

restrictions and enforcement, trash collection, minimum standards for maintenance of Lots consistent with such standards as may be set forth in this Declaration or adopted by the Architectural Control Committee, and any other matter which is within the jurisdiction of the Association; provided, however, that the Rules and Regulations may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or By-Laws. A copy of the Rules and Regulations as they may, from time to time, be adopted, amended or repealed, or a notice setting forth the adoption, amendment or repeal of specific portions of the Rules and Regulations, shall be delivered to each Owner. The Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration, and shall be binding on the Owners and their successors in interest, whether or not actually received thereby. The Rules and Regulations, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner upon request. In the event of any conflict between any such Rules and Regulations and any other provisions of this Declaration, or the Articles or By-Laws, the provisions of the Rules and Regulations shall be deemed to be superseded.

5.13 Schedule of Fines and Penalties. The Board may adopt a schedule of reasonable fines and penalties which, in its reasonable discretion, it may impose against an Owner for the failure of such Owner, or of a resident, guest or invitee of such Owner, to comply with any provisions of this Declaration or the Association's Rules and Regulations. The Board shall adopt and distribute to each Member, by personal delivery or by first class mail, a schedule of such fines and penalties. The Board shall not be required to distribute any additional schedules unless there are changes from the schedule that was adopted and distributed to the Members pursuant to this section. Such fines or penalties may only be imposed by the Board after Notice and Hearing, as set forth in the By-Laws. All fines and penalties are personal obligations of the Owner against whom such fines and penalties are imposed, and are not enforceable by lien.

ARTICLE 6

ASSESSMENTS

6.1 Creation of the Lien and Personal Obligation of Assessment. The Declarant or any Merchant Builder, for each Lot owned within the Project, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) Regular Assessments; (b) Special Assessments; (c) Compliance Assessments, including, but not limited to, costs incurred by the Association in the repair of damage to the Association Property for which such Owner was responsible and costs incurred by the Association in bringing such Owner and his Lot into compliance with this Declaration; (d) Reconstruction Assessments; and (e) such other assessments as the Association may periodically establish. The Regular and Special Assessments, together with a reasonable late charge as may, from time to time, be established by the Board in accordance with California law, interest, costs and reasonable attorneys' fees for the collection thereof, shall be a charge against and a continuing lien upon the Lot against which each such Assessment is levied, and shall also be the personal obligation of the Owner of such property at the time when the Assessment came due.

6.2 Purpose of Regular Assessments: Levy and Collection. The Regular Assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the Project and to maintain, repair, replace and improve the Association Property, and any other Improvements or areas which the Association is obligated to maintain, as provided herein. The Association, by and through its Board, shall levy and collect Assessments from the Owner of each Lot in the Project in an amount sufficient to cover all of the Common Expenses incurred by the Association in connection with the performance and execution of the powers and duties set forth in this Declaration, the By-Laws and Articles. In connection therewith, the Association shall not impose or collect assessments, penalties or fees that exceed the amount reasonably necessary for the purpose or purposes for which they were levied. The percentage rate for the Assessments levied by the Association shall be adjusted at such time as the annexation of an additional Phase becomes effective.

6.3 Regular Assessments - Basis. Except as provided hereinbelow, Regular Assessments payable to the Association shall be assessed equally against all Owners of Lots in the Project. Each Owner's proportionate share of the Common Expenses for any fiscal year of the Association shall be a fraction, the numerator of which shall be the number of Lots owned by such Owner, and the denominator of which shall be the total number of Lots in the Project which are subject to Assessment. Until the first day of the fiscal year of the Association immediately following the first close of escrow for the sale of a Lot in the Project to an Owner, the maximum total Regular Assessment shall be One Thousand One Hundred Twenty-Eight and 60/100 Dollars (\$1,128.60). Subject to the limitations imposed by California Civil Code Section 1366, as the same may be amended, from time to time, the Board may increase Regular Assessments subject to the following limitations:

a. Increases in Regular Assessments for any fiscal year which are less than or equal to twenty percent (20%) above the Regular Assessment against Lots in Phase 1 for the immediately preceding fiscal year may be approved by the Board, provided that the Board shall: (1) comply with the provisions set forth in Section 1365(a) of the California Civil Code with respect to the distribution of the pro forma operating budget of the Association for the forthcoming fiscal year; or (2) obtain the approval of Members, constituting a quorum, casting a majority of the votes at a meeting or an election of the Association conducted in accordance with California Corporations Code Sections 7510, et seq., and Sections 7613, et seq. For purposes of this section, a quorum means more than fifty percent (50%) of the Members of the Association; and

b. Increases in Regular Assessments for any fiscal year which are greater than twenty percent (20%) above Regular Assessments for the immediately preceding fiscal year may be approved by the Board only after the Board obtains the affirmative vote of Members pursuant to the provisions set forth in Subsection a.(2) above.

So long as Declarant is offering Lots for sale pursuant to a Final Subdivision Public Report, the Regular Assessment may not be decreased by ten percent (10%) or more without the express written consent of the Declarant and the DRE.

Following the annexation of a subsequent Phase pursuant to the provisions set forth in this Declaration, Regular Assessments may be automatically increased (or decreased) for all Lots in the Project as set forth in the Association budget. Such adjustment, if any, shall occur on the first day of the month following the first close of escrow for the sale of a Lot in said Phase without any approval of the Members of the Association to the amount recommended by the DRE in connection with the DRE's review and processing of the Association budget for such Phase.

6.4 Special Assessments. In any fiscal year the Board may not, subject to the limitations of California Civil Code Section 1366, without the vote or written assent of a majority of those Owners constituting a quorum (which shall mean more than fifty percent [50%] of Owners of the Association) casting a majority of affirmative votes at a meeting or election of the Association conducted in accordance with Sections 7510, et seq., and 7613 of the Corporations Code, levy Special Assessments to defray the costs of any action or undertaking on behalf of the Association which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. The five percent (5%) limitation shall not apply to increases in Special Assessments related to an emergency situation, as described in Section 6.5 below. Special Assessments shall be levied among all Owners and their Lots in the same proportions as their Regular Assessments.

6.5 Emergency Situations. The limitations set forth in Sections 6.3 and 6.4 above shall not limit increases in Regular Assessments or Special Assessments which may become necessary for emergency situations. For purposes of this section, an emergency situation is any one of the following:

- a. An extraordinary expense required by an order by a court;
- b. An extraordinary expense for the maintenance or repair of Association Property that is necessary to remedy any dangerous condition in the Project that represents a threat of damage or injury to any person or property; and
- c. An extraordinary expense necessary to repair or maintain the Association Property, or any portion thereof, that could not have been reasonably anticipated by the Board at the time the most recent Association budget was prepared. Prior to the imposition or collection of an Assessment pursuant to this Subsection c., the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved, and why the expense was not or could not have been reasonably foreseen in the budget process. The resolution shall be distributed to the Members with the notice of Assessment.

6.6 Compliance Assessments. A Compliance Assessment is a charge against a particular Owner directly attributable to, and/or reimbursable by, the Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, or to suspend or condition such Owner's right to use any portion of the Association Property. Any suspension or conditional suspension shall be for a period of not more than thirty (30) days for any continuing infraction, but in the case of the continuing

infraction, including non-payment of any assessment after the same becomes delinquent, may be imposed for so long as the violation continues. Compliance Assessment shall not include any late payment penalties, interest charges or costs, including attorneys' fees incurred by the Association in the collection of annual or Special Assessments.

6.7 Date of Commencement of Regular Assessments: Due Dates. The Regular Assessments provided for herein shall commence on the first day of the month following the close of escrow for the first sale of a Lot in a Phase. Nothing herein shall prevent Declarant from commencing Regular Assessments against Lots in future Phases on a voluntary basis. Regular Assessments shall be adjusted according to the number of months remaining in the fiscal year, as set forth in the By-Laws. The Board shall fix the amount of the Regular Assessment against each Lot at least thirty (30) days in advance of each Regular Assessment period. The Association shall provide notice by first class mail to the Owners of any increase in Regular Assessments of the Association not less than thirty (30) days nor more than sixty (60) days prior to the increased Regular Assessment becoming due.

Declarant and any other Owner shall be exempt from the payment of those portions of the Regular Assessments that are for the purpose of defraying expenses and reserves directly attributable to the existence of Improvements within the Association Property that have not been completed or placed into use by the Association at the time Assessments commence. This exemption shall be in effect until the earlier to occur of: (a) the recordation of a Notice of Completion of the Association Property Improvements; or (b) the placement of such Improvements into use.

6.8 Collection of Assessments. Except as otherwise provided above, Regular and Special Assessments shall be levied at an equal and uniform rate for all Lots and may be collected on a monthly basis. Due dates shall be established by the Board at its discretion. Compliance Assessments shall be due thirty (30) days after such Assessment has been levied.

6.9 Certification of Payment. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association setting forth whether the Assessments on a specified Lot have been paid. If a certificate states that Assessments have been paid, such certificate shall be conclusive evidence of such payment.

6.10 Reserves. The Regular Assessments shall include reasonable amounts, as determined by the Board, collected as reserves for the future periodic maintenance, repair and replacement of all or a portion of the Association Property, or any such other purpose determined by the Board. All amounts collected as reserves shall be deposited by the Board in a separate bank account for the purposes for which they were collected, and are to be segregated from and not commingled with any other funds of the Association.

