

BY-LAWS  
OF  
SIERRA CREST HOMEOWNERS ASSOCIATION, INC.

Article I.

Name

The name of the corporation is Sierra Crest Homeowners Association, Inc., hereinafter referred to as the "Association".

Article II.

Definitions

Section 1. Project. Project refers to and means the entire real estate described in Exhibit "A" attached hereto for all purposes, divided into Lots and Common Areas within said real estate description.

Section 2. Association. Association shall mean and refer to Sierra Crest Homeowners Association, Inc., a non-profit corporation, its successors and assigns of which each Owner shall be a Member.

Section 3. Lot. Lot refers to and means any plot of land including any improvements thereon, shown upon the recorded subdivision Map for the Project which is not owned in common with the other Owners of the other Lots.

Section 4. Common Areas. Common Areas shall mean and refer to the entire Project, excepting those portions thereof which lie within the boundaries of any Lot, as hereinabove defined.

Section 5. Common Open Space. Common Open Space shall refer to those parts of the Common Area to be used for the use and enjoyment of all the occupants of the Project, but not including streets and alleys, private yards and patios of individual Lots or other areas designed primarily to serve other functions.

Section 6. Member. Member shall mean a Member of the Association.

Section 7. Owner. Owner shall mean and refer to the record Owner, whether one or more persons or entities of a Lot, which

is a part of the Project, including contract sellers, but excluding those having such interest merely as a security for the performance of an obligation.

Section 8. Mortgage. Mortgage shall mean the conveyance of a Lot, or other portion of the Project to secure the performance of an obligation, which conveyance shall be void upon the due performance of said obligation.

Section 9. Mortgagee. Mortgagee shall mean a person or entity to whom a mortgage is made; "Mortgagor" shall mean a person or entity who mortgages his or its property to another, i.e., the maker of a Mortgage.

Section 10. Whenever the word "Deed of Trust" is used herein, it shall mean and be synonymous with the word "Mortgage", and the same may be used interchangeably with the same meaning.

Section 11. Developer. Developer shall mean and refer to Richard G. Miller, his heirs, successors and assigns.

Section 12. Declaration. Declaration shall refer to that certain Declaration of Covenants, Conditions and Restrictions for Sierra Crest, dated \_\_\_\_\_, 1975, which was recorded in the Office of the County Clerk of El Paso County, on \_\_\_\_\_, 1975, under File No. \_\_\_\_\_. "Declaration" shall include any authorized amendment of the foregoing instrument.

### Article III.

#### Membership

Section 1. Membership. Every person or entity who is an Owner of a Lot which is subject by the Declaration to assessment by the Association, including contract sellers shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership per Lot. Membership shall be appurtenant to and may not be separated from the ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

Section 2. Suspension of Membership. During any period in which a Member shall be in default in the payment of any common or special assessment levied by the Association, the voting rights and right to use the Common Areas and any facilities thereon may be suspended by the Board of Directors until such assessment has been paid. Such rights of the Member may also be suspended after notice and hearing, for a period not to

exceed thirty (30) days for any single infraction of any rules and regulations established by the Board of Directors governing the use of the Common Areas.

#### Article IV.

##### Property Rights

Section 1. Each Member shall be entitled to the use and enjoyment of the Common Areas as provided in the Declaration. Any Member may delegate his rights of enjoyment of the Common Areas to the members of his family who reside with him on his Lot and to his tenants or contract purchasers who reside on the Lot. Such Member shall notify the Secretary of the Association in writing of the name of any such delegee. The rights and privileges of such delegee are subject to suspension to the same extent as those of the Member.

#### Article V.

##### Meetings of Members

Section 1. Place of Meetings. Meetings of the Association shall be held at the principal office of the Project or any other suitable place convenient to the Members, as may be designated by the Board of Directors; provided, however, that all meetings shall be held in El Paso County, Texas.

