

ARTICLE VI
DUTIES AND POWERS OF THE ASSOCIATION

6.1 General Duties and Powers. In addition to the duties and powers enumerated in its Articles and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall have the specific duties and powers specified in this Article.

6.2 General Duties of the Association. The Association through the Board shall have the duty and obligation to:

(a) enforce the provisions of this Declaration, any Supplemental Declaration, the Articles, Bylaws and Association Rules, by appropriate means and carry out the obligations of the Association hereunder;

(b) maintain in good and attractive condition and repair, and otherwise manage the following:

(i) all easements and real property and all facilities, improvements and landscaping thereon in which the Association holds an interest and/or which the Association is specifically designated to maintain (whether pursuant to this Declaration or any other agreement to which the Association is a party or is bound), including, without limitation, the Common Areas and the Special Maintenance Areas, subject to the terms of any instrument transferring such interest to the Association;

(ii) all personal property in which the Association holds an interest, subject to the terms of any instrument transferring such interest to the Association; and

(iii) all property, real or personal, which the Association is obligated to repair or maintain pursuant to this Declaration, including, without limitation, the Article of this Declaration entitled "*Repair and Maintenance*";

(c) pay any real and personal property taxes and other charges assessed to or payable by the Association;

(d) obtain, for the benefit of the Common Areas, water, gas and electric, refuse collections and other services;

(e) make available the books, records and financial statements of the Association for inspection by Owners and First Mortgagees during normal business hours;

(f) comply with provisions of California law relating to the operation of a common interest development, including, without limitation, the Davis-Stirling Common Interest Development Act (California Civil Code Section 1350 *et seq.*), as same may be amended from time to time;

(g) undertake well-informed decisions based on fair and objective information, and engage in actions which achieve objectives without unnecessary controversy and/or disruption to the Development; and

(h) avoid litigation and/or adversarial proceedings, and, prior to engaging in any adversarial proceedings in accordance with this Declaration, submitting same to good faith, confidential mediation.

6.3 General Powers of the Association. The Association through the Board shall have the power but not the obligation to:

(a) employ a manager or other persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, provided that any contract with a person or firm appointed as a manager or managing agent shall have (i) a term of not more than one (1) year with successive one (1) year renewal periods upon mutual agreement of the parties, and (ii) shall provide for the right to terminate without cause, and without payment of a penalty, upon no more than ninety (90) days notice;

(b) acquire interests in real or personal property for offices or other facilities that may be necessary or convenient for the management of the Covered Property, the administration of the affairs of the Association or for the benefit or enjoyment of the Members;

(c) borrow money in a total amount not to exceed ten percent (10%) of the then existing estimated annual Common Expenses, as may be needed in connection with the discharge by the Association of its powers and duties;

(d) establish in cooperation with the City and/or the County a District for the performance of all or a portion of the maintenance or other functions now within the responsibility of the Association;

(e) convey all or a portion of the Common Areas to a District established pursuant to Subsection (d) above, or to a Government Agency as Dedication Areas pursuant to the Specific Plan, Development Agreement, or other applicable document;

(f) establish and maintain a working capital and contingency fund in an amount to be determined by the Board. Such contribution shall be a Common Expense and shall be used by the Board as it deems fit to carry out the objectives and purposes of the Association; and

(g) negotiate and enter into contracts with Institutional Mortgagees and mortgage insurers and guarantors as may be necessary or desirable to facilitate the availability of loans secured by Mortgages within the Covered Property.

6.4 General Limitations and Restrictions on the Powers of the Board. In addition to the limitations and restrictions enumerated in the Articles and Bylaws or elsewhere provided for herein, and without limiting the generality thereof, the Board shall be prohibited from taking any of the following actions without the approval of a majority of the voting power of the Association and a majority of the votes of Members other than the Declarant:

(a) enter into contracts for materials or services for the Common Areas which have a term in excess of one (1) year, with the following exceptions:

(i) 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;

(ii) prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration, provided that the applicable policy permits short rate cancellation by the insured;

(iii) management contract which provides that the Association may terminate the contract without cause, and without payment of a penalty, upon no more than ninety (90) days notice;

(iv) agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services of not to exceed five 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

(v) agreements for cable television services and equipment or satellite television services and equipment of not to exceed five (5) years duration, provided that the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more;

(b) sell any real or personal property of the Association with an aggregate fair market value in excess of five percent (5%) of said estimated Common Expenses during any accounting year;

(c) pay compensation to Directors or to officers of the Association for services performed in the conduct of the Association's business; *provided, however*, the Board may cause a Director or officer to be reimbursed for expenses incurred in carrying on the business of the Association;

(d) incur aggregate indebtedness in excess of five percent (5%) of the then existing estimated annual Common Expenses;

(e) fill any vacancy on the Board created by the resignation or removal of a member of the Board; and

(f) undertake any litigation and/or adversarial proceedings affecting the Development except as provided herein.

6.5 Association Rules. The Board shall also have the exclusive power to adopt, amend, and repeal such rules and regulations as it deems reasonable (the "**Association Rules**") which may include the establishment of a system of fines and penalties enforceable as Remedial Assessments, all as provided in the Bylaws. The Association Rules shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Areas; *provided, however*, that the Association Rules may not discriminate among Owners, and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules 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 Association Rules shall be delivered to each Owner in the same manner established in this Declaration for the delivery of notices. Upon completion of

the notice requirements, said Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration and shall be binding on the Owners and their successors in interest whether or not actually received thereby. The Association Rules, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner and Institutional Mortgagee upon request. In the event of any conflict between any such Association Rules and any other provisions of this Declaration, or the Articles and Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or the Bylaws to the extent of any such conflict.

