

**2.5 Special Class A Voting Rights.** Notwithstanding the provisions of this Article, if the Class A Members do not have sufficient voting power pursuant to the voting rights set forth in this Declaration and the Bylaws to elect at least twenty percent (20%) of the total number of Directors on the Board, at any meeting of Members at which Directors are to be elected, then such Class A Members shall, by majority vote, among themselves, elect the number of Directors required to equal twenty percent (20%) of the total number of Directors on the Board. In the event twenty percent (20%) of the total number of Directors is equal to any fractional number, the number of Directors to be elected pursuant to the special Class A voting right shall be rounded to the next higher whole number.

**2.6 Approval of Members.** Unless elsewhere otherwise specifically provided in this Declaration or the Bylaws, any provision of this Declaration or the Bylaws which requires the vote or written assent of the voting power of the Association or any class or classes of Membership shall be deemed satisfied by either of the following:

(a) the vote, in person or by proxy, of the Owners constituting a quorum casting a majority of the votes at a meeting duly called and noticed pursuant to the provisions of the Bylaws dealing with annual or special meetings of the Members; or

(b) written consents signed by the Owners constituting a quorum casting a majority of the votes.

**2.7 Special Declarant Representation Rights.** Notwithstanding the provisions of this Article, until the Conversion Date, as set forth in Section 2.4(b)(ii) above, Declarant shall have the absolute authority to elect at least twenty percent (20%) of the total number of Directors on the Board.

### **ARTICLE III** **COVENANT FOR MAINTENANCE ASSESSMENTS**

**3.1 Creation of the Lien and Personal Obligation of Assessments.** Each Owner including the Declarant to the extent Declarant is an Owner as defined herein, of any Lot by acceptance of a deed or other conveyance, creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: Regular Assessments, Special Assessments, Reimbursement Assessments, Capital Improvement Assessments, Remedial Assessments, Reconstruction Assessments, and Phase of Development Assessments. Such Assessments shall be fixed, established and collected from time to time as provided in this Declaration. The Regular, Special, Reimbursement, Capital Improvement, Reconstruction and Phase of Development Assessments, together with interest thereon, late charges, attorneys' fees and court costs, and other costs of collection thereof, as hereinafter provided, shall be a charge upon the Lot against which each such Assessment is made. Each such Assessment, including Remedial Assessments, together with such interest, late charges, costs and attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment becomes due. The personal obligation for delinquent Assessments shall not pass to the successors in title of an Owner unless expressly assumed by such successors. No Owner may waive or otherwise escape liability for Assessments by nonuse of the Common Areas or any part thereof, or abandonment of such Owner's Lot.

**3.2 Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively for the purposes of carrying out and/or enforcing the provisions of this Declaration, and promoting the recreation, health, safety and welfare of the Members, the management of the Covered Property, enhancing the quality of life in the Covered Property, and the value of the Covered Property including, without limitation, the improvement and maintenance of the properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas, or in furtherance of any other duty or power of the Association. The Association shall not impose or collect an assessment, penalty or fee that exceeds the amount necessary (including applicable reserve amounts) for the purpose or purposes for which it is levied.

**3.3 Regular Assessments.** The Board shall determine the amount of the Regular Assessment to be paid by each Member. The Association shall provide written notice by first-class mail to all Owners of any change in Regular Assessments, or the due dates therefore, not less than thirty (30) days, nor more than sixty (60) days, prior to the due date for such Regular Assessments. Each Member shall thereafter pay to the Association his or her Regular Assessment in installments by the due date established by the Board. In the event the Board shall determine that the estimate of total charges for the current year is, or will become inadequate to meet all Common Expenses for any reason, it shall then immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessment against each Member, and the date or dates when due. After the Association's first accounting year of operation, it shall comply with the provisions of Section 1366 of the California Civil Code, prior to any increase in Regular Assessments. In the event the amount budgeted to meet Common Expenses for the then-current year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may either reduce the amount of the Regular Assessment or may abate collection of Regular Assessments as it deems appropriate. Until such time as the Class B Membership has ceased and been converted into Class A Membership, Regular Assessments may not be reduced if such reduction would diminish the quantity or quality of services provided by the Association. Notwithstanding the foregoing, Regular Assessment increases shall not be limited in the case of "emergency situations" as provided in Section 1366 of the California Civil Code. Notwithstanding the foregoing, Regular Assessments to be paid by Declarant may be reduced or abated pursuant to the terms of any maintenance agreement or similar document. Notwithstanding any other provisions of this Declaration, until the earlier to occur of (1) the recordation of a notice of completion of an improvement on the Common Areas, or (2) the placement of such improvement into use, each Owner (including Declarant) shall be exempt from paying that portion of any Regular Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of such improvement.

