bylaws may be amended or repealed by the vote of the Members entitled to exercise a majority or more of the voting power of each class of Members of the Association or by the written assent of such Members. After conversion of the Class B membership to Class A membership, these Bylaws may be amended or repealed by the vote of (i) Members entitled to exercise a majority of the voting power of the Association, and (ii) at least a majority of the voting power of Members of the Association other than Declarant. The percentage of voting power necessary to amend a specific clause or provision of these Bylaws shall not be less than any percentage of affirmative votes prescribed for action to be taken under that clause. Anything herein stated to the contrary notwithstanding, so long as there is a Class C membership in the Association, **Article VII** of these Bylaws shall not be amended without the approval of the Class C Member of the Association. ANY ELECTION OR PROCEEDING TO AMEND THESE BYLAWS AFTER THE CLOSE OF THE FIRST ESCROW FOR A SALE OF A CONDOMINIUM TO AN OWNER SHALL BE SUBJECT TO AND COMPLY WITH THE PROVISIONS OF THE OPEN MEETING ACT (CALIFORNIA CIVIL CODE SECTIONS 1363.03 - 1363.09) AND ANY ELECTION RULES ADOPTED BY THE BOARD IN CONFORMANCE THEREWITH.

Section 11.3. Mortgagee Approval of Amendments. Anything herein stated to the contrary notwithstanding, no amendment that is of a material adverse nature to Mortgagees may be made to these Bylaws without the prior written consent of first Mortgagees which have at least fifty-one percent (51%) of the votes of Condominiums subject to Mortgages. A Mortgagee who receives a written request to approve amendments (including additions) who does not deliver or mail to the requesting party a negative response within thirty (30) days, shall be deemed to have approved such request provided that such written request was delivered by certified mail or registered mail, with "return receipt" requested. Such written request shall be deemed properly given if deposited in the United States mail, postage prepaid, and addressed to the Mortgagee at its address appearing of record in the first Mortgage (or assignment thereof, if applicable) unless such Mortgagee has previously notified the Association in writing of a different address for purposes of notices under the Declaration or these Bylaws.

ARTICLE XII

ASSOCIATION PROPERTY

The Association shall accept title to the Association Property as set forth in the Declaration.

ARTICLE XIII

MISCELLANEOUS

Section 13.1. Voting by Declarant. Prior to conversion of the Class B membership in the Association to Class A membership, any procedure, action or matter for which the Bylaws require the approval of a prescribed majority of the voting power of Members of the Association other than Declarant shall require the vote or written assent of (i) a bare majority of the Class B voting power, and (ii) the prescribed majority of the Class A voting power. After conversion of the Class B membership in the Association to Class A membership, any procedure, action or matter for which the Bylaws require the approval of a prescribed majority of the voting power of Members of the Association other than Declarant shall require the vote or written assent of (A) a bare majority of the total voting power of Members of the Association, and (B) the prescribed majority of the total voting power of Members of the Association other than Declarant.

Section 13.2. Fiscal Year. The fiscal year of the Association shall begin on the first day of January and end on the thirty-first (31st) day of December of each year, except that the first fiscal year shall begin on the date of incorporation of the Association. However, the fiscal year of the Association is subject to change from time to time as the Board shall determine.

Section 13.3. The San Diego Spectrum Declaration. The Association shall be deemed the "Owner" under the Spectrum Declaration with respect to all of Promenade At Spectrum and the Association shall have all rights and obligations of Owner under the Spectrum Declaration. For example, and not by way of limitation, the Association shall be obligated to pay the Spectrum Association Regular Assessments which are levied against Promenade At Spectrum and the Association shall be the sole Member of the Spectrum Association with respect to Promenade At Spectrum.

Section 13.4. References to Statutes. Several Sections of these Bylaws refer to or briefly summarize certain California statutes in order to provide information to the Members and Board about those statutes. However, (i) the references are only summary in nature and the full statutory provision should be reviewed, (ii) no attempt has been made to refer to all applicable statutes, and (iii) there is no intent to limit application of any future statutory amendments or any new statutory provisions.

I, the undersigned, do hereby certify:

1. That I am the incorporator of PROMENADE AT SPECTRUM HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation; and

2. That the foregoing Bylaws, comprising eighteen (18) pages, constitute the Bylaws of said corporation duly adopted by Written Consent of Incorporator dated April 17, 2006.

IN WITNESS WHEREOF, I hereunto subscribe my name and affix the seal of said corporation this 17th day of April, 2006.



A. JOHN HECHT, Incorporator