

The Association has:

- (a) The power and duty to accept, maintain, repair and otherwise manage the Common Area and Association Maintenance Areas in accordance with Article VI and IX hereof.
- (b) The power and duty to maintain any private sewer systems and any private storm drains or drainage facilities within the Common Area in accordance with the provisions of Articles VI and IX hereof.
- (c) The power and duty to obtain, for the benefit of the Properties, all commonly metered water, gas and electric services, and the power but not the duty to provide for refuse collection and cable or master television service.
- (d) The power and duty to grant exclusive or nonexclusive easements and rights of way or fee interest in portions of the Common Area, to the extent any such grant is reasonably required for utilities and sewer facilities to serve the Common Area and the Lots, or for purposes of conformity with the as-built location of Improvements installed by Declarant; provided that no such fee interest may be granted except pursuant to a Recorded lot line adjustment approved by the requisite governmental entity if such a lot line adjustment is required by law; the Association may deannex such property from this Declaration in connection with an approved lot line adjustment.
- (e) The power but not the duty to grant or quitclaim exclusive or nonexclusive easements, licenses or rights of way in, on or over the Common Area for purposes consistent with the intended use of the Properties as a planned residential development.
- (f) The power and duty to maintain liability and fire insurance with respect to the Common Area, the Association Maintenance Areas and personal property, if any, owned by the Association as provided herein in furthering the purposes of and protecting the interests of the Association and Members and as directed by the Restrictions.
- (g) The power but not the duty, after Notice and Hearing, to enter upon any Lot, without being liable to any Owner except for damage caused by such entry, in order to (i) enforce by peaceful means the provisions hereof, or (ii) maintain or repair any Lot if for any reason the Owner thereof fails to perform such maintenance or repair as required by this Declaration. The cost of such enforcement, maintenance and repair shall be a Special Assessment enforceable as set forth herein. The Owner shall promptly pay all amounts due for such work, and the costs and expenses of collection may be added, at



the option of the Board, to the amounts specially assessed against such Owner. If an emergency occurs, such entry upon a Lot by or on behalf of the Board shall be permitted without Notice and Hearing.

- (h) The power but not the duty to reasonably limit the number of guests and tenants of the Owners using the Common Area.
- (i) The power but not the duty to establish uniform Rules and Regulations for the use of the Common Area.
- (j) The power but not the duty to enter in to contracts with Owners or other persons to provide services or to maintain and repair Improvements within the Properties and elsewhere which the Association is not otherwise required to provide or maintain pursuant to this Declaration; provided, however, that any such contract shall provide for reimbursement of the Association for the costs of providing such services or maintenance.

## ARTICLE VI

### 6. Covenant for Maintenance Assessments.

#### 6.1. Creation of Assessment Obligation.

Declarant, for each Lot owned by it, hereby covenants to pay, and each Owner, by acceptance of a deed to a Lot, whether or not it shall be so expressed in such deed, is deemed to covenant to pay to the Association (a) Annual Assessments, (b) Capital Improvement Assessments, (c) Special Assessments, and (d) Reconstruction Assessments; such assessments to be established and collected as provided herein. The Association may not levy or collect any Annual Assessment; Capital Improvement Assessment, Special Assessment or Reconstruction Assessment that exceeds the amount necessary for the purpose or purposes for which it is levied. Except as provided in this Section 6.1, all such assessments (other than Special Assessments), together with interest, costs and reasonable attorneys' fees for the collection thereof, are a charge and a continuing lien upon the Lot against which such assessment is made. Each such assessment (including Special Assessments), together with interest, costs and reasonable attorneys's fees, is also the personal obligation of the Person who was the Owner of the Lot at the time when the assessment fell due. The personal obligation for delinquent assessments may not pass to any new Owner ("Purchaser") unless expressly assumed by the Purchaser.

