

(f) In the event any Phase of Development Assessments are established for a particular Phase of Development, the Phase Committee shall establish and maintain for such Phase of Development maintenance and reserve accounts, which accounts shall be separate from the general accounts of the Association, and separate from those accounts maintained for any other Phase of Development. The maintenance and reserve accounts for any particular Phase of Development shall also be segregated pursuant to the terms generally set forth in Section 3.15 above.

ARTICLE VII

REPAIR AND MAINTENANCE

7.1 Repair and Maintenance by Association. Except to the extent that an Owner may be obligated to maintain and repair as hereinafter provided, and without limiting the generality of the statement of duties and powers contained in this Declaration, the Articles, Bylaws or Association Rules, the Association shall have the duty to accomplish the following upon the Covered Property or other land in such manner and at such times as the Board shall prescribe:

(a) maintain, repair, restore, replace and make necessary improvements to the Common Areas and the Special Maintenance Areas;

(b) maintain, repair, restore, replace, and make necessary improvements to any Phase of Development Common Areas; *provided, however,* the cost of such maintenance and/or repair shall be borne solely by the Owner(s) with the right to utilize such Phase of Development Common Areas, which costs shall be funded through Phase of Development Assessments collected in accordance with the terms of this Declaration;

(c) maintain, repair, restore, replace and make necessary improvements to any District Areas (or improvements located on such District Areas) to the extent such actions are (1) necessary, and (2) outside the scope of the maintenance obligations of a District (or arise due to such District's failure to perform its obligations);

(d) maintain, repair, restore, replace and make necessary improvements to any Dedication Areas which have not been accepted by the County or another applicable Government Agency; and

(e) maintain all other areas, facilities, equipment, services or aesthetic components of whatsoever nature as may from time to time be requested by the vote or written consent of a majority of the voting power of the Members.

All maintenance performed by the Association shall be in accordance with the Maintenance Requirements.

The costs of any such maintenance and repair pursuant to this Section shall be paid out of the general funds of the Association, except as otherwise herein specified as payable by the particular Owners.

7.2 Repair and Maintenance by Owner. Except to the extent that the Association, District or Government Agency shall be obligated to maintain and repair as may be provided in this Declaration, every Owner shall be responsible for the following maintenance and repair:

7.2.1 Improvements. Each Owner shall maintain, in good and attractive condition and repair and adequately painted and finished, and consistent with applicable local ordinances, all Improvements located upon or within such Owner's Lot in accordance with the Maintenance Requirements and the terms and conditions of this Declaration. Each Owner shall maintain all paved surfaces and keep them clean, reasonably dry and free of oil and other extraneous matter.

7.2.2 Specific Landscaping Maintenance Requirements. Each Owner shall install, and thereafter maintain, in good, attractive, healthy and thriving condition and repair (and free of weeds, trash and/or debris), yard landscaping and drainage and irrigation improvements on such Owner's Lot in accordance with the applicable Maintenance Requirements, Design Guidelines, this Declaration, and any other applicable requirements, including any applicable soils reports. All portions of the yard of a Lot which are unimproved and visible from the street on which said Lot fronts shall be landscaped by the Owner thereof in conformance with customary landscaping material(s), primarily living plants, lawn (sod), trees and shrubs. Each Owner shall trim and restrain all trees, shrubs or plantings of any kind so that the same shall not overhang or otherwise encroach upon, above or below any sidewalk, street or neighboring residence. Subject to the Section entitled "*Approval and Conformity of Plans and Improvements*" of the Article hereof entitled "*Architectural Control*," landscaping of the rear yard of the Lot shall be installed within one hundred eighty (180) days from the date of the conveyance of such Lot from Declarant to the Owner. Thereafter, such landscaping shall be maintained by the Owner in an attractive condition and according to any rules promulgated by the Board and as otherwise required by applicable laws or regulations then in effect. Every Owner shall be obligated to maintain the landscaping over the "Landscape Parkway" located between the lot line and the adjacent sidewalk on the right-of-way. It is critical for each Owner to maintain all landscaping, drainage and irrigation improvements on such Owner's Lot (whether existing at the time such Owner acquired the Lot or installed later) in a proper fashion in order to avoid over-watering. Over-watering is a significant source of excessive moisture transmission through concrete slabs and landscaping and soil damage to both the over-watered property and neighboring properties affected by water runoff and seepage. The Association shall have the right, as part of the Association Rules, to establish watering guidelines which each Owner is required to follow. Each Owner is solely and ultimately responsible for properly watering and maintaining such Owner's landscaping, drainage, and irrigation improvements, including frequent inspection of underground irrigation pipes and prompt repair of any leaks. In certain circumstances, the Owner's water meter may also connect to "Landscape Parkways" and Common Area landscaping areas located adjacent to the Owner's Lot (which areas abut a public street). In such circumstance, the Owner shall be responsible for such water charges and may not interfere with such irrigation lines or equipment. Owners cannot delegate that responsibility to their gardeners or landscapers (although Owners are expected to consult with such people as to appropriate watering levels). Prior to installing any landscaping, drainage or irrigation improvements, Owners are required to consult with a landscape architect and other appropriate Design Professionals and to comply with the requirements set forth in Section 5.4 above with respect to landscaping, drainage and irrigation. While the forgoing is not intended to require Owners to maintain landscaping which is the responsibility of the Association, Owners are nevertheless required to notify the Association in the event that they observe that Association-maintained landscaping is exhibiting signs of over-irrigation or under-irrigation. For example, if a slope on an Owner's Lot is irrigated by the Association (as part of the Special Maintenance Areas), and that Owner notices that the ground is becoming overly saturated, creating ponding which does not dry up, or exhibiting signs of moss or algae, such Owner is expected, as a Member of the Association, to notify the Association that a potential problem may exist.