6.6 Use of Recreational Facilities. The Board shall have the right to limit the number of guests that an Owner or such Owner's tenant may permit to use any open parking and recreational facilities on the Common Area, and the Board shall have the right to set further reasonable restrictions on the time and manner of use of said parking areas and recreational facilities, in accordance with the Association Rules, including, without limitation, Association Rules restricting or prohibiting the use of all or designated portions of the Covered Property recreational facilities by minors or guests of an Owner or his tenants.

6.7 Delegation of Powers. The Association shall have the right, according to law, to delegate to committees, officers, employees or agents any of its duties and powers under this Declaration, the Articles and Bylaws; *provided, however,* no such delegation to a professional management company, the Architectural Committee or otherwise shall relieve the Association of its obligation to perform such delegated duty.

6.8 Pledge of Assessment Rights. Subject to applicable law, including, without limitation, Section 1367.1 of the California Civil Code, as same may be amended from time to time, the Association shall have the power to pledge the right to exercise its Assessment powers in connection with obtaining funds to repay a debt of the Association; *provided, however,* any such pledge shall require the prior affirmative vote or written assent of not less than sixty-six and two-thirds percent (66-2/3%) of the voting power present in person or by proxy at a duly and validly held meeting of the Members or by written consent as set forth in the Bylaws. Said power shall include, but not be limited to, the ability to make an assignment of Assessments which are then payable to or which will become payable to the Association; which assignment may be then presently effective but shall allow said Assessments to continue to be paid to and used by the Association as set forth in this Declaration, unless and until the Association shall default on the repayment of the debt which is secured by said assignment. The Association may levy Special Assessments against the Members to obtain such funds. Upon the failure of any Member to pay said Special Assessment when due, the Association may exercise all its rights, including, without limitation, the right to foreclose its lien, pursuant to the Article hereof entitled "*Nonpayment of Assessments.*" Without limiting the generality of the foregoing, any pledge of Assessment rights in excess of an amount equal to twenty-five percent (25%) of the total Regular Assessments collected by the Association in the then-preceding accounting year, shall require the prior written approval of seventy-five percent (75%) of the Institutional Mortgagees based on one (1) vote for each First Mortgage held.

6.9 Emergency Powers. The Association or any person authorized by the Association may enter any Lot in the event of any emergency involving illness or potential danger to life or property. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association, at its expense, unless covered by insurance carried by the Owner.

6.10 Additional Services and Facilities. Notwithstanding any other provision(s) in this Declaration, Declarant or the Owners in any Phase of Development shall have the right to establish additional service(s) (including, but not limited to, employing security guards, manned security entrances, or custodians) or facility(ies) (including, but not limited to, entry driveway security mechanism) for a Phase of Development subject to the following provisions:

(a) Declarant may establish a Phase of Development Assessment for a particular Phase of Development at any time prior to the sale of a Lot within such Phase of Development to a Retail Purchaser. Subsequent to the issuance of a Final Subdivision Public Report for a particular Phase of Development, at least sixty-six and two-thirds percent (66-2/3%) of all Owners within such Phase of Development must consent to the establishment and operation (including without limitation, the initial budget and the Phase of Development Assessments) of a particular service or facility for their Phase of Development. Such requisite consent must be in writing and may be obtained during a properly noticed regular or special meeting of the Association.

(b) The full cost and expense (including reserves) of any additional service or facility for a Phase of Development shall be fully paid by all of the Owners in such Phase of Development pursuant to Phase of Development Assessments levied and collected by the Association.

(c) No additional service or facility shall be established which adversely affects any existing services and facilities then being provided for the overall Development.

(d) In the event a Phase of Development Assessment is established, the Owners within such Phase of Development shall elect a committee ("**Phase Committee**") for their Phase of Development. The Board may establish, from time to time, fair and reasonable procedures for the election of such Phase Committee. The Phase Committee for a particular Phase of Development shall consist of three (3) Owners in that Phase of Development or representatives of Declarant. Each Phase Committee will be a committee of the Association, subject to the control of the Board, and each Phase Committee will meet, confer and work closely with the Board in order to coordinate the establishment and maintenance of the additional service(s) or facility(ies). Each Phase Committee will be primarily responsible for performing the necessary tasks, including such tasks established by the Board, for the proper establishment and maintenance of the additional service(s) or facility(ies), and the appropriate assessments to be established. Such tasks shall include, without limitation the preparation of budgets (which shall include sufficient start up and reserve funds) and other financial information for the additional service(s) or facility(ies).

(e) In the event any Phase of Development Assessments are established for a particular Phase of Development, such Phase of Development Assessments may not be increased by more than twenty percent (20%) from the levels of the preceding fiscal year unless a majority of a quorum of the voting power of the Association within such Phase of Development consents to such increase. Phase of Development Assessments may not be used to cover any operating expenses of the Association other than those for which the Phase of Development Assessments are being collected. The Board shall have the authority to levy Special, Reconstruction and/or Capital Improvement Assessments against the Owners within such Phase of Development which relate to the additional facilities or services provided to such Owners consistent with the provisions of Article III herein.

(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: