

standing the foregoing, maintenance performed by such contractors or subcontractors of Declarant or any Merchant Builder shall not serve to postpone the commencement of Regular Assessments pursuant to this Declaration, nor entitle an Owner to claim any offset or reduction in the amount of such Regular Assessments.

d. Character of Improvements to Association Property. The nature, design, quality and quantity of all Improvements to the Association Property shall be determined by Declarant, in its sole discretion. The Association shall be obligated to accept title to the Association Property and undertake all maintenance responsibilities for the Association Property when title is conveyed and maintenance responsibilities are tendered by Declarant, pursuant to Subparagraphs (a) and (c) above.

e. Disputes. In the event that a dispute arises between Declarant and the Association with respect to the nature, design, quality or quantity of the Improvements, or the acceptance of maintenance responsibilities therefor, resolution of the dispute shall be accomplished in accordance with the procedures for resolution of disputes set forth in Article 19 below.

3.18 Reservation of Association Property Easements. Declarant hereby reserves the right to grant nonexclusive easements over the Association Property in favor of Merchant Builders and the Owners of any Annexation Property which is annexed to the Project pursuant to this Declaration, and, upon the recordation of a Notice of Annexation affecting the Annexation Property, the Owners described in this Declaration shall automatically obtain nonexclusive easements over all Association Property which is a part of said Annexation Property.

ARTICLE 4

THE ASSOCIATION

4.1 Membership. Every person or entity who or which is an Owner (including Declarant and Merchant Builders) shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest in a Lot in the Project merely as security for the performance of an obligation. All memberships in the Association shall be appurtenant to the Lot owned by each Member, and memberships in the Association shall not be assignable, except to the person or entity to whom the title to the Lot has been transferred. Ownership of such Lot shall be the sole qualification for membership in the Association. The memberships in the Association shall not be transferred, pledged or alienated in any way, except upon the transfer of title to said Lot, and then only to the purchaser or Mortgagee of such Lot. Any attempt to make a prohibited membership transfer shall be void and will not be reflected in the books of the Association.

4.2 Classes of Membership. The Association shall have two (2) classes of voting membership, as follows:

Class A. Class A Members shall be all Owners, initially with the exception of the Declarant and any Merchant Builders, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B Members shall be Declarant and any Merchant Builders. Each Class B Member shall be entitled to three (3) votes for each Lot owned by Declarant or a Merchant Builder. As to each Phase annexed to the Project, the Class B membership shall terminate and be converted to Class A membership on the happening of any of the following events, whichever occurs earliest:

- a. The second (2nd) anniversary of the first close of escrow for the sale of the Lot in the most recent Phase of the Project by Declarant or any Merchant Builder;
- b. The fourth (4th) anniversary of the first close of escrow for the sale of a Lot in Phase 1; or
- c. The close of escrow has occurred on at least three hundred forty-four (344) Lots in the Project.

4.3 Special Voting Procedures for Election of the Board. The Declarant shall be entitled to solely elect a majority of the members of the Board until the first to occur of the following events:

- a. The election of the Board immediately following the sale by Declarant and/or Merchant Builders of at least three hundred forty-four (344) Lots in the Project to members of the public; or
- b. The date which is the fifth (5th) anniversary of the first close of escrow for the sale of a Lot in Phase 1.

Notwithstanding the foregoing, the Class A Members shall be entitled to elect at least forty percent (40%) of the members of the Board, so long as there are two (2) classes of membership outstanding in the Association.

4.4 Voting Rights. All voting rights shall be subject to the provisions and limitations provided in this Declaration, the Articles and the By-Laws. Except as provided in the Article herein entitled "Enforcement of Bonded Obligations," and Article 5, Section 5.3, of the By-Laws, any provision of the Articles, the By-Laws or this Declaration which expressly requires the vote or written consent of a specified percentage of the voting power of the Association shall require the approval of such specified percentage of the voting power of each class of membership. Upon the termination of Class B membership, except as provided in the Article herein entitled "Enforcement of Bonded Obligations," and Article 5, Section 5.3, of the

By-Laws, any provision of the Articles, the By-Laws or this Declaration which expressly requires the vote or written consent of a specified percentage of the voting power of the Association shall require the vote or written consent of the voting power of the Association, as well as the vote or written consent of the voting power of the Association residing in Members, other than Declarant.