#### 6.2. Maintenance Funds of Association.

The Board shall establish no fewer than two (2) separate Association Maintenance Fund accounts into which shall be deposited all monies paid to the Association and from which disbursements shall be made, as provided herein, in the Association's performance of functions under this Declaration. The Association Maintenance Funds may be established as trust accounts at a banking or savings



institution and shall include: (a) an Operating Fund for current Common Expenses, (b) an adequate Reserve Fund for the deposit of Reserves attributable to the repair or replacement of Improvements within the Common Area (which would not reasonably be expected to recur on an annual or more frequent basis), and for payment of deductible amounts for insurance policies which the Association obtains as provided in Section 12.4 hereof, and (c) any other Funds which the Board may establish to the extent necessary under the Declaration's provisions. Nothing contained herein precludes the establishment of additional Maintenance Funds by the Association, so long as the amounts assessed, deposited into, and disbursed from any such Fund are designated for purposes authorized by this Declaration.

6.3. Purpose of Annual Assessments.

The Assessments shall be used exclusively to (a) promote the Owner's health, safety, recreation and welfare, (b) improve and maintain the Common Area and Association Maintenance Areas, and (c) discharge any other Association obligation under the Declaration. All amounts deposited into the Maintenance Funds must be used solely for the common benefit of all of the Owners for purposes authorized by this Declaration. Disbursements from the Reserve Fund shall be made by the Board only for the purposes specified in this Article VI and in Section 1365.5(c) of the California Civil Code, as amended. If the Association decides to use or transfer reserve funds to pay for litigation, the Association must notify its Members of the decision by mail. Such notice shall provide an explanation of why the litigation is being initiated or defended, why operating funds cannot be used, how and when the reserve funds will be replaced, and a proposed budget for the litigation. The notice must state that the Members have a right to review an accounting for the litigation which will be available at the Association's office. The accounting shall be updated monthly. Disbursements from the Operating Fund shall be made by the Board only for such purposes as are necessary for the discharge of its responsibilities herein for the common benefit of all of the Owners, other than those purposes for which disbursements from the Reserve Fund are to be used. Association assessments or funds may not be used to abate any nuisance or annoyance emanating from outside the boundaries of the Properties, or in support of Federal, State or local political activities intended to influence governmental action affecting areas outside the boundaries of the Properties (e.g., endorsement or support of political candidates, legislative or administrative actions by any governmental agency). Annual Assessments shall be used to satisfy Common Expenses as provided herein and in the Bylaws.

6.4. Limitations on Annual Assessment Increases.

The Board shall levy Annual Assessments as follows:

- (a) Maximum Authorized Annual Assessment for Initial Year of Operations. Until the first day of the Fiscal Year immediately following the Fiscal Year in which Annual Assessments commence, the Board may levy an Annual Assessment per Lot in an amount which exceeds one hundred twenty percent (120%) of the amount of Annual Assessments disclosed for the Properties in the most current Budget filed with and approved by DRE at the time Annual Assessments commence only if the Board first obtains the approval of



Members casting a majority of votes at a meeting or election of the Association in which more than fifty percent (50%) of the Members are represented ("Increase Election"). Notwithstanding the foregoing, this Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 6.4(e).

- (b) Maximum Authorized Annual Assessment for Subsequent Fiscal Years. Starting with the Fiscal Year immediately following the fiscal Year in which Annual Assessments commence, the Board may levy Annual Assessments which exceed the Annual Assessments for the immediately preceding Fiscal Year only as follows:
- (i) If the increase in Annual Assessments is less than or equal to twenty percent (20%) of the Annual Assessments for the immediately preceding Fiscal Year, then the Board must either (a) have distributed the Budget for the current Fiscal Year in accordance with Section 1365(a) of the California Civil Code, or (b) obtain the approval of Members casting a majority of votes in an Increase Election;
  - (ii) If the increase in Annual Assessments is greater than twenty percent (20%) of the Annual Assessments for the immediately preceding Fiscal Year, then the Board must obtain the approval of Members casting a majority of votes in an Increase Election.

Notwithstanding the foregoing, this Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 6.4(e).