7.3 Right of Association to Maintain and Install. In the event that any Owner fails to accomplish any maintenance, repair or installation required by this Section or pay his or its share of expenses incurred in the accomplishment of the same, the Association or its delegates may, but shall not be obligated to, cause such maintenance, repair and installation to be accomplished or such payment to be made to the appropriate parties (said maintenance, repair, installation or lack of payment shall be referred to in this Article as a "deficiency") as hereinafter set forth.

(a) Upon finding by the Board of a deficiency, the Board shall give notice of the deficiency to the violating Owner which shall briefly describe the deficiency and set a date for the cure thereof. If the violating Owner submits a written request to the Board for a hearing within fifteen (15) days after the mailing of such deficiency notice, the Board shall set a date for such hearing before the Board or a committee selected by the Board for such purpose. The Board may delegate its powers under this subsection to a duly appointed committee of the Association.

(b) Such hearing shall be held not less than ten (10) nor more than thirty (30) days from the date of said request for hearing.

(c) Such hearing shall be conducted according to such reasonable rules and procedures as the Board shall adopt which shall provide the Owner with the right to present oral and written evidence and to confront and cross-examine any person offering at such hearing evidence adverse to such Owner. If the Board or any such committee renders a decision against the Owner, it may set another date by which the deficiency is to be corrected by the Owner. A decision of such committee may be appealed to the Board, but a decision of the Board shall be final.

(d) If the deficiency continues to exist after the time limitation set forth in the deficiency notice or, in the event a hearing is held, the date imposed by a final decision of the Board or any such committee, the Board or such committee may cause such maintenance, repair or installation to be accomplished or such payment to be made.

(e) In the event the Board or such committee elects to cause such maintenance, repair or installation to be accomplished, it shall give written notice of such election to the violating Owner and the following shall apply:

(i) the Owner shall have no more than ten (10) days following the receipt thereby of said written notice of election in which to select a day or days upon which such maintenance, repair or installation work shall be accomplished;

(ii) the date which said Owner selects shall be not less than ten (10) days nor more than thirty (30) days following the last day of the ten (10) day period specified in such notice of election;

(iii) if said Owner does not select such day or days within the ten (10) day period specified in such notice of election, the Board or such committee may select a day or days upon which such work may be accomplished which shall be not less than twenty-five (25) nor more than fifty-five (55) days from the last day of the ten (10) day period specified in such notice of election; and

(iv) unless the Owner and the Board otherwise agree, such maintenance or installation shall take place only during daylight hours on any day, Monday through Friday, excluding holidays;

(f) If the Association pays for all or any portion of correcting such deficiency or if an Owner has not paid its share of the maintenance and repair expenses as set forth in Sections 7.2 and 7.3 regardless of whether the Association has reimbursed the appropriate parties, Owners, pursuant to this Section, such amount shall be a Reimbursement Assessment to the violating Owner and such Owner's Lot.

7.4 Right of Entry. The Association shall have the right to enter upon any Lot in connection with any exterior maintenance, repair or construction in the exercise of the powers and duties of the Association. Any damage caused by such entry shall be repaired by the Association to the extent that the damage is unreasonable under the circumstances to carry out the Association's rights and obligations.

