

accept title to the Common Property, and undertake all maintenance responsibilities for the Common Property when title is conveyed and maintenance responsibilities are tendered by Declarant, pursuant to Subparagraphs (a) and (c) above. If a dispute arises between the Association and Declarant or any Merchant Builder in connection with the nature, design, quantity, quality or other attributes of the Common Property, the completion thereof, the state of title thereto or the acceptance of title or maintenance responsibility therefor, then the Association shall be obligated to accept title to and assume maintenance responsibility for such Common Property, and all Improvements and facilities located thereon, pending resolution of such dispute in accordance with Section 18.2 herein.

**3.18**     Declarant Easements. Declarant hereby reserves to itself, together with the right to transfer the same to others, easements of access, ingress and egress over all Lots, Common Area and Association Maintenance Areas for installation and maintenance of utilities and drainage facilities shown on one or more of the Tract Maps for the Project and for the construction, installation, operation, replacement, repair and maintenance of all utility and service lines, systems and other devices and Improvements which may be reasonably necessary for the development and marketing of Residences within the Project and the Annexation Property, including, but not limited, water, sewer, gas, electrical, telephone, television and storm drain purposes. Each Owner, by accepting a deed to a Lot in the Project, expressly consents to the foregoing easements and rights of way and authorizes and appoints Declarant (so long as Declarant owns all or any portion of the Project or the Annexation Property) as its and their attorney-in-fact of such Owner to execute any and all instruments particularly describing or locating such easements or rights of way.

## ARTICLE 4

### THE ASSOCIATION

**4.1**     Membership. Every person or entity who is an Owner, as defined in Article I above, including Declarant, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest in a Lot in the Project merely as security for the performance of an obligation. All memberships in the Association shall be appurtenant to the Lot owned by each Member, and memberships in the Association shall not be assignable, except to the person or entity to whom the title to the Lot has been transferred. Ownership of such Lot shall be the sole qualification for membership in the Association. The memberships in the Association shall not be transferred, pledged or alienated in any way, except upon the transfer of title to said Lot, and then only to the purchaser or Mortgagee of such Lot. Any attempt to make a prohibited membership transfer shall be void and will not be reflected in the books of the Association. The Association may levy a reasonable transfer fee against new Owners and their Lots (which fee shall be a Compliance Assessment chargeable to such new Owner) to reimburse the Association for the administrative cost of transferring the memberships to the new Owners on the records of the Association.

4.2 Classes of Membership. The Association shall have two (2) classes of voting membership, as follows:

4.3 Class A. Class A Members are all Owners, except Declarant and Merchant Builders for so long as there exists a Class B Membership. Each Class A Member shall be entitled to one (1) vote for each Lot owned. Declarant shall become a Class A Member with respect to Lots owned or voted by Declarant upon the conversion of Declarant's Class B membership, as provided below. 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. The Association shall not be required to recognize the vote or written assent of any such co-Owner, except the vote or written assent of the co-Owner designated in a writing executed by all of such co-Owners and delivered to the Association.

4.4 Class B. The Class B Members are Declarant and the Merchant Builders. As to each Phase, the Class B Member shall be entitled to three (3) votes for each Lot it owns and the Class B membership shall be converted to Class A membership upon the happening of the earliest to occur of the following events:

- a. The Close of Escrow for the sale of five hundred fifty-four (554) Lots in the Project;
- b. The fifth (5<sup>th</sup>) anniversary of the first Close of Escrow in a Phase for which a Final Subdivision Public Report was most recently issued by the DRE; or
- c. The twelfth (12<sup>th</sup>) anniversary of the first Close of Escrow for the sale of a Lot in the Project.

4.5 Special Voting Procedures for Election of the Board. The Declarant shall be entitled to solely elect a majority of the members of the Board until the first to occur of the following events:

- a. The election of the Board immediately following the sale by Declarant of five hundred fifty-four (554) Lots in the Project to members of the public; or
- b. The date which is the twelfth (12<sup>th</sup>) anniversary of the first Close of Escrow for the sale of a Lot in Phase 1.

Notwithstanding the foregoing, the Class A Members shall be entitled to elect at least forty percent (40%) of the members of the Board, so long as there are two (2) classes of membership outstanding in the Association.

4.6 Voting Rights. All voting rights shall be subject to the provisions and limitations provided in this Declaration, the Articles and the By-Laws. Except as provided in Article 5, Sections 5.3 and 5.4, and in Article 15 herein, and Article 5, Section 5.3, of the By-Laws, any provision of the Articles, the By-Laws or this Declaration which expressly requires the

vote or written consent of a specified percentage of the voting power of the Association shall require the approval of such specified percentage of the voting power of each class of membership. Upon the termination of Class B membership, except as provided in Article 5, Sections 5.3 and 5.4, and Article 15 herein, and Article 5, Section 5.3, of the By-Laws, any provision of the Articles, the By-Laws or this Declaration which expressly requires the vote or written consent of a specified percentage of the voting power of the Association shall require the vote or written consent of the voting power of the Association, as well as the vote or written consent of the voting power of the Association residing in Members, other than Declarant.