- (c) Supplemental Annual Assessments. If the Board determines that the Association's important and essential functions may be properly funded by an Annual Assessment in an amount less than the maximum authorized Annual Assessment described above, it may levy such lesser Annual Assessment. If the Board determines that the estimate of total charges for the current year is or will become inadequate to meet all Common Expenses, it shall immediately determine the approximate amount of the inadequacy. Subject to the limitations described in Sections 6.4(a) and (b) above and (e) below, the Board may levy a supplemental Annual Assessment reflecting a revision of the total charges to be assessed against each Lot.
- (d) Automatic Assessment Increases. Notwithstanding any other provisions of this Section 6.4, upon Declarant's annexation of any portion of the Annexable Territory pursuant to Article XVI, the Annual Assessment shall be automatically increased by the additional amount, if any, necessary to maintain the Common Area and Association Maintenance Areas in or



abutting such Annexable Territory so long as (I) the annexation of such Annexable Territory is permitted by DRE, and (ii) the amount of such increase does not result in the levy of an Annual Assessment which is greater than the maximum potential Annual Assessment disclosed in all Final Subdivision Public Reports for the Properties previously issued by the DRE.

(e) Emergency Situations. For purposes of Sections 6.4(a), 6.4(b) and 6.5, an "Emergency Situation" is any of the following:

- (i) An extraordinary expense required by an order of a court;
- (ii) An extraordinary expense necessary to repair or maintain the Properties or any portion thereof for which the Association is responsible where a threat to personal safety on the Properties are discovered; and

(iii) An extraordinary expense necessary to repair or maintain the Properties or any portion thereof for which the Association is responsible that could not have been reasonably foreseen by the Board when preparing the Budget. Prior to the imposition or collection of an assessment pursuant to this Subparagraph (iii), the Board shall adopt a resolution containing written findings as to the necessity of the extraordinary expenses involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The resolution shall be distributed to the Members with the Notice of Assessment.

**6.5. Capital Improvements.**

The Board may levy, in any Fiscal Year, a Capital Improvement Assessment or Reconstruction Assessment applicable to that Fiscal Year only to defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement or other such addition upon the Common Area or Association Maintenance Areas including fixtures and personal property related thereto. No Capital Improvement Assessments in any Fiscal Year which, if added to the Capital Improvement Assessments already levied during such Fiscal Year, exceed five percent (5%) of the Association's Budgeted gross expenses for such Fiscal Year, may be levied without the vote or written consent of Members casting a majority of votes at an Increase Election. Notwithstanding the foregoing, the Board may levy in any Fiscal Year, a Capital Improvement Assessment applicable to that Fiscal Year which exceeds five percent (5%) of the Association's Budgeted gross expenses for such Fiscal Year if such increase is necessary for addressing an Emergency Situation as defined in Section 6.4(e).

**6.6. Uniform Rate of Assessment.**

Annual Assessments, Capital Improvement Assessments and Reconstruction Assessments shall be assessed uniformly and equally against all Owners and their Lots based upon the number of Lots owned by each Owner except as may be otherwise provided in a Notice of Addition. The Association may, subject to the provisions of Section 9.4 and Article XI hereof, levy Special



Assessments against selected Owners who have caused the Association to incur special expenses due to willful or negligent acts of said Owners, their tenants, families, guests, invitees or agents. All installments of Annual Assessments shall be collected in advance on a regular basis by the Board, at such frequency as the Board shall determine.

6.7. Date of Commencement of Annual Assessments.

Annual Assessments shall commence on all Lots in a Phase on the first day of the first calendar month following the first Close of Escrow in such Phase. The first Annual Assessment shall be adjusted according to the number of months remaining in the Fiscal Year. The Board shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. However, unless otherwise established by the Board, the initial Annual Assessments shall be assessed in accordance with the most recent Budget on file with and approved by DRE. Written notice of any change in the amount of any Annual Assessment, Capital Improvement Assessment or Reconstruction Assessment shall be sent via first-class mail to every Owner subject thereto not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due. The due dates shall be established by the Board. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an Association officer or agent setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate as to the status of assessments against a Lot is binding upon the Association as of the date of its issuance.

