

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;

b. Acquire title, manage, maintain, repair, inspect and replace the Common Property, and Improvements located thereon, including all personal property, in a neat, clean, safe and attractive condition at all times, and to pay all utilities, landscaping, utility and other necessary services for the Common Property, all as more specifically set forth in the Article herein entitled "Repair and Maintenance";

c. Maintain fire, casualty, liability and fidelity bond coverage, and such other insurance coverages as are required or suggested pursuant to the provisions of the Article herein entitled "Insurance";

d. Delegate its powers and authority, officers and employees of the Association or to a manager employed by the Association, provided that the Board shall not delegate its responsibility:

(1) to make expenditures for additions or Improvements chargeable against the reserve funds;

(2) to conduct hearings concerning compliance by an Owner or his tenant, lessee, guest or invitee for a violation of the Association management documents;

(3) to levy monetary fines, impose Special Assessments against Lots, temporarily suspend an Owner's right as a Member of the Association, or to otherwise impose discipline; or

(4) to initiate litigation, record a claim of lien, or institute foreclosure proceedings for default in the payment of Assessments;

(5) to adopt Rules and Regulations concerning the maintenance, improvement, use and/or occupancy of the Project;

(6) to discharge by payment, if necessary, any lien against the Common Property or other portions of the properties, and, after Notice and Hearing as provided in the By-laws, charge the cost of discharging said lien to the Owner or Owners responsibility for its existence;

(7) to promulgate and adopt inspection and maintenance guidelines for the periodic inspection and maintenance of the Common Property;

(8) to adopt or designate a trustee to enforce assessment liens by sale as provided in the Article here entitled "Effect of Non-Payment of Assessments; Remedies of the Association" and California Civil Code Section 1367(b) and any successor or companion statutes;

(9) to disclose information in accordance with Section 11018.6 of the California Business and Professions Code and Sections 1354, 1365.5, 1365.9, 1375 and 1375.1 of the California Civil Code, as amended from time to time.

e. Obtain, for the benefit of the Common Property, all commonly metered water, gas and electric services, and may provide for refuse collection and cable (or master antenna) television service;

f. Grant easements or licenses where necessary for utilities and sewer facilities over, on and across the Common Property to serve the Project and the Association Property;

g. Grant nonexclusive easements over the Common Property, as necessary, for the express purpose of permitting the Association to perform its maintenance responsibilities pursuant to this Declaration;

h. Levy and collect Assessments on the Owners of all Lots in the Project for which Assessments have commenced, and enforce payment of such Assessments in accordance with the terms and provisions set forth in the Article herein entitled "Effect of Nonpayment of Assessments: Remedies of the Association";

i. Pay all taxes and special assessments which would be a lien upon the Project or the Common Property, and discharge any lien or encumbrance levied against the Project or the Common Property;

j. Pay for reconstruction of any portion of the Common Property damaged or destroyed;

k. Employ and contract with a professional manager for the Association. Except as otherwise provided by the DRE and as provided in this Declaration, any such management agreement, or any agreement providing for services by Declarant to the Association, shall be for a term not in excess of one (1) year (renewable by agreement of the parties for successive one (1) year periods), and any such agreement shall be terminable by the Association, acting by and through the Board, at any time without cause or the payment of a penalty or termination fee upon not more than ninety (90) days' written notice.

l. Retain, if deemed appropriate by the Board, and pay for legal and accounting services necessary and proper for the efficient operation of the Association, enforcement of the Declaration, Rules and Regulations and Architectural Standards, or in performing any other duties or enforcing any other rights of the Association;

m. Enter into a written subsidy agreement and/or maintenance agreement with Declarant, under which Declarant agrees to: (1) pay all or any portion of

the Common Expenses of the Association, and/or (2) perform any or all of the Association's maintenance obligations described in the Declaration in exchange for a temporary reduction or suspension of Regular Assessments during the term of such agreement;

n. Enter into any Lot when necessary in connection with maintenance or construction for which the Board is responsible;

o. Borrow and repay money for the purpose of maintaining and improving the Common Property, and Improvements thereon, and to encumber said Common Property as security for the repayment of such borrowed money;

p. Perform any and all other acts and things that a nonprofit, mutual benefit corporation organized under the laws of the State of California is empowered to do, which may be necessary, convenient or appropriate in the administration of its affairs for the specific purposes of meeting its duties as set forth in this Declaration;