Except as provided in California Civil Code Section 1365.5 and any companion or successor statutes, the Board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement or maintenance of, or litigation involving the repair, restoration, replacement or maintenance of, major components

which the Association is obligated to repair, restore, replace or maintain and for which the reserve fund was originally established. Notwithstanding the foregoing, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating accounts to meet short term cash flow requirements or other expenses, provided the Board has made a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one (1) year of the date of the initial transfer, except that the Board may, upon making a finding supported by documentation that a temporary delay would be in the best interests of the Association, temporarily delay the restoration.

The Board shall exercise prudent fiscal management in delivering restoration of the reserve funds and restoring the expended funds to the reserve funds and shall, if necessary levy a special assessment to recover the full amount of the expended funds within the time limits required under California law. This special assessment is subject to the limitation imposed by California Civil Code Section 1366, unless the special assessment is to pay for legal costs associated with litigation involving the repair, restoration, replacement, or maintenance of, major components for which the Association is responsible. The Board may, at its discretion, extend the date the payment on this special assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid special assessment for this purpose.

The Board, upon making a decision to use reserve funds or temporarily transfer money from the reserve fund to pay for litigation, the Board shall notify the Members of the Association of that decision in the next available mailing to all Members, in accordance with California Civil Code Section 5016, and any companion or successor statutes, and of the availability of an accounting of those expenses. The Board shall make an accounting of expenses related to the litigation on at least a quarterly basis. Such accounting shall be made available for inspection by Members of the Association at the principal office of the Association. The withdrawal of funds from the Association's reserve accounts shall require the signatures of either: (i) two (2) members of the Board; or (ii) one (1) Director and one (1) officer of the Association who is not also a member of the Board.

6.11 Offsets and Waiver Prohibited. No Owner may waive or otherwise avoid liability for the Assessments provided for herein for any reason whatsoever, including, but not limited to, non-use of the Association Property or abandonment of his Lot, nor shall any Owner be entitled to any offset against any Assessment provided for herein for any reason whatsoever, including, but not limited to, any expenditure made by such Owner for or on behalf of the Association.

6.12 Exempt Property. The following property subject to this Declaration shall be exempt from the Assessments herein:

- a. All property dedicated to and accepted by a local public authority; and

- b. All Association Property.

ARTICLE 7

EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION

7.1 Effect of Nonpayment of Assessments: Remedies of the Association.

Any Regular, Special or Compliance Assessment not paid within fifteen (15) days after the due date shall be deemed delinquent and the Owner shall be required to pay (a) reasonable costs of collection, including reasonable attorneys' fees; (b) a reasonable late charge not exceeding ten percent (10%) of the delinquent Assessment or Ten Dollars (\$10.00), whichever is greater, or as may, from time to time, be established by the Board in accordance with California law; and (c) interest on all sums imposed under this section at an annual percentage rate not to exceed twelve percent (12%) per annum, or the maximum rate allowed by law, commencing thirty (30) days from the date the Assessment becomes due until paid in full. The Board, for and on behalf of the Association, may commence legal action against the Owner personally obligated to pay the same, or, in the case of a Regular or Special Assessment, may foreclose the lien against his Lot. Such lien may also be foreclosed by a power of sale or other nonjudicial procedure provided for by the laws of the State of California. In furtherance thereof, each Owner hereby vests in the Association, its successors or assigns, the right and power to bring all actions at law or to pursue lien foreclosure against any Owner for purposes of collecting such delinquent Assessments.

7.2 Notice of Delinquent Assessments.

No action shall be brought to foreclose a lien for delinquent Assessments or to proceed under the power of sale herein, unless at least thirty (30) days has expired following the date a Notice of Delinquent Assessments is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of said Lot and a copy thereof is recorded by the Association in the Office of the County Recorder. Said Notice of Delinquent Assessments must recite a good and sufficient legal description of any such Lot, the record Owner or reputed Owner thereof, the total amount due and payable as provided herein, and the name and address of the principal office of the Association, and, in the event of a nonjudicial foreclosure, as provided in Section 7.3 below, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice shall be signed and acknowledged by any authorized officer of the Association. The lien shall continue until fully paid or otherwise satisfied.

7.3 Foreclosure Sale.

Any foreclosure sale provided for above is to be conducted by the Board, its attorney or other persons authorized by the Board, in accordance with the provisions of the California Civil Code applicable to the exercise of powers of sale in Mortgages and deeds of trust, as same may be amended from time to time, or in any other manner permitted by law. The Association, through duly authorized agents, shall have the power to bid on the Lot at a foreclosure sale and to acquire, hold, lease, mortgage and convey the same.