4.5 Voting; Joint Owners. Those Members appearing in the official records of the Association as record Owners of Lots shall be entitled to notice of any meeting of Members. If there is more than one (1) record Owner of any Lot ("joint Owners"), all such joint Owners shall be Members of the Association and may attend any meetings of the Association, but only one (1) such joint Owner shall be entitled to exercise the vote to which the Lot is entitled. Fractional votes shall not be allowed. Joint Owners may, from time to time, designate in writing one (1) joint Owner to vote. Where no joint Owner is designated, a vote made by a joint Owner of such Lot shall be conclusively presumed to have been cast with full authority and consent of the joint Owners. In the event of a dispute among joint Owners as to how their vote shall be cast, the joint Owners shall lose their right to vote on the matter in question, and any attempt to cast a vote in those circumstances shall be disallowed by the Board. The Board shall have no jurisdiction to determine any matters relating to the entitlement of Declarant to vote, or the manner in which such vote is exercised.

4.6 Adjustment of Voting Rights. The voting rights in the Association shall be adjusted on the first day of the month immediately following the first close of escrow for the sale of a Lot in each subsequent Phase of the Project.

4.7 Vesting of Voting Rights. The voting rights attributable to any given Lot in the Project, as provided for herein, shall not vest until the Assessments provided for hereinbelow have been levied by the Association against said Lot.

4.8 Suspension of Voting Rights. As more particularly set forth in the Article entitled "General Provisions," the Board shall have the authority, among other things, to suspend the voting rights of any Member to vote at any meeting of the Members for any period during which such Owner is delinquent in the payment of any Assessment, regardless of type, it being understood that any suspension for nonpayment of any Assessment shall not constitute a waiver or discharge of the Member's obligation to pay the Assessments provided for in this Declaration.

4.9 Transfer. The Association membership held by any Owner of a Lot shall not be transferred, pledged or alienated in any way, except as incidental to the sale of such Lot. In the event of such sale, the Association membership may only be transferred, pledged or alienated to the bona fide purchaser or purchasers of the Lot, or to the Mortgagee (or third party purchaser) of such Lot upon a foreclosure sale. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. The Association may levy a reasonable transfer fee against new Owners (which fee shall be a Compliance Assessment chargeable to such new Owner) to reimburse the Association for the actual administrative cost of transferring the memberships to the new Owners on the records of the Association.

4.10 Proxies. Votes may be cast in person or by proxy. Proxies must be filed with the Secretary before the appointed time for each meeting. Every proxy shall be revocable and shall automatically terminate upon the earliest of the following: (a) the conveyance by the Owner of his Lot; (b) the date of automatic termination, if any, specified in the proxy, but not to exceed three (3) years from the date of issuance of the proxy; or (c) eleven (11) months from the date of issuance of the proxy, if no automatic termination date is specified in the proxy. Any form of proxy or written ballot distributed to the membership of the Association shall afford an Owner the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon at the meeting for which said proxy was distributed, except it shall not be mandatory that a candidate for election to the Board be named in the proxy. A proxy or written ballot shall provide that, where the Owner specifies a choice, the vote shall be cast in accordance with that choice. In addition, the proxy shall also identify the person or persons authorized to exercise the proxy and the length of time it shall be valid.

4.11 Record Dates. For the purposes of determining Members entitled to notice of any meeting, to vote or to exercise any other rights in respect of any lawful action, the Board may fix in advance record dates as provided in the By-Laws.

ARTICLE 5

POWERS AND DUTIES OF THE ASSOCIATION

5.1 Management Body. The Association is hereby designated as the management body of the Project. The Members of the Association shall be the Owners in the Project as provided herein, and the affairs of the Association shall be managed by the Board, as more particularly set forth in the By-Laws. The initial Board shall be appointed by the incorporator or its successor. Thereafter, the Directors shall be elected as provided in the By-Laws.

5.2 Powers. The Board, for and on behalf of the Association, shall have the right and power to do all things necessary to conduct, manage and control the affairs and business of the Association. Subject to the provisions of the Articles, the By-Laws and this Declaration, the Board shall have all general powers authorized under the California Corporations Code and California Civil Code for nonprofit, mutual benefit corporations, and shall have the following specific powers:

- a. Enforce the provisions of this Declaration and all contracts or any agreements to which the Association is a party;
- b. Acquire, manage, maintain, repair and replace all Association Property and Improvements located thereon, including all personal property, in a neat, clean, safe and attractive condition at all times, and to pay all utilities, gardening and other necessary services for the Association Property, all as more specifically set forth in the Article herein entitled "Repair and Maintenance";