4.7 Voting: Joint Owners. Those Members appearing in the official records of the Association as record Owners of Lots shall be entitled to notice of any meeting of Members. If there is more than one (1) record Owner of any Lot ("joint Owners"), all such joint Owners shall be Members of the Association and may attend any meetings of the Association, but only one (1) such joint Owner shall be entitled to exercise the vote to which the Lot is entitled. Fractional votes shall not be allowed. Joint Owners may, from time to time, designate in writing one (1) joint Owner to vote. Where no joint Owner is designated, a vote made by a joint Owner of such Lot shall be conclusively presumed to have been cast with full authority and consent of the joint Owners. In the event of a dispute among joint Owners as to how their vote shall be cast, the joint Owners shall lose their right to vote on the matter in question, and any attempt to cast a vote in those circumstances shall be disallowed by the Board. The Board shall have no jurisdiction to determine any matters relating to the entitlement of Declarant to vote, or the manner in which such vote is exercised.

4.8 Adjustment of Voting Rights. The voting rights in the Association shall be adjusted on the first day of the month immediately following the first Close of Escrow for the sale of a Lot in each subsequent Phase of the Project.

4.9 Vesting of Voting Rights. The voting rights attributable to any given Lot in the Project, as provided for herein, shall not vest until the Assessments provided for hereinbelow have been levied by the Association against said Lot.

4.10 Suspension of Voting Rights. The Board shall have the authority to suspend the voting rights of any Member to vote at any meeting of the Members for any period during which such Owner is delinquent in the payment of any Assessment, regardless of type. Any suspension for nonpayment of any Assessment shall not constitute a waiver of discharge of the Member's obligation to pay the Assessments provided for in this Declaration.

4.11 Transfer. The Association membership held by any Owner of a Lot shall not be transferred, pledged or alienated in any way, except as incidental to the sale of such Lot. In the event of such sale, the Association membership may only be transferred, pledged or alienated to the bona fide purchaser or purchasers of the Lot, or to the Mortgagee (or third party purchaser) of such Lot upon a foreclosure sale. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. The Association may levy a reasonable transfer fee against new Owners (which fee may be chargeable to such new Owners

as a Compliance Assessment) to reimburse the Association for the administrative cost of transferring the memberships to the new Owners on the records of the Association.

**4.12**     Proxies. Votes may be cast in person or by proxy. Proxies must be filed with the Secretary before the appointed time for each meeting. Every proxy shall be revocable and shall automatically terminate upon the earliest of the following: (a) the conveyance by the Owner of his Lot; (b) the date of automatic termination, if any, specified in the proxy, but not to exceed three (3) years from the date of issuance of the proxy; or (c) eleven (11) months from the date of issuance of the proxy, if no automatic termination date is specified in the proxy. Any form of proxy or written ballot distributed to the membership of the Association shall afford an Owner the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon at the meeting for which said proxy was distributed, except it shall not be mandatory that a candidate for election to the Board be named in the proxy. A proxy or written ballot shall provide that, where the Owner specifies a choice, the vote shall be cast in accordance with that choice. In addition, the proxy shall also identify the person or persons authorized to exercise the proxy and the length of time it shall be valid.

**4.13**     Record Dates. For the purposes of determining Members entitled to notice of any meeting, to vote or to exercise any other rights in respect of any lawful action, the Board may fix in advance record dates as provided in the By-Laws.

## ARTICLE 5

### FUNCTIONS OF THE ASSOCIATION

**5.1**     Management Body. The Association is hereby designated as the management body of the Project. The Members of the Association shall be the Owners in the Project, as provided herein, and the affairs of the Association shall be managed by a Board of Directors, as more particularly set forth in the By-Laws of the Association. The initial Board shall be appointed by the incorporator or its successor. Thereafter, the Board shall be elected as provided in said By-Laws.

**5.2**     Powers. The Association has all of the powers of a California Nonprofit Mutual Benefit Corporation, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Association management documents. Subject to the provisions of the Association management documents, the Association has the power to perform any and all lawful acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association. Subject to the foregoing provisions, the Association, acting through the Board, shall have the following specific powers:

- a.     Enforce the provisions of this Declaration, the Architectural Standards, the Rules and Regulations, and all contracts or any agreements to which the Association is a party;