7.5 Maintenance of Public Utility Facilities. Nothing contained herein shall require or obligate the Association to maintain, replace or restore the facilities of public utilities which are located within easements in the Common Areas owned by such public utilities. However, the Association shall take such steps as are necessary or convenient to ensure that such facilities are properly maintained, replaced or restored by such public utilities.

7.6 Assumption of Maintenance Obligations. Declarant, Declarant's assigns, its subcontractors and the agents and employees of the same shall have the right to enter upon the Common Areas to complete the construction of any landscaping or other Improvement to be installed on the Common Areas as provided in this Declaration.

7.7 District Areas. Certain portions of the Common Areas may be conveyed to and/or maintained by a District which shall assume responsibility for the maintenance and repair of such Common Areas. In the event Common Areas are to be maintained by a District, (a) no improvement, excavation or work which in any way alters any portion of any Common Area shall take place, except (i) in compliance with all laws and regulations, and (ii) upon the prior approval of the District, and (b) such District Areas shall be held, maintained and used to meet the recreational interests of Owners or to enhance their enjoyment of the natural environment of the District Areas and for no other purpose. If for any reason, any District Area ceases to be maintained by the District, the Association shall immediately undertake maintenance and repair of such District Area in accordance with this Article.

7.8 Fuel Modification Zones. There are a number of Fuel Modification Zones within the Covered Property. The Association is solely responsible for maintaining the Fuel Modification Zones which may be located within Common Areas or Special Maintenance Areas. Individual Owners shall be responsible to maintain all Fuel Modification Zones located on their Lots for which the Association is not otherwise responsible. All such maintenance shall be performed in accordance with the requirements of the Specific Plan and all other applicable laws, rules, regulation and fire safety guidelines. So long as the Association maintains the Fuel Modification Zones in accordance with the applicable rules, regulations and guidelines, each Owner by acceptance of a deed to a Lot shall be deemed to covenant and agree to release the Association and its officers, directors, employees, contractors, consultants and agents from any and all claims, damages, costs, expenses, losses and other liability (including actual attorneys' fees) for death or injury to any person and/or

damage to property arising from or relating to a fire within the Covered Property. Each Owner shall be further deemed to have acknowledged that compliance with any such rules, regulations or guidelines is not a guarantee against damage or destruction caused by fire.

7.9 Water Intrusion. Notwithstanding any other provision herein, in the event that there shall be intrusion of water into any Dwelling or Common Area Improvement constructed by Declarant (including, without limitation, as a result of any roof, window, siding or other leaks (including, without limitation, plumbing leaks), and which leak constitutes an Alleged Defect), the owner of the affected Improvements (including the Association) shall, in addition to any obligations set forth in any applicable Warranty, be obligated to immediately notify Declarant of such event, and the owner shall take all necessary and appropriate action to stop any such water intrusion. Declarant shall thereafter have all of the rights afforded Declarant to inspect the condition, including the right to assess the likelihood of mold or mildew, and to offer recommendations for mitigation of mold or mildew. Each Owner and the Association shall be obligated to take all reasonable steps to mitigate any possible spread or accumulation of mold or mildew. Nothing herein shall obligate Declarant to take any corrective action, nor shall any rights of Declarant under this subsection constitute an admission or acknowledgment that any causes of any water intrusion are the result of defective construction. Failure of any Owner or the Association to timely notify Declarant of any such water intrusion shall be cause to deny future claims against Declarant relating thereto, which claims could have been mitigated had earlier action been taken.

ARTICLE VIII **INSURANCE**

8.1 Types. The Association, to the extent available, shall obtain and continue in effect in its own name the following types of insurance with such deductible provisions as may be appropriate so long as such amounts or type of insurance coverage are not, in the good faith judgment of the Board, prohibitively expensive or no longer necessary or appropriate for the protection of the Covered Property, the Association and the Members:

(a) a policy of commercial general liability insurance covering the Common Areas with a limit of not less than Three Million Dollars (\$3,000,000) for claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobile and liability for property of others, and such other risks as shall customarily be covered with respect to similar master planned developments in the area of the Covered Property, and shall contain a "severability of interest" endorsement or the equivalent which shall preclude the insurer from denying the claim of an Owner because of negligent acts or omissions of the Association or other Owners;

(b) a policy of fire and casualty insurance (all-risk) with extended coverage for the full replacement value of the Common Areas (including all building service equipment and the like), without deduction for depreciation, with an "agreed amount endorsement" or its equivalent and clauses waiving subrogation against Members and the Association and persons upon the Covered Property with the permission of a Member, such insurance to afford protection against at least loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, water damage, and such other risks as shall customarily be covered with respect to similar planned unit developments in the area of the Covered Property; and