Section 2. Annual Meetings. The first annual meeting of the Association shall be held in El Paso, Texas when 51% of the Lots have been sold or within one year of the date of the close of the first sale of a Lot in the project, whichever occurs first. Thereafter, the annual meetings of the Association shall be held within thirty (30) days of the anniversary date of the first annual meeting in each succeeding year. At such meetings, there shall be elected by a ballot of the Owners, a Board of Directors in accordance with requirements of Article VI of these By-Laws. The Owners may also transact such other business of the Association as may properly come before them.

Section 3. Special Meetings. It shall be the duty of the President to call a special meeting of the Association as directed by resolution of the Board of Directors or upon a petition signed by a majority of the Owners having been presented to the Secretary. The notice of any special meeting shall state the time and the place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice unless by consent of 75% of the votes represented at such meeting, in person or by proxy.

Section 4. Notice and Place of Meeting. It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purpose thereof as well as the date, time and place where it is to be held, to each Member entitled to vote

thereat at least ten (10) but not more than fifty (50) days prior to such meeting and addressed to the Member's address last appearing on the Books of the Association, or supplied by such Member to the Association for the purpose of notice. The mailing of a notice in the manner provided in this Section 4, shall be considered notice served.

Section 5. Voting. Voting shall be on a Lot basis and shall be based upon the class of membership held in the Association. The Owner of each Lot, with the exception of Developer, shall be a Class A Member and shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership except, that Owners owning two adjoining Lots and who qualify for a single assessment under Part E-7(b) (v) of the Declaration shall be entitled to only one vote. Developer shall be a Class B Member as to each unsold Lot and shall be entitled to three (3) votes for each Lot owned by him. An unsold Lot shall mean a Lot in the Project that has not been conveyed to an individual purchaser for his own use, by Developer. Transfer of title to a Lot or group of Lots by Developer to another entity which does not constitute a sale or sales to the individual Owner user shall not convert the respective Class B Membership or Memberships into Class A Membership. The Class B Membership shall cease and be converted to Class A Membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes in the Class A Membership equal the total votes outstanding in the Class B Membership, or
- (b) On December 31, 1986.

Section 6. Majority of Owners. As used in these By-Laws, the term "majority of Owners" shall mean those Owners holding 51% of the total votes of both Class A Members and Class B Members (if any), determined in accordance with the voting provisions contained herein and in the Declaration.

Section 7. Quorum. Except as otherwise provided in these By-Laws, the presence in person or by proxy of a "majority of Owners" as defined in Section 6 of this Article shall constitute a quorum.

Section 8. Proxies. Votes may be cast in person or by proxy. Proxies must be in writing and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by an Owner of his Lot.

Section 9. Suspension of Voting Rights. The voting rights of any Member shall be automatically suspended during any period in which he shall be delinquent in the payment of assessments due the Association and for any period during which his right to use the Common Areas has been suspended by the Board of Directors pursuant to the provisions of the Declaration and/or By-Laws.

## Article VI.

### Board of Directors

Section 1. Number and Qualification. The affairs of the Association shall be governed by a Board of Directors composed of at least three (3) persons, who may be non-residents of the State of Texas and non-Members of the Association.

Section 2. Election and Term of Office. At the first annual meeting of the Members of the Association, the Members shall elect three (3) or more Directors to succeed the original Directors. The term of office of each Director shall be fixed for one (1) year. The Directors shall hold office until their successors have been elected and hold their first meeting.

(a) Members of the Board of Directors shall be elected by plurality of the votes cast at the annual meeting of the Members of the Association.

(b) Cumulative voting shall not be allowed.

Section 3. Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the Association, 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 the successor is elected at the next annual meeting of the Association.

Section 4. Directors Fees. Directors fees, if any, shall be determined by the Members of the Association.

Section 5. Action Taken without a Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining a written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Board of Directors.

Section 6. Organization Meeting. The first meeting of the Board of Directors shall be held within thirty (30) days of election at such place as shall be fixed by the Directors at the meeting at which such Directors were elected, 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 of Directors shall be present.

Section 7. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors. Notice of regular meetings of the Board of Director shall be given to each Director, personally or by mail, telephone or telegraph, at least seven (7) days prior to the day named for such meeting.

