

SECTION 7: POWERS, DUTIES AND LIMITATIONS OF THE ASSOCIATION

7.01. Powers and Duties of Association. In addition to the powers and duties enumerated in its Articles and Bylaws or elsewhere provided for herein, and without limiting the generality thereof, the Association and the Board shall have the following powers and duties:

a) Delegation of Powers. To delegate all powers to committees, officers or employees of the Association as expressly authorized by the Project Documents.

b) Management Agent. To employ a management agent and to contract with independent contractors to perform all or any part of the duties and responsibilities of the Association, provided that any contract with a firm or person appointed as a managing agent or any other contract providing for services of the developer, sponsor or builder shall not exceed a 1 year term renewable by the parties for successive one year periods and shall provide for the right of the Association to terminate the same at the first annual meeting of the Members of the Association, to terminate the same for cause on 30 days written notice, and either party may terminate without cause and without payment of a termination fee on 60 days written notice.

c) Maintenance. To maintain the Project as required by the provisions of this Declaration.

d) Supervision. To supervise all officers, agents and employees of the Association and see that their duties are properly performed.

e) Assessments, Liens, and Fines. To levy and collect assessments and as provided in the Project Documents, impose fines or take disciplinary action against Owner for failure to pay assessments or for violation of any provision of the Project Documents. Penalties may include, but are not limited to: fines, temporary suspension of voting rights, rights to use of the facilities on the Common Area, or other appropriate discipline for failure to comply with the governing instruments, provided that the accused Member is given notice and the opportunity to be heard by the Board with respect to the alleged violations before a decision to impose discipline is reached. Such notice and hearing procedures shall satisfy the minimum requirements of Corporations Code Section 7341, which are set forth in Section 12 of the Bylaws.

f) Enforcement of Project Documents. To enforce applicable provisions of the Project Documents for the ownership, management and control of the Project.

g) Adoption of Rules. To adopt, amend and repeal reasonable rules consistent with this Declaration relating to the use of the Common Area and all facilities thereon, and the conduct of Owners and their tenants and guests with respect to the Project and other Owners. A copy of the Association Rules as adopted, amended or repealed shall be mailed or otherwise delivered to each Owner and a copy shall be posted in a conspicuous place within the Common Area.

h) Records. Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by 5% or more of the total voting power of the Association; keep adequate and correct books and records of account, minutes of proceedings of its Members, Board and committees, and a record of its Members giving their names and addresses and classes of membership.

i) Water and Other Utilities. To acquire, provide and pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone, gas and other utility services as necessary for the Common Area.

j) Granting of Easements. To grant easements where necessary for utilities and sewer facilities over the Common Area to serve the Common Area and the Lots.

k) Exercise of Easements. To exercise all easement rights as granted to it in this Declaration for the purpose of performing the maintenance authorized herein or for any other purpose reasonably related

to the performance by the Association or the Board of their responsibilities, the Association's agents or employees.

l) Contracts. To contract for goods and/or services for the Common Area facilities and interests or for the Association, subject to limitations elsewhere set forth in the Project Documents.

m) Limit Number of Guests. To limit the number of an Owner's guests who may use any facilities on the Common Area.

n) Title to Common Area. To accept title to the Common Area conveyed to it by Declarant.

o) Acquisition of Property. To acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association.

p) Budgets. To prepare budgets and financial statements for the Association as prescribed in this Declaration.

q) Legal and Accounting. To obtain and pay the cost of legal, accounting and other professional services necessary or proper for the maintenance and operation of the Project and the enforcement of the Project Documents.

r) Emergency Repair. To enter upon any privately owned Lot as necessary in connection with construction, maintenance or emergency repair for the benefit of the common area or the Owners in common.

s) Election of the Board of Directors. To elect the Members of the Board.

t) Filling Vacancies. To fill vacancies on the Board created by the removal of a Board Member.

7.02. Property Taxes and Assessments. Each Owner shall be obligated to pay any taxes or assessments levied by the County Assessor against his/her Lot and personal property. To the extent not assessed to or paid directly by the Owners, the Association shall pay all real and personal property taxes and assessments levied upon any portion of the Common Area or other Property owned by the Association.

The Association shall prepare and file annual tax returns with the federal government and the State of California and make such elections as may be necessary to reduce or eliminate the tax liability of the Association.

7.03. Insurance. The Association shall maintain casualty, liability and other insurance on behalf of the Association as required by the provisions of this Declaration.

7.04. Discharge of Liens. The Association shall discharge by payment, if necessary, any lien against the Common Area, and assess the cost thereof to the Owners responsible for the existence of said lien.

7.05. Payment of Expenses. The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business including, without limitation, all licenses, taxes or governmental charges levied or imposed against the Property of the Association.

7.06. Prohibited Acts. The Association, through its Board, shall be prohibited from taking any of the following actions, except with the vote or written assent, by vote at a meeting of the Association or by written ballot without a meeting pursuant to Corporations Code Section 7513, of a simple majority of the voting power of the Association residing in Members other than the Declarant, constituting a quorum consisting of more than fifty (50) percent of the voting power of the Association residing in Members other than the Declarant:

a) Entering into a contract with a third person wherein the third person will furnish goods or services for the Common Area or the Association for a term longer than one year with the following exceptions:

i) A management contract, the terms of which have been approved in writing by the Federal Housing Administration or the Veterans Affairs;

ii) 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;

iii) Prepaid casualty and/or liability insurance policies of not to exceed three years duration provided that the policy permits short rate cancellation by the insured;

iv) Lease agreements for laundry room fixtures and equipment of not to exceed five years duration provided that the lessor under the agreement is not an entity in which the Declarant has a direct or indirect ownership interest of 10% or more;

v) Agreements for cable television services and equipment or satellite dish television services and equipment of not to exceed five years duration provided that the supplier is not an entity in which the subdivider has a direct or indirect ownership interest of 10% or more;

vi) 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 subdivider has a direct or indirect ownership interest of 10% or more; or,

vii) A contract for a term not to exceed three years that is terminable by the Association after no longer than one year without cause, penalty or other obligation upon ninety (90) days written notice of termination to the other party.

b) Incurring aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of 5% of the budgeted gross expenses of the Association for that fiscal year;

c) Selling during any fiscal year Property of the Association having an aggregate fair market value greater than 5% of the budgeted gross expenses of the Association for that fiscal year;

d) Paying compensation to Members of the Board or to officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Board may cause a Member or officer to be reimbursed for expenses incurred in carrying on the business of the Association; or,

e) Filling of a vacancy on the Board created by the removal of a Director.

7.07. Action Requiring Consent. The Board shall take the following actions only upon obtaining consents of Members as follows:

a) The Consent of three-fourths of the voting power of the Association residing in Members other than the Declarant so long as the Declarant holds or directly controls at least 25% of the voting power of the Association, and after the Declarant no longer controls 25% or more, the consent of two-thirds of the voting power of all Members shall be necessary to do the following:

i) Borrow money, and only with the assent (by vote or written consent) of three-fourths (3/4) of Members, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

ii) Dedicate, sell or transfer all of or any part of any interest it may have in the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be

agreed to by the Members; provided that no such dedication or transfer shall be effective unless an instrument has been signed by two-thirds of the Members agreeing to such dedication, sale or transfer, and any sale of all or substantially all of the corporation's assets must be in compliance with Section 7.07(b) below; or,

iii) Participate in mergers and consolidations with other nonprofit corporations organized for the same purpose or annex additional residential Property, provided that any merger, consolidation or such annexation shall have the assent by vote of three-fourths (3/4) of Members or by the written consent of such Members, excluding Declarant.

b) The consent of 100% of the Members shall be required so long as there is any lot, parcel, area, apartment or unit for which the Association is obligated to provide management, maintenance, preservation or control for the Association to do the following:

i) Transfer all or substantially all of its assets; or,

ii) File a certificate of dissolution.

7.08. Alternative Dispute Resolution. In any dispute in which the Association is a party, the Association may perform any act reasonably necessary to resolve any such civil claim or action through alternative dispute resolution proceedings such as mediation, binding arbitration, or non-binding arbitration proceedings. The Association may perform the following acts:

a) Providing, or in good faith attempting to provide, one hundred twenty (120) days advance notice of the Board's intent to initiate the prosecution of any civil action and of the nature and basis of the claim to every Member of the Association and every entity or person who is a prospective party to the civil action, provided that notice can be given (A) more than one hundred twenty (120) days prior to the expiration of any pertinent statute of limitations, and (B) without prejudice to the Association's rights to enforce the project documents, and further provided that no such notice need be given prior to the filing of an action in small claims court or an action solely to enforce assessment obligations.

b) Prior to initiating the prosecution of a civil action solely for declaratory relief or injunctive relief to enforce the project documents, in conjunction with a claim for monetary damages not in excess of five thousand dollars (\$5,000), endeavor to submit the matter to alternative dispute resolution in compliance with the provisions of Section 1354(b) of the California Civil Code.

c) Immediately after initiating the prosecution or defense of any civil action, make a reasonable effort, in good faith, to meet and confer with every person or entity who is a party to the action to discuss appropriate processes for resolving the civil action, including available alternative dispute processes for resolving the civil action, including available processes for avoiding or reducing costs or losses by the parties associated with the action; provide an opportunity to cure any alleged defect in Common Areas, or facilities which is the basis for the action; and provide for the scope of discovery, if any, to be conducted prior to the inception of any alternative dispute resolution procedure.

d) Consider diversion of the prosecution or defense of any civil action to a alternative dispute resolution proceeding such as mediation, non-binding arbitration, or binding arbitration.

e) Agree to participate, and participate fully and in good faith in the resolution of any civil action through any alternative dispute resolution proceedings, including but not limited to mediation, non-binding arbitration, and binding arbitration, and paying costs reasonably incurred by the Association on account of those alternative dispute resolution proceedings.

7.09. Dispute Notification and Resolution Procedure (Declarant Disputes). Any disputes between the Association (or any Owners) and the Declarant or any director, officer, partner, employer, subcontractor or agent of the Declarant relating to this Declaration, the use or condition of the Property, and/or the design, construction and installation of any Improvements located thereon shall be subject to the following provisions:

a) Notice: Any Person with a claim against the Declarant or any director, officer, partner, employer, subcontractor or agent thereof (collectively the "Declarant" for purposes of this section) shall notify the Declarant in writing of the claim, which writing shall describe the nature of the claim and the proposed remedy (the "Claim Notice").

b) Right to Inspect and Right to Corrective Action: Within a reasonable period after receipt of the Claim Notice, which period shall not exceed 60 days, the Declarant and the claimant shall meet at a mutually-acceptable place within the Development to discuss the claim. At such meeting or at such other mutually-agreeable time, Declarant and Declarant's representatives shall have full access to the Property that is subject to the claim for the purposes of inspecting the Property. The parties shall negotiate in good faith in an attempt to resolve the claim. If the Declarant elects to take any corrective action, Declarant and Declarant's representatives and agents shall be provided full access to the Development to take and complete corrective action.

If the claim is subject to the provisions of Civil Code Section 1375 as it may be amended from time to time, compliance with the procedures of Civil Code Section 1375 shall satisfy the requirements of this section.

c) Mediation: If the parties cannot resolve the claim pursuant to the procedures described in subparagraph (b) above (including, if applicable, Civil Code Section 1375 procedures), the matter shall be submitted to mediation pursuant to the mediation the Board or Owner is necessary to preserve any Association's or Owner's rights under any applicable statute of limitations, provided that the Association or Owner shall take no further steps in prosecuting the action until it has complied with the procedures described in this section.

Notwithstanding any other provision herein to the contrary, in any dispute between the Association and/or any Owner and the Declarant, each party shall bear its own attorney's fees.

Any and all communications by and between the parties, whether written or oral, which are delivered by the parties or their attorneys or other representatives in an effort to settle the claim shall be considered communications undertaken in the course of effecting a settlement or compromise and as such shall not be admissible as the admission on the part of any party or any representative or agent of that party to be utilized for any such purpose in any action or proceeding.

Notwithstanding the provisions of this section, the Association, any Owner, or the Declarant shall not be obligated to participate in the mediation or judicial reference proceedings described herein if, prior to the commencement of the proceeding, that party makes a good faith determination supported by valid and sufficient reasons that such participation is not in that party's interest and notifies the other party in writing of its determination not to participate.

Nothing herein shall be considered to reduce or extend any applicable statute of limitations.

7.10. Civil Action Against Declarant. Not later than 30 days prior to the filing of any civil action by the Association against the Declarant for alleged damage to the Common Areas, alleged damage to the Separate Interest that the Association is obligated to maintain or repair, or alleged damage to the Separate Interests that arises out of, or is integrally related to, damage to the Common Areas or Separate Interest that the Association is obligated to maintain or repair, the Board shall provide written notice to each Member of the Association. This notice shall specify all of the following:

- a) That a meeting will take place to discuss problems that may lead to the filing of a civil action;
- b) The options, including civil actions, that are available to address the problems;
- c) The time and place of this meeting; and,

d) Notwithstanding subdivision (a), if the Association has reason to believe that the applicable statute of limitations will expire before the Association files the civil action, the Association may give the notice, as described above, within 30 days after the filing of the action.

7.11. Inspection and Maintenance Guidelines. The Board shall adopt inspection and maintenance guidelines for the periodic inspection and maintenance of the Common Area improvements and landscaping, including, but not limited to, foundations, gutters, down-spouts and down-spout connections, drainage, deck drains, decks, wall surfaces, trim, roofs, window caulking, utility equipment maintained by the Association, streets, parking areas, any and all recreational facilities, and the irrigation system.

The Board periodically and at least once every two years, shall review and update the inspection and maintenance guidelines.

The Board shall take all appropriate steps to implement and comply with the inspection and maintenance guidelines.