

**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 A copy of the Rules and Regulations as they may, from time to time, be adopted, amended or repealed, or a notice setting forth the adoption, amendment or repeal of specific portions of the Rules and Regulations, shall be delivered to each Owner.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 The Rules and Regulations, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner upon request.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of this Declaration, or the Articles or By-Laws, the provisions of the Rules and Regulations shall be deemed to be superseded.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

such Owner and his Lot into compliance with this Declaration; and (d) such other assessments as the Association may periodically establish. The Regular and Special Assessments, together with interest, costs and reasonable attorneys' fees for the collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Regular Assessment and Special Assessment, together with interest, costs and reasonable attorneys' fees for the collection thereof, in accordance with Section 1366(c) of the California Civil Code, as the same may be amended, from time to time, shall also be the personal obligation of the Owner of such property at the time when the Assessment fell due. Each Compliance Assessment levied against an Owner, together with a reasonable late charge, interest, costs and reasonable attorneys' fees for the collection thereof, shall be the personal obligation of the Owner of the property at the time of the Assessment. At no time shall the nonpayment of a Compliance Assessment become a lien on an Owner's Lot. The personal obligation for delinquent Compliance Assessments shall not pass to an Owner's successors in title, unless expressly assumed by them.

**6.2**        Purpose of Regular Assessments: Levy and Collection. The Regular Assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the Owners, in the Project, and to maintain and improve the Common Property. The Association, by and through its Board, shall levy and collect Assessments from the Owner of each Lot in the Project in an amount sufficient to cover all of the Common Expenses incurred by the Association in connection with the performance and execution of the powers and duties set forth in this Declaration, the By-Laws and Articles. Regular Assessments may be collected on a monthly installment basis.

**6.3**        Regular Assessments - Basis. Except as provided hereinbelow, Regular Assessments payable to the Association shall be assessed equally against all Owners of Lots. Each Owner's proportionate share of the Common Expenses for any fiscal year of the Association shall be a fraction, the numerator of which shall be the number of Lots owned by such Owner, and the denominator of which shall be the total number of Lots in the Project which are subject to Assessment. Until the first day of the fiscal year of the Association immediately following the first Close of Escrow for the sale of a Lot in the Project to an Owner, the maximum total Regular Assessment shall be the amount set forth in the pro forma operating budget reviewed and approved by the DRE. Subject to the limitations imposed by California Civil Code Section 1366, as the same may be amended, from time to time, the Board may increase Regular Assessments subject to the following limitations:

a.        Increases in Regular Assessments for any fiscal year which are less than or equal to twenty percent (20%) above the Regular Assessment for the immediately preceding fiscal year may be approved by the Board, provided that the Board shall comply with the provisions set forth in Section 1365(a) of the California Civil Code with respect to the distribution of the pro forma operating budget of the Association for the forthcoming fiscal year;

b.        Increases in Regular Assessments for any fiscal year which are greater than twenty percent (20%) above Regular Assessments for the immediately preceding fiscal year may be approved by the Board only after the Board obtains the

affirmative vote of Members constituting a quorum, casting a majority of the votes at a meeting or an election of the Association conducted in accordance with California Corporations Code Sections 7510, et seq., and Sections 7613, et seq. For purposes of this Section, a quorum means more than fifty percent (50%) of the Members of the Association.

The Board may fix the Regular Assessment at an amount not in excess of the maximum Regular Assessment. So long as Declarant is offering Lots for sale pursuant to a Final Subdivision Public Report, the Regular Assessment may not be decreased by ten percent (10%) or more without the express written consent of the Declarant and the DRE.