Each installment of Annual Assessments may be paid by the Member to the Association in one check or payment or in separate checks as payments attributable to specified Association Maintenance funds. If any payment of an Annual Assessment installment (a) is less than the amount assessed and (b) does not specify the Association Maintenance Fund or Funds into which it should be deposited, then the amount received shall be credited in order of priority first to the Operating Fund, until that portion of the Annual Assessment has been satisfied, and second to the Reserve Fund.

The Board may determine that funds remaining in the Operating Fund at the end of a Fiscal Year be retained and used to reduce the following Fiscal Year's Annual Assessments. Upon dissolution of the Association incident to the abandonment or termination of the Properties as a planned development, any amounts remaining in any of the Maintenance Funds shall be distributed to or for the benefit of the Members in the same proportions as such monies were collected from the Members.

Notwithstanding any other provisions of this Declaration, until the earlier to occur of (a) the Recordation of a notice of completion of an Improvement on the Common Area or Association Maintenance Areas, or (b) the placement into use of such Improvement, each Owner (including Declarant) shall be exempt from paying that portion of any Annual Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of such Improvement.



Notwithstanding any other provisions of this Declaration or the Bylaws regarding the term and termination of contract with Declarant for providing services to the Association under which Declarant may enter into a written maintenance agreement with the Association under which Declarant shall pay all or any portion of the operating Common Expenses and perform all or any portion of the Association's maintenance responsibilities in exchange for a temporary suspension of Annual Assessments. Such maintenance agreement shall extend for a term and shall be on 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 satisfaction of Common Expenses.

6.8. Exempt Property.

The following property subject to this Declaration is exempt from the assessments herein:

- (a) All portions of the Properties dedicated to and accepted by a local public authority; and
- (b) The Common Area owned by the Association in fee.

**ARTICLE VII**

7. Nonpayment of Assessments; Remedies.

7.1 Nonpayment of Assessments; Remedies.

Any installment of an assessment is delinquent if not paid within fifteen (15) days of the due date established by the Board. Any installment of Annual Assessments, Capital Improvement Assessments, Special Assessments, or Reconstruction Assessments not paid within thirty (30) days after the due date, plus all reasonable costs of collection (including attorneys' fees) and late charges as provided herein bears interest at the maximum rate permitted by law commencing thirty (30) days from the date the assessment becomes due until paid. The Board may also require the delinquent Owner to pay a late charge in accordance with California Civil Code Section 1366(d)(2). The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot. The Association need not accept any tender of a partial payment of an assessment installment and all costs and attorneys' fees attributable thereto, and any acceptance of any such tender does not waive the Association's right to demand and receive full payments thereafter. Before the Association may place a lien upon an Owner's Lot to collect a past due assessment, the Association shall send a written notice to the Owner by certified mail which contains the following information: (i) the fee and penalty procedure of the Association, (ii) an itemized statement of the charges owed by the Owner, including the principal owed, any late charges and the method of calculation, any attorney's fees, (iii) the collection practices used by the Association, and (iv) a statement that the Association may recover the reasonable costs of collecting past due assessments.

7.2. Notice of Delinquent Assessment.



No action may be brought to enforce any assessment line created herein unless at least thirty (30) days has expired following the date a Notice of Delinquent Assessment is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of the Lot, and a copy thereof has been Recorded by the Association. Such Notice of Delinquent Assessment must recite (a) a good and sufficient legal description of any such Lot, (b) the record Owner or reputed Owner thereof, (c) the amount claimed (which may at the Association's option include interest on the unpaid assessment and late charges as described above plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by said lien), (d) the Association's name and address, and (e) in order for the lien to be enforce by nonjudicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. A monetary penalty imposed by the Association as a disciplinary measure for failure of an Owner to comply with the Restrictions may not become a lien enforceable by nonjudicial foreclosure against such Owner's Lot. Recordation of the Notice of Delinquent Assessment creates a lien on the Lot as provided in Section 1367 of the California Civil Code. Said lien is prior to any declaration of homestead Recorded after the date on which this Declaration is Recorded. The lien continues until paid or otherwise satisfied. The Notice of Delinquent Assessment must be signed by an authorized Association officer or agent, and must be mailed in the manner set forth in Section 2926b of the California Civil Code to the record Owner of the Lot no later than ten (10) calendar days after recordation.