**3.4 Capital Improvement Assessments.** In addition to the Regular Assessments, the Association may levy in any calendar year, a Capital Improvement Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or replacement (other than due to destruction) of a described capital improvement upon the Common Areas to the extent the same is not covered by the provisions affecting Reconstruction Assessments in the Article hereof entitled "*Destruction of Improvements*," including the necessary fixtures and personal property related thereto. The Association shall not impose a Capital Improvement Assessment, the total amount of which exceeds five percent (5%) of the estimated Common Expenses as set forth in the Section of this Article entitled "*Regular Assessments*," without the approval of a majority of a quorum of the voting power of the Association. Any reserves collected by the Association for the future maintenance and repair of the Common Areas, or any portion thereof, shall not be included in

determining said annual Capital Improvement Assessment limitation. All amounts collected as Capital Improvement Assessments may only be used for capital improvements and shall be deposited by the Board in a separate bank account to be held in trust for such purposes. Said funds shall not be commingled with any other funds of the Association and shall be deemed a contribution to the capital account of the Association by the Members. The Association shall provide notice to all Owners, by first-class mail, of any decision by the Association to levy a Capital Improvement Assessment, not less than thirty (30) nor more than sixty (60) days prior to the due date for such Assessment.

**3.5 Uniform Assessment.** Regular, Reconstruction and Capital Improvement Assessments shall be fixed at an equal amount for each Lot and may be collected at intervals selected by the Board, and Phase of Development Assessments shall be fixed at an equal amount for each Lot subject to such Phase of Development Assessment and may be collected at intervals selected by the Board.

**3.6 Certificate of Payment.** The Association shall, upon demand, furnish to any Member liable for Assessments, a certificate in writing signed by an officer or authorized agent of the Association, setting forth whether the Assessments on a specified Lot have been paid, and the amount of delinquency, if any. A reasonable charge may be collected by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

**3.7 Exempt Property.** All properties dedicated to, and accepted by, or otherwise owned or acquired by, the County, the City or any other Government Agency authority shall be exempt from the Assessments created herein.

**3.8 Special Assessment.** Special Assessments may be levied by the Association to fund any budgetary shortfall or to restore any funds transferred from the Association's reserve account. Special Assessments shall also be levied by the Board against an Owner and such Owner's Lot to reimburse the Association for any other charge designated as a Special Assessment in this Declaration, the Articles, Bylaws or Association Rules. Notwithstanding the foregoing, the Board shall not impose Special Assessments without first complying with the provisions of Section 1366 of the California Civil Code. The foregoing limitation shall be subject to the exception of "emergency situations" as provided in Section 3.3 above.

**3.9 Remedial Assessment.** In the event the Board levies any fines or charges against an Owner who fails to comply with this Declaration, the Articles, Bylaws or the Association Rules, such fines or charges shall be Remedial Assessments.

**3.10 Reimbursement Assessment.** Reimbursement Assessments may be levied by the Association to reimburse the Association for materials or services provided by the Association which benefit individual Lots. Reimbursement Assessments shall also be levied by the Board against an Owner (and such Owner's Lot) to reimburse the Association for any other charge designated as a Reimbursement Assessment in this Declaration, the Articles, Bylaws or Association Rules. The Association shall provide notice by first-class mail to the Owners subject to a Reimbursement Assessment of any decision to levy such Reimbursement Assessment, not less than thirty (30) nor more than sixty (60) days prior to the Reimbursement Assessment becoming due.

**3.11 Phase of Development Assessments.** Pursuant to this Declaration, the Association shall charge and collect the Phase of Development Assessments in order to finance the cost and operation of any additional service or facility located within a particular Phase of Development or benefiting solely Owners within a particular Phase of Development; *provided, however*, if a Project Association exists with respect to all of the Property in that Phase of Development, all necessary Phase of Development Assessments shall be assessed by such Project Association, and the Association shall not be subject to any claim by any Party, including any Owner, for failure to charge or collect any Phase of Development Assessments.

**3.12 Date of Commencement of Regular Assessments.** Subject to any assessment maintenance or subsidy program established by the Declarant, the Regular Assessments for a particular Phase of Development hereunder shall commence on the date (the "**Initial Assessment Commencement Date**") which is the first day of the month following the first close of escrow for the sale of a Lot by Declarant to a Retail Purchaser within a particular Phase of Development.

**3.13 No Offsets.** All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that (i) the Association is not properly exercising its duties and powers as provided in this Declaration; (ii) a Member has made or elects to make no use of the Common Areas; or (iii) any construction or maintenance performed pursuant to the Section entitled "*Assumption of Maintenance Obligations*" of the Article entitled "*Repair and Maintenance*" of this Declaration shall in any way postpone Assessments or entitle a Member to claim any such offset or reduction.

**3.14 Homestead Waiver.** Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of California now in effect, or in effect from time to time hereafter.

**3.15 Reserves.** The Regular Assessments shall include reasonable amounts as determined by the Board collected as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Common Areas, or any other purpose as determined by the Board. All amounts collected as reserves, whether pursuant to this Section or otherwise, shall be deposited by the Board in a separate bank account to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Members. The Board shall not expend funds designated as reserve funds for any purpose other than those purposes set forth in Section 1365.5 of the California Civil Code. Withdrawal of funds from the Association's reserve account shall require the signatures of either (a) two (2) members of the Board; or (b) one (1) member of the Board and an officer of the Association who is not also a member of the Board.

**3.16 Automatic Assessment Increases.** Upon the annexation of additional Phases of Development, the Regular Assessments shall be automatically increased by the amount, if any, necessary to maintain the Common Areas located within such additional Phases of Development and for which the Association has responsibility in accordance with the standards prescribed by the then-current DRE Operating Cost Manual or, if the Operating Cost Manual is no longer maintained by the DRE, pursuant to standards established in accordance with prudent property management practices for "common interest developments" (as defined in Section 1351(c) of the California Civil Code) consistently applied throughout the geographic region in which the

Development is located. However, such increase shall occur only if (i) the annexation of such additional Phases of Development is permitted by the DRE, and (ii) if a range of Assessments is elected, the amount of such increase is within the range of assessments approved by the DRE pursuant to the DRE Approved Budgets, increased at a rate of twenty percent (20%) compounded annually. If annexation of Common Areas results in an increase in the Regular Assessments which is permissible under the requirements of the preceding sentence, then the Association shall be obligated to collect such increased Regular Assessment. To facilitate the orderly payment of Regular Assessments during the development of the Development, the Board may establish and levy a median monthly Regular Assessment at an amount sufficient to defray the Common Expenses during the development of the Development. By accepting title to a Lot, each Owner consents to the Regular Assessment increases specified in this Section. Notwithstanding the foregoing provisions of this Section, or any other provisions of this Article III to the contrary, the Board may elect to establish assessments at an amount which will result in level Regular Assessments as additional Phases of Development are annexed hereto provided that such level Regular Assessments are established in accordance with the standards prescribed by the then-current DRE Operating Cost Manual or, if such Operating Cost Manual is no longer maintained by the DRE, pursuant to standards prescribed by comparable maintenance cost guidelines prepared in accordance with prudent property management practices for "common interest developments" (as defined in Section 1351(c) of the California Civil Code) consistently applied throughout the geographic region in which the Development is located.

#### **ARTICLE IV** **NONPAYMENT OF ASSESSMENTS**

**4.1 Effect of Nonpayment of Assessments; Remedies of the Association.** In the event any Assessment is not paid when due, such Assessment shall be deemed to be delinquent and in default. Each Owner vests in the Association or its assigns the right and power to bring all actions at law and in equity and exercise such other remedies provided herein against such Owner for the collection of delinquent Assessments. In the event an attorney or attorneys are employed for collection of any Assessment, whether by suit or otherwise, each Owner agrees to pay reasonable attorneys' fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against such Owner. In addition to any other remedies herein or by law provided, the Association may enforce the obligations of the Owners to pay the Assessments in any manner provided by law or in equity, and without any limitation of the foregoing, by any or all of the following procedures:

(a) **Suspension of Rights; Monetary Penalties.** After a hearing by the Board (whether or not the delinquent Owner appears), upon ten (10) days prior written notice to the delinquent Owner, the Board may (a) suspend the voting rights of any Owner, (b) impose reasonable monetary penalties pursuant to a monetary penalty schedule established and posted by the Board, and/or (c) suspend such Owner's right to use the Common Areas for any period during which any Assessment against such Owner's Lot remains unpaid; *provided, however*, these provisions shall not operate or be construed to deny or restrict ingress or egress of any Owner to and from such Owner's Lot.

(b) **Enforcement by Suit.** By commencement and maintenance of a suit at law or equity against any Owner or prior Owner to enforce the Assessment obligation, such suit is to be maintained in the name of the Association. Any judgment rendered in any such action may include the amount of the delinquency, interest thereon at the maximum legal rate per annum from