q. The right to join with Declarant in the execution of any lot line adjustment, certificate of compliance, or other instrument in and to any in accordance with any such lot line adjustment, provided that such lot line adjustment and the resulting conveyance are made for (i) for the purpose of eliminating encroachment, (ii) to permit changes in the development plan in circumstances where changes are the result of topography, obstruction, hardship, aesthetic or environmental conditions; (iii) or the requirement of the Public Agencies; (iv) do not have a significant negative impact upon the Association or the Owners or (v) to transfer the burden of management and maintenance of any Common Property which in the reasonable judgement of the Board is generally inaccessible or is not likely to be of any particular use or benefit to the Owners; and

r. Subject to compliance with Civil Code 1354 and/or Civil Code Section 1375, or any companion or successor statutes, initiate, defend, settle or intervene in litigation, arbitration, mediation or other administrative proceedings in its own name as the real party in interest without joining with it the individual Owners in matters pertaining to the following: (i) enforcement of the Association management documents; (ii) damage to the Common Property; (iii) damage to those portions of the Lots for which the Association is obligated to maintain, inspect and repair; (iv) damage to the residences which arise out of, or is integrally related to, damage to the Common Property.

**5.3** Duties. The Board shall perform and execute the following duties for and on behalf of the Association:

a. Provide, water, sewer, gas, electricity, garbage and trash collection, and other necessary utility services for the Common Property;

b. Provide insurance for the Association and its Members, in accordance with the provisions of the Article hereinbelow entitled "Insurance";

c. Maintain and repair all portions of the Common Property in a neat, clean, safe, attractive, sanitary and orderly condition at all times. In the event any maintenance or repairs to the Common Property are required due to the willful or negligent acts or omissions of an Owner or Owners, the Association shall levy the cost of such maintenance and repair as a Compliance Assessment against the responsible Owner(s);

d. Without limiting the generality of the foregoing, maintain and repair all Common Property and related Improvements, as set forth in the Article herein entitled "Repair and Maintenance;"

e. Release security and exonerate bonds posted by Declarant or any Merchant Builders to secure obligations to the Association immediately upon satisfaction of the obligations giving rise to the posting of such security; -

f. Pay all real and personal property taxes and assessments which the Association is required to pay for pursuant to the terms and provisions of this Declaration or by law, unless separately assessed to Owners; provided, however, that it shall be the obligation of each Owner to pay his respective share of the tax assessment levied on the Project prior to separate assessments by the Tax Assessor pursuant to the applicable provisions of the California Revenue and Taxation Code;

g. Contract for any other material, supplies, furniture, labor, services, maintenance, repairs, structural alterations and insurance which the Association is required to pay for pursuant to the terms and provisions of this Declaration or by law;

h. Cause financial statements for the Association to be regularly prepared and distributed to each Member of the Association:

(1) A pro forma operating budget for each fiscal year shall be distributed not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of the fiscal year, and shall contain the following information:

i) An itemized estimate of the Association's revenue and expenses, determined on an accrual basis;

ii) The amount of the total cash reserves of the Association which are then currently available for the major repair or replacement of The Common Property Improvements and for other contingencies;

iii) A summary, printed in bold type, of the Association's reserves, based upon the most recent review or study conducted pursuant to California Civil Code Section 1365.5 ("Study"), as may be amended, from time to time, setting forth the following:

(A) The current estimated replacement cost, estimated remaining life and the estimated useful life of each major component of the Common Property;

(B) The current estimate, as of the end of the fiscal year for which the Study was prepared, of the amount of cash reserves necessary to repair, replace, restore or maintain the major components of the Common Property;

(C) The current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain such major Common Property Improvements; and

(D) The percentage by which the actual current amount of accumulated cash reserves meets the current estimated amount of cash reserves necessary to maintain, repair, replace and restore such major components.

iv) A statement setting forth the procedures utilized by the Association to calculate and establish reserves to defray the costs of future repairs, replacements or additions to the Common Property Improvements; and

v) A general statement as to whether the Board has determined or anticipates that the levy of one (1) or more Special Assessments will be required to repair, replace or restore any major components of the Common Property or to provide adequate reserves therefor.

(2) A balance sheet as of an accounting date which is the last day of the month closest in time to six (6) months from the date of closing for the first sale of a Lot, and an operating statement for the period from the date of the first closing to the said accounting date, shall be distributed within sixty (60) days after the accounting date. This operating statement shall include a schedule of Assessments received, and receivable, identified by the number of the Lot and the name of the person or entity assessed;

(3) An annual report consisting of the following shall be distributed within one hundred twenty (120) days after the close of the fiscal year:

i) A balance sheet as of the last day of the Association's fiscal year;

ii) An operating (income) statement for the fiscal year;

iii) A statement of changes in financial position for the fiscal year; and

iv) Any information required to be reported pursuant to Section 8322 of the California Corporations Code.