7.3. Foreclosure Sale.

A sale to foreclose an Association lien may be conducted by the Board, its attorneys or other persons authorized by the Board in accordance with the provisions of Sections 2924, 2924a, 2924b, 2924c and 2924f of the California Civil Code, or in accordance with any similar statute hereafter enacted applicable to the exercise of powers of sale in Mortgages, or in any other manner permitted by law. The Association, through duly authorized agents, may bid on the Lot at foreclosure sale, and acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, the Association or the purchaser at the sale may file suit to secure occupancy of the defaulting Owner's Lot, and the defaulting Owner shall be required to pay the reasonable rental value of the Lot during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner.

7.4. Curing of Default.

Upon the timely curing of any default for which the Association Recorded a Notice of Delinquent Assessment, the Association's officers shall Record an appropriate Release of Lien upon payment by the defaulting Owner of a reasonable fee, to be determined by the Board, to cover the cost of preparing and Recording such release. A certificate executed and acknowledged by any two (2) members of the Board stating the indebtedness secured by the liens upon any Lot created hereunder shall be conclusive upon the Association and the Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request at a reasonable fee, to be determined by the Board.

7.5. Cumulative Remedies.



The assessment liens and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

7.6. Mortgage Protection.

No lien created under this Article VII, nor any breach of this Declaration, nor the enforcement of any provision hereof defeats or renders invalid the rights of the Beneficiary under any Recorded first Deed of Trust (meaning any deed of trust with first priority over other deeds of trust) upon a Lot made in good faith and for value. After a Beneficiary or other Person obtains title to a Lot by judicial foreclosure or by means set forth in a Deed of Trust, the Lot shall remain subject to the Declaration and the payment of all installments of Assessments accruing after the date the Beneficiary or other Person obtains title.

7.7. Priority of Assessment Lien.

Mortgages Recorded before a Notice of Delinquent Assessment have lien priority over the Notice of Delinquent Assessment. Sale or transfer of any Lot does not affect the assessment lien, except that the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage extinguishes the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer relieves such Lot from lien rights for any assessments thereafter becoming due. No Person who obtains title to a Lot pursuant to a judicial or nonjudicial foreclosure of the first Mortgage is liable for the share of the Common Expenses or assessments chargeable to such Lot which became due prior to the acquisition of title to the Lot by such Person. Such unpaid share of Common Expenses or assessments is a Common Expense collective from all of the owners including such Person.

7.8. Receivers.

In addition to the foreclosure and other remedies granted the Association herein, each Owner, by acceptance of a deed to such Owner's Lot, hereby conveys to the Association all of such Owner's right, title and interest in all rents, issues and profits derived from and appurtenant to such Lot, and profits to any delinquent Assessments owed by such Owner, reserving to the Owner the right, prior to any default by the Owner in the payment of Assessments, to collect and retain such Association may, upon the expiration of thirty (30) days following delivery to the Owner of the "Notice of Delinquent Assessment" described herein, either in person, by agent or by receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness secured by the lien described herein, (a) enter in or upon and take possession of the Lot or any part thereof, (b) in the Association's name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and (c) apply the same, less allowable expenses of operation, to any delinquencies of the Owner hereunder, and in such order as the Association may determine. The entering upon and taking possession of the Lot, the collection of rents, issues and profits and the application thereof, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

7.9. Alternative Dispute Resolution.