Section 8. Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present, shall be regarded as the act of the Board of Directors.

Section 9. Waiver of Notice. Before 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 of Directors shall be a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

Section 10. Powers and Duties. The Board of Directors shall have 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 By-Laws, directed to be exercised and done by the Members of the Association. These powers shall include, but not be limited to, the power to adopt and publish rules and regulations governing the use of Common Areas and the personal conduct of the Members and their guests thereon.

Section 11. Other Duties. In addition to duties imposed by these By-Laws or by resolutions of the Association, the Board of Directors shall be responsible for the following:

(a) Care, upkeep and surveillance of the Project and the Common Areas.

(b) Collection of monthly assessments from the Owners.

(c) Designation and dismissal of the personnel necessary for the maintenance and operation of the Project and the Common Areas.

(d) Supervise all officers, agents and employees of the Association and see to it that their duties are properly performed.

Section 12. Committees. The Board of Directors, by resolution adopted by a majority of the Directors in office, may designate one or more committees of Directors, each of which committees shall consist of two or more Directors, which committees, to the extent provided in such Resolution, shall have and exercise the authority of the Board of Directors in the management of the corporation. The appointment of such committees and the delegation thereof of authority, however, shall not operate to relieve the Board of Directors, or any individual Director, of any responsibility imposed upon it or him by law.

Section 13. Management Agent. The Board of Directors shall employ for the Association, a manager or management agent at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize.

Section 14. Removal of Directors. At any annual or special meeting of the Association duly called, any one or more of the Directors may be removed with or without cause by a majority of the members of the Association in attendance and a successor may then and there be elected to fill the vacancy thus created. Any Director's removal as then proposed by the Members, shall be given an opportunity to be heard at the meeting.

Section 15. Liability of the Board of Directors. The members of the Board of Directors shall not be liable to the Owners for any non-willful tort, mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The Association shall indemnify and hold harmless each member of the Board of Directors against all loss, costs and expenses (including attorney fees reasonably incurred by him) in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a Director or Officer of the Association, except as to matters as to which he may be finally adjudged in such action, suit or proceeding, to be liable for willful misconduct or bad faith. In the event of a settlement, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Association is advised by its counsel that the person to be indemnified has not been guilty of willful misconduct or bad faith as such Director or Officer. The cost of any such indemnification shall be treated and handled by the Association as an item of Common Expense as provided in the Declaration.

Nothing in these By-Laws shall prohibit any Member of the Board of Directors from entering into Contracts with, or otherwise dealing with, the Association. The Association may purchase liability insurance for each Director or Officer covering his personal liability for his acts and omissions occurring while acting in the capacity of a Director or Officer of the Association, the cost of which shall be paid by the Association as a Common Expense as provided in the Declaration.

## Article VII.

### Officers

Section 1. Designation. The Officers of the Association shall be a President, Vice President, Secretary and a Treasurer, who shall be members of and chosen by, the Board of Directors at its annual meetings, and shall serve for and during the period until the next annual meeting of the Board, or until their suc-

cessors have been chosen and qualified. Any two or more Offices may be held by the same person, except the offices of President and Secretary. Such other Officers and assistant officers and agents as may be deemed necessary, may be elected or appointed by the Board of Directors.

Section 2. Removal of Officers. Any Officer may be removed by the Board of Directors whenever, in its judgment, the best interest of the Association will be served thereby. Removal of an Officer shall be without prejudice to the contract rights, if any, of the Officer so removed. Election or appointment of an Officer or agent shall, not of itself, create contract rights.

Section 3. Resignation of Officers. Any Officer may resign at any time by giving written notice to the Board of Directors, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later times specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4. Vacancies. Any vacancies occurring in any office shall be filled by the remaining Board of Directors, even though they may constitute less than a quorum. The Officer elected to such vacancy shall serve for the remainder of the term of the Officer he replaces.

Section 5. President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board of Directors. He shall have all of the general powers and duties which are usually vested in the Office of President of an Association, including, but not limited to, the power to appoint committees from among the Owners from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association.