If for any reason this annual report is not prepared by a licensee of the California Board of Accountancy, said report shall be accompanied by a certificate from an authorized officer of the Association that the statements were prepared without audit from the books and records of the Association. Notwithstanding the foregoing, in lieu of distributing the pro forma budget required hereinabove, the Board may elect to distribute a summary of the pro forma budget to all Members with a written notice that the pro forma budget is available at a suitable location in the Project;

(4) A statement of the Association's policies and practices in enforcing its remedies against Members for nonpayment of Assessments, as set forth in the Article herein entitled "Effect of Nonpayment of Assessments: Remedies of the Association," which shall be distributed annually to the Members during the sixty (60) days period immediately preceding the beginning of the Association's fiscal year;

(5) A summary of the Association's policies and procedures for implementing the procedural requirements for alternative dispute resolution required by Section 1354 of the California Civil Code, and any successor statute;

(6) The Board shall review on a quarterly basis, the following:

i) A current reconciliation of the Association's operating accounts;

ii) A current reconciliation of the Association's reserve accounts;

iii) The current fiscal year's actual reserves and expenses compared to the then current year's Association budget;

iv) An income and expense statement for the Association's operating and reserve accounts; and

v) The most current account statements prepared by the financial institutions where the Association maintains its operating and reserve accounts.

(7) A summary of the Association's general liability, casualty and fire and other insurance policies, which shall be distributed within sixty (60) days preceding the beginning of the Association's fiscal year, and which shall include the following information about each policy:

- i) The type of insurance;
- ii) the name of the insurer;
- iii) the policy limits; and
- iv) the deductibles for each policy.

The Association shall, as soon as reasonably practical, notify the Members by first class mail if any of the policies referred to above have lapsed, been canceled and are not immediately renewed, restored or replaced, or if there is a significant change in the terms of such policies, such as a reduction in coverage or limits or an increase in the deductible. If the Association receives any notice of non-renewal of a policy, then it shall immediately notify the Members if replacement coverage will not be in effect on the date the existing coverage will lapse. The summary of the insurance policies obtained and maintained by the Association shall be prepared in accordance with the requirements of the California Civil Code Section 1365, as the same may be amended, from time to time.

i. Cause financial statements for the Association to be regularly prepared and distributed to each Member of the Association:

j. Assume and pay out of the Assessments provided for hereinbelow all costs and expenses incurred by the Association in connection with the performance and execution of all of the aforesaid powers and duties, and any other powers and duties the Association may assume;

k. Formulate, adopt and enforce such Rules and Regulations as it may deem proper for the operation of the Common Property. Notice of adoption of any such Rules and Regulations and of any change, amendment or repeal thereof, shall be given in writing to each Member, and shall be placed on file in the principal office of the Association. In the event of any conflict between such Rules and Regulations and this Declaration, this Declaration shall prevail;

l. Enforce all applicable provisions of this Declaration, the Articles, By-Laws, Architectural Standards, and such Rules and Regulations of the Association and of all other documents pertaining to the ownership, use, management and control of the Project;

m. Give notices in writing to the Federal Home Loan Mortgage Corporation (hereinafter "FHLMC"), the Federal National Mortgage Association



(hereinafter "FNMA") and the Government National Mortgage Association (hereinafter "GNMA"), and other lenders and investors participating in the financing of the sale of Lots in the Project, as required herein; and

n. Within ten (10) days of the mailing or delivery of a written request from an Owner, provide said Owner with a copy of this Declaration, the Rules and Regulations, and the Articles and By-Laws for the Association, together with a true statement in writing as to the amount of any delinquent Assessments, penalties, attorneys' fees and other charges therein as provided by this Declaration or other management documents of the Board as of the date of such request. The Board may impose a fee for providing the foregoing, but in no event shall the fee exceed the reasonable cost to prepare and reproduce the requested documents. In addition, the Board shall make available, during normal working business hours, upon request by any prospective purchaser of a Lot, any Owner of a Lot, any first Mortgagee and the holder(s), insurer(s) and guarantor(s) of a first Mortgage of any Lot, current copies of this Declaration, the Articles, the By-Laws and the Rules and Regulations governing the Lot, and all of the books, records and financing statements of the Association.