Following the annexation of a subsequent Phase pursuant to the provisions set forth in this Declaration, Regular Assessments may be automatically increased (or decreased) for all Lots in the Project as set forth in the Association budget. Such adjustment, if any, shall occur on the first day of the month following the first Close of Escrow for the sale of a Lot in said Phase without any approval of the Members to the amount recommended by the DRE in connection with the DRE's review and processing of the Association budget for such Phase. In addition, in order to minimize the need for frequent adjustments in the amount of the Regular Assessments during the course of development of the Project, the DRE has deemed it reasonable to allow the Board to stabilize the amount of Regular Assessments invoiced to the Owners at a level of amount calculated to defray the Common Expenses of the Association during the time that Regular Assessments are fluctuating due to the periodic annexation of Lots and Common Property. Accordingly, the pro forma operating budget approved by the DRE provides for level Regular Assessments to be levied by the Association, which may either temporarily accrue a surplus, or permit a previously accrued surplus to gradually deplete. Until all of the Annexation Property is subject to Regular Assessments, any excess in the Regular Assessments collected shall be placed in a separate account ("Surplus Fund Account") to be drawn upon only for the purpose of funding any deficit which may occur due to the use of a level Regular Assessment in a subsequent Phase. In order to ensure adequate Regular Assessments are being collected during the development of the Project, the Board shall review the Surplus Fund Account on a monthly basis to ensure that the account is sufficient to cover the difference in the level Regular Assessment and the actual Common Expenses of the Association for a minimum of three (3) months, or ten percent (10%) of the current monthly budget, whichever is higher. In the event the Surplus Fund Account is depleted to an amount inadequate to fund an anticipated three (3) month deficit, then the Board shall make alternative arrangements to ensure adequate funding of the Regular Assessments to meet the Common Expenses of the Association.

**6.4 Special Assessments.** In any fiscal year the Board may not, subject to the limitations of California Civil Code Section 1366, without the vote or written assent of a majority of those Owners constituting a quorum (which shall mean more than fifty percent [50%] of Owners of the Association) casting a majority of affirmative votes at a meeting or election of the Association conducted in accordance with Sections 7510, et seq., and 7613 of the Corporations Code, levy Special Assessments to defray the costs of any action or undertaking on behalf of the Association which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. The five percent (5%) limitation shall not apply to increases

in Special Assessments related to an emergency situation, as described in Section 5.5 below. Special Assessments shall be levied among all Owners and their Lots in the same proportions as their Regular Assessments.

**6.5 Emergency Situations.** The limitations set forth in Sections 5.3 and 5.4 above shall not limit increases in Regular Assessments or Special Assessments which may become necessary for emergency situations. For purposes of this section, an emergency situation is any one of the following:

- a. An extraordinary expense required by an order by a court;
- b. An extraordinary expense for the maintenance or repair of The Common Property that is necessary to remedy any dangerous condition in the Project that represents a threat of damage or injury to any person or property; and
- c. An extraordinary expense necessary to repair or maintain the Common Property, or any portion thereof, that could not have been reasonably anticipated by the Board at the time the most recent Association budget was prepared. Prior to the imposition or collection of an Assessment pursuant to this Subsection c., the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved, and why the expense was not or could not have been reasonably foreseen in the budget process. The resolution shall be distributed to the Members with the notice of Assessment.

**6.6 Compliance Assessments.** A Compliance Assessment is a charge against a particular Owner directly attributable to, and/or reimbursable by, the Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, or to suspend or condition such Owner's right to use any portion of the Common Property. Any suspension or conditional suspension shall be for a period of not more than thirty (30) days for any continuing infraction, but in the case of the continuing infraction, including non-payment of any assessment after the same becomes delinquent, may be imposed for so long as the violation continues. Compliance Assessment shall not include any late payment penalties, interest charges or costs, including attorneys' fees incurred by the Association in the collection of annual or Special Assessments.

**6.7 Date of Commencement of Regular Assessments: Due Dates.** Regular Assessments shall commence as to each Lot in a Phase on the first day of the month following the first Close of Escrow for the sale of a Lot in such Phase. Regular Assessments shall be adjusted according to the number of months remaining in the fiscal year, as set forth in the By-Laws. The Board shall fix the amount of the Regular Assessment against each Lot at least thirty (30) days in advance of each Regular Assessment period. The Association shall provide notice by first class mail to the Owners of any increase in Regular Assessments of the Association not less than thirty (30) days nor more than sixty (60) days prior to the increased Regular Assessment becoming due.

Declarant and any other Owner shall be exempt from the payment of those portions of the Regular Assessments that are for the purpose of defraying expenses and reserves directly attributable to the existence of Improvements within the Common Property that have not been completed or placed into use by the Association at the time Assessments commence. This exemption shall be in effect until the earlier to occur of: (a) the recordation of a Notice of Completion of the Common Property Improvements; or (b) the placement of such Improvements into use.

Notwithstanding any other provisions of the Association Management Documents regarding the term and termination of contracts with Declarant for providing services to the Association, Declarant may enter into a written maintenance and/or subsidy agreement with the Association under which Declarant shall pay all or any portion of the Common Expenses, and perform all or any portion of the Association's maintenance responsibilities in exchange for a temporary suspension of Regular Assessments. Such agreement shall extend for a term and beyond such conditions as are approved by the DRE, and may require Owners to reimburse Declarant, through the Association, for a portion of the costs expended in the satisfaction of Declarant's obligations pursuant to such agreement.

**6.8**        **Certification of Payment.** The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association setting forth whether the Assessments on a specified Lot have been paid. If a certificate states that Assessments have been paid, such certificate shall be conclusive evidence of such payment.

**6.9**        **Delivery of Statement.** Upon written request, the Board shall, within ten (10) days of the mailing or delivery of such request, provide the Owner of a Lot with a copy of this Declaration and copies of the By-Laws and Articles of the Association, together with a true statement, in writing, as to the amount of any delinquent Assessments, penalties, attorneys' fees and other charges authorized by this Declaration on the Lot as of the date of the request. If a certificate states that Assessments have been paid, such certificate shall be conclusive evidence of such payment. The Board may impose a fee for providing such documents and statement, but in no event shall the fee exceed the reasonable cost to prepare and reproduce the requested documents.

**6.10**       **Reserves.** The Regular Assessments shall include reasonable amounts, as determined by the Board, collected as reserves for the future periodic maintenance, repair and replacement of all or a portion of the Common Property, or any such other purpose determined by the Board. All amounts collected as reserves shall be deposited by the Board in a separate bank account for the purposes for which they were collected, and are to be segregated from and not commingled with any other funds of the Association.

Except as provided in California Civil Code Section 1365.5 and any companion or successor statutes, the Board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement or maintenance of, or litigation involving the repair, restoration, replacement or maintenance of, major components which the Association is obligated to repair, restore, replace or maintain and for which the reserve fund was

originally established. Notwithstanding the foregoing, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating accounts to meet short term cash flow requirements or other expenses, provided the Board has made a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one (1) year of the date of the initial transfer, except that the Board may, upon making a finding supported by documentation that a temporary delay would be in the best interests of the Association, temporarily delay the restoration.

The Board shall exercise prudent fiscal management in delivering restoration of the reserve funds and restoring the expended funds to the reserve funds and shall, if necessary levy a Special Assessment to recover the full amount of the expended funds within the time limits required under California law. This Special Assessment is subject to the limitation imposed by California Civil Code Section 1366. The Board may, at its discretion, extend the date the payment on this special assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid Special Assessment for this purpose.

If the Board decides to use or transfer reserve funds to pay for litigation, the Association shall notify its Members of the decision in the next available mailing to all Members pursuant to Section 5016 of the California Corporations Code. Such notice shall provide an explanation of the purposes for which the funds shall be used to initiate or defend litigation, the reasons why operating funds cannot be used, and the time and method by which the reserve funds will be replaced, together with a proposed budget for the litigation. The notice must also state that Members shall have a right to review an accounting for the litigation as provided in Section 1365.5 of the California Civil Code, which shall be made available at the principal office of the Association. The accounting shall be updated on a quarterly basis.

**6.11**      Offsets and Waiver Prohibited. No Owner may waive or otherwise avoid liability for the Assessments provided for herein for any reason whatsoever, including, but not limited to, non-use of the Common Property or abandonment of his Lot, nor shall any Owner be entitled to any offset against any Assessment provided for herein for any reason whatsoever, including, but not limited to, any expenditure made by such Owner for or on behalf of the Association.

**6.12**      Exempt Property. The following property subject to this Declaration shall be exempt from the Assessments herein:

- a.      All property dedicated to and accepted by any of the Public Agencies;
- b.      All Common Area.