Section 6. Vice President. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board of Directors to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors.

Section 7. Secretary. The Secretary shall keep the Minutes of all meetings of the Board of Directors and the Minutes of all meetings of the Association; have charge of such books and papers as the Board of Directors may direct, and shall, in general, perform all of the duties incident to the Office of Secretary or as required by the Board of Directors.



Section 8. Treasurer. The Treasurer shall have 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 shall be responsible for the deposit of all monies and other valuable affects 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. The Treasurer shall also prepare an Annual Financial Report prior to each annual meeting in such form and containing such information as may be from time to time directed by the Board of Directors, and such other financial records and reports as may be requested by the Board of Directors.

Section 9. Compensation of Officers and Employees. The compensation of all Officers and employees of the Association shall be fixed by the Board of Directors. This provision shall not preclude the Board of Directors from employing a Director as an employee of the Association nor preclude the contracting with the Director for the management of the Project or otherwise, provided that no Director may vote upon any matter providing for his employment and/or compensation.

## Article VIII.

### General Provisions

Section 1. Basic provisions governing the functions and activities of the Association are set forth in the Declaration. To the extent not inconsistent with the Declaration, the functions and activities of the Association shall be supplemented by the following provisions:

(a) Assessment Roll. The Association shall maintain an assessment roll and set of accounting books in which there shall be an account for each Lot. Such an account shall designate the name and address of the Owner, the amount of each assessment against the Owner, the dates and amounts in which the assessments become due, the amounts paid upon the account and the balance due upon the assessments.

(b) Budget. The Board of Directors shall adopt a budget for each calendar year which shall contain estimates of the cost of performing the functions and activities of the Association as set forth herein and in the Declaration.

(c) Proposed Assessments Against Each Member. Copies of the proposed budget and proposed assessments against each Member of the Association shall be transmitted to each Member of the Association on or before January 1 (or the beginning of the fiscal year, if other than the calendar year) or the year for which the budget is made. If the budget is subsequently amended

before the assessments are made, a copy of the amended budget shall be furnished each member of the Association.

(d) Depository of Association Monies. The depository of the monies of the Association shall be one or more banks or other financial institutions as shall be designated from time to time by the Board of Directors. Withdrawal of monies from such accounts shall be only by check or withdrawal orders signed by six persons as are authorized by the Board of Directors.

(e) Audit. An audit of the accounts of the Association shall be made annually by a certified public accountant chosen by the Board of Directors, and a copy of said report shall be furnished to each Member within thirty (30) days of the completion of the audit.

(f) Fidelity Bonds. Fidelity Bonds shall be required by the Board of Directors from all Officers and employees of the Association and from any contractor handling or responsible for monies of the Association. The amount of such bonds shall be determined by the Board of Directors, but shall be at least the amount of the total annual assessments against Members for Common Expenses. The premiums of such bonds shall be paid by the Association, and treated as an item of Common Expense.

(g) Fiscal Year. The fiscal year of this corporation shall be the calendar year unless the Board of Directors shall designate a fiscal period ending other than on December 31.

(h) Donations. The Association may accept gifts, legacies, donations and/or contributions in any amount and in any form, from time to time, but on such terms and conditions as may be decided from time to time by the Board of Directors.

(i) Corporation Seal. The corporate seal of the Association shall be in such form as the Board of Directors shall determine and shall contain the name of the Association, the state of its creation and such other matters as may be required by the laws of the State of Texas or as the Board of Directors, in their discretion, may determine. Said seal may be used by causing it or facsimile thereof to be impressed, fixed, reproduced or other wise.

(j) Checks, Drafts, Notes. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Association for all debts of the Association shall be signed by the President and counter-signed by the Treasurer or by such Officer as shall from time to time be determined by the Board of Directors.

(k) Notice and Waiver of Notice. Whenever any notice is required by these By-Laws to be given, personal notice is not

meant unless expressly so stated; and any notice so required shall be deemed to be sufficient if given by depositing the same in a post office box and a sealed post paid wrapper, addressed to the person entitled thereto at his last known Post Office address, and such notice shall be deemed to have been given on the day of such mailing. Any notice required to be given under these By-Laws may be waived by the person entitled thereto.