**5.4 Limitations on Board Action.** The Board shall be prohibited from taking any of the following actions, except with the written asset, by vote at a meeting of the Association, or by written ballot without a meeting pursuant to California Corporations Code Section 7513, or any successor statute, of a simple majority of the votes residing in Members, other than the Declarant, constituting a quorum consisting of more than fifty percent (50%) of the voting power of the Association residing in Members other than Declarant:

a. Entering into a contract with a third person, wherein the third person will furnish goods or services for the Common Property or the Association for a term longer than one (1) year, with the following exceptions:

- (1) A management contract, if applicable;
- (2) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;
- (3) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration, provided that the policy permits for short-rate cancellation by the insured;
- (4) Agreements for cable television services and equipment or satellite dish television services and equipment of not to exceed five (5) years duration, provided that the supplier or suppliers under the agreement is not an entity in which Declarant has a direct or indirect interest of ten percent (10%) or more;

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

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

b. Incurring aggregate expenditures for capital improvements to the Common Property in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;

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

d. Paying compensation to Directors or to officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Board may cause a Director or officer to be reimbursed for expenses incurred in carrying on the business of the Association; or

e. Filling a vacancy on the Board created by the removal of a Director.

**5.5 Licenses, Easements and Rights of Way.** The Board, for and on behalf of the Association, is authorized and empowered to grant such licenses, easements and rights-of-way for sewer lines, water lines, underground conduits, storm drains and other public utility purposes over those portions of the Common Property upon which no building or other structure has been erected as may be necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Common Property, or for the preservation of the health, safety, convenience and welfare of the Owners.

**5.6 New Improvements.** Except as otherwise provided in this Declaration, the Association may construct new Improvements or additions to the Common Property or demolish existing Improvements, provided that, in the case of any Improvement: (a) the written consent or vote of a majority of the Owners (other than Declarant) in the Project shall first be obtained as to the maximum total cost of any addition or demolition involving a total expenditure in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year; (b) no Lot shall be altered or damaged by any such demolition or construction without the consent of the Owner thereof; and (c) the County shall review and approve the construction of any new Improvements.

**5.7**      Association Rules and Regulations. The Board shall also have the power to adopt, amend and repeal Rules and Regulations, as it deems reasonable, which may include the establishment of a system of fines and penalties enforceable as Compliance Assessments. The Rules and Regulations shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Property, signs, parking restrictions and enforcement, trash collection, minimum standards for maintenance of Lots consistent with such standards as may be set forth in this Declaration or adopted by the ACC, and any other matter which is within the jurisdiction of the Association; provided, however, that the Rules and Regulations may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or By-Laws. A copy of the Rules and Regulations as they may, from time to time, be adopted, amended or repealed, or a notice setting forth the adoption, amendment or repeal of specific portions of the Rules and Regulations, shall be delivered to each Owner. The Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration, and shall be binding on the Owners and their successors in interest, whether or not actually received thereby. The Rules and Regulations, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner upon request. In the event of any conflict between any such Rules and Regulations and any other provisions of this Declaration, or the Articles or By-Laws, the provisions of the Rules and Regulations shall be deemed to be superseded. All fines and penalties are personal obligations of the Owner against whom such fines and penalties are imposed, and are not enforceable by lien.

**5.8**      Schedule of Fines and Penalties. The Board may adopt a schedule of reasonable fines and penalties which, in its reasonable discretion, it may impose against an Owner for the failure of such Owner, or of a resident, guest or invitee of such Owner, to comply with any provisions of this Declaration or the Association's Rules and Regulations. The Board shall adopt and distribute to each Member, by personal delivery or by first class mail, a schedule of such fines and penalties. The Board shall not be required to distribute any additional schedules unless there are changes from the schedule that was adopted and distributed to the Members pursuant to this section. Such fines or penalties may only be imposed by the Board after Notice and Hearing, as set forth in the By-Laws. All fines and penalties are personal obligations of the Owner against whom such fines and penalties are imposed, and are not enforceable by lien.

## ARTICLE 6

### ASSESSMENTS

**6.1**      Creation of the Lien and Personal Obligation of Assessment. The Declarant, and any Merchant Builder, for each Lot owned by Declarant or such Merchant Builder, which is subject to assessment, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) Regular Assessments; (b) Special Assessments for capital improvements and such other purposes set forth herein; (c) Compliance Assessments, including, but not limited to, costs incurred by the Association in the repair of damage to the Common Property for which such Owner was responsible, and costs incurred by the Association in bringing