

ments levied after the date of recording the conveyance evidencing such sale of the Residence Lot. The rights, duties, privileges and obligations incidental to membership shall be exercised and imposed in accordance with the provisions of this Declaration, the Articles and the By-Laws of the Corporation. Each Owner, tenant, or occupant of a Residence Lot shall comply with this Declaration, the Articles, and the By-Laws, and failure to comply shall be grounds for an action by the Corporation to recover sums due for damages to it or to its Members or for injunctive relief as the Corporation may deem proper. Each membership shall represent an equal underlying beneficial interest in any and all property owned by the Corporation.

ARTICLE 5

CORPORATION: BOARD OF DIRECTORS

5.1 Number, Qualification, and Office. The number of Directors, qualification of Directors, and all other matters concerning the make-up and operation of the office of a Director and of the Board shall be as set forth in the By-Laws of the Association.

5.2 Certificate of Identity of Board. From time to time hereafter, a certificate of identity of the persons constituting the Board may, but need not, be filed for record. The latest of such certificates appearing of record shall be conclusive evidence of such identity in favor of any person relying thereon in good faith, providing the same shall be executed and acknowledged by (i) at least two persons, each of whom is identified as a Director by the next last previous such certificates appearing of record (or, in

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the case of the first such certificate filed for record after the date hereof, such two signatories may be from among the persons named in the original Articles of Incorporation of the Corporation), or (ii) the record Owners of at least five Residence Lots.

ARTICLE 6

CORPORATION: POWERS OF THE BOARD

6.1 Powers of the Board. In addition to the rights and powers enumerated in its Articles of Incorporation and By-Laws and the general duties and powers conferred by law, and without limiting the generality thereof, all actions and powers relating to the management, operation, administration and maintenance of the Project shall be exercised by the Corporation acting through the Board. Without constituting a limitation on the foregoing, but as examples thereof, the Board shall have the following powers:

- (1) To select and remove officers, agents, and employees of the Corporation; to prescribe such powers and duties for them as may not be inconsistent with this Declaration; to fix their compensation and to require from them security for faithful service;
- (2) To conduct, manage, administer and control the affairs and business of the Corporation and the Project and to make such rules and regulations relating to the use of the Common Area and the Units not inconsistent with this Declaration as it may deem best;
- (3) To appoint an executive committee and any other committees and to delegate to such committees any

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of the powers and authority of the Board in the management of the business and the affairs of the Corporation and the Project;

(4) To levy fees, dues and assessments for the maintenance and operation of the Corporation and the Project;

(5) To enter upon any Unit to the extent such entry is necessary to carry out any maintenance or repairs as permitted by this Declaration;

(6) To enforce the provisions of this Declaration; provided that nothing contained in this paragraph shall be construed to prohibit enforcement of this Declaration by any Owner;

(7) To contract for and maintain fire, casualty, liability, workmen's compensation, medical, hospital and other insurance insuring Owners, the Corporation, Directors, or some of them, and other persons;

(8) To contract, provide and pay for (i) maintenance, utility, gardening and other services benefitting the Common Area, (ii) employment of and living quarters for persons necessary for operation of the Project, or any part thereof, (iii) legal and accounting services, and (iv) related matters;

(9) To contract for and purchase tools, equipment, materials, supplies and other personal property and services for (i) maintenance and repair of the Common

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Area, and (ii) improvements to the Project;

(10) To contract and pay for reconstruction of any portion or portions of the Project damaged or destroyed;

(11) To pay taxes which would be a lien upon the entire Project or the Common Area, and to pay and discharge any lien or encumbrance levied against the entire Project or the Common Area;

(12) To dispose by sale or otherwise of unneeded lawn or patio furniture, maintenance equipment or other property acquired by the Corporation;

(13) To sell, at such price and terms as the Board may determine, the entire Project for the benefit of all of the Owners and Mortgagees thereof, as their interests shall appear. Said power to sell shall be exercisable only (i) when partition of the Project may be had under California Code of Civil Procedure Section 752b, and (ii) after recordation of a certificate by those holding such power that said power is properly exercisable;

(14) To prosecute or defend, under the name of the Corporation, any action affecting or relating to the Corporation, the Common Area or the personal property of the Corporation or any action in which all of the Owners have an interest in the subject of the action or in whom any right to relief in respect

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to or arising out of the same transaction or series of transactions is alleged to exist.

(15) Architectural Committee. The Board may appoint an Architectural Committee consisting of three (3) or more persons, at least two of whom are also members of the Board and Owners, which Committee may be empowered with such of the powers of the Board as the Board may so delegate to establish, supervise, control and enforce reasonable rules and regulations for constructing, improving, altering, repairing, maintaining or removing any improvements, fences, hedges, trees or landscaping on the Residence Lots or Common Area.

6.2 Standard of Performance. No right or power conferred on the Board in paragraph 6.1 shall be construed as a duty, obligation or disability charged upon the Board or any Director; but if any right or power herein granted be exercised, Directors so exercising or voting for such exercise shall be held to the same standard of care as would a trustee acting for compensation.

6.3 Duties of the Board. The Board, acting in the name of and on behalf of the Corporation, shall have the duty to acquire and pay for out of the maintenance fund hereinafter provided for all of the following:

- (1) Water, sewer, garbage, electrical, telephone, gas and all other necessary utility services for the Common Area and the Project, except to the extent that

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such services are separately metered or charged to the Owners, in which event each Owner shall pay the amount charged to him.

(2) A policy or policies of fire insurance