## Article IX.

### Evidence of Membership

Section 1. Evidence of Membership. The Association shall have no shares of stock. Since membership cannot be transferred except in connection with the transfer of ownership of a Lot, the Association shall not issue formal certificates of membership. The Board of Directors may, at its option, issue informal membership cards to Members and to members of the respective families who reside on their respective Lots. The Association shall maintain a current membership roll of Members from time to time.

Section 2. Transfer of Membership. Membership in the Association shall be transferred only concurrently with the recordation of transfer of ownership of the Lot to which it relates. Only one Membership for each Lot shall be validly outstanding at any time and that shall be in the name of the record owner of the Lot. Upon transfer of a Lot, the membership formerly held by the transferor shall be transferred to the transferee.

Section 3. Suspension after Hearing. The Board of Directors, after hearing and by majority vote, shall have the right to suspend the voting rights of a Member and the right of a Member to use the Common Areas for:

(a) his failure to pay any Common or Special Assessments as provided in the Declaration; such suspension shall not exceed the period in which said payment remains delinquent; and

(b) his violation of the rules and regulations of the Association, provided that (i) suspension of such cause shall not exceed thirty (30) days for any single violation and (ii) any such violation shall not be grounds for suspending the Member's right to access to his Lot.

Before any such action may be taken, at least ten (10) days written notice must be given to such Member, specifying the charges and stating the time and place of hearing on such charge. At such hearing, the Member shall be given an opportunity to be heard to present evidence and answer to such charge.

Article X.

Amendment

Section 1. By-Laws. These By-Laws may be amended by the Association in a duly constituted annual or special meeting for such purpose and no amendment shall take affect unless approved by Owners representing a majority of the total votes of both Class A Members and Class B Members in attendance at such membership meeting. No amendment shall conflict with any provision of the Declaration.

Article XI.

Other Projects

Section 1. Other Projects. The Declaration permits the Developer to designate additional Project(s) to be included with this Project in a single-common operation scheme. The Board of Directors shall be fully authorized to implement the provisions of the Declaration relating thereto as regards the Association's participation in said common operation scheme. In addition, the Association may also elect to merge with all or any of the other homeowners associations which participate in said single-common operation. Any such merger shall be accomplished in conformity with the applicable provisions of the TEXAS NON-PROFIT CORPORATION ACT.

Article XII.

Mortgages

Section 1. Notice to Association. An Owner who mortgages his Lot shall notify the Association through the manager or management agent, or the President of the Board of Directors, of the name and address of his mortgagee; and the Association shall maintain such information in a book entitled "Mortgagees of Lots." Such notices may likewise be given by any mortgagee directly to the Association.

Section 2. Notice of unpaid Assessments. The Association shall at the request of a mortgagee of a Lot, report any unpaid assessments due from the Owner of such Lot.

Article XIII.

Conflict

Section 1. Conflict. In case of any conflict between the Articles of Incorporation and these By-Laws, the Articles of Incorporation shall control; and in case of any conflict between the Declaration and these By-Laws or the Articles of Incorporation, the Declaration shall control.

IN WITNESS WHEREOF, Declarant has executed this instrument on the day and year first above written.

DECLARANT:

*Richard G. Miller*  
RICHARD G. MILLER,

STATE OF TEXAS )  
COUNTY OF EL PASO )

Before me, the undersigned authority, on this day personally appeared Richard G. Miller, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office this 3<sup>rd</sup> day of September, 1976.



*Judy Reed*  
Notary Public, El Paso County, Texas

My Commission Expires:  
JUDY REED, Notary Public  
In and for the County of El Paso, Texas  
My Commission Expires June 1, 1977

Note; This page appears to be erroneously numbered 19 instead of 13. At first glance it looks someone copied the authentication page of the DCCR (#19) and attached it to the By-Laws. BUT, further examination of the placement of the handwritten dates and signatures relative to the typed text indicates they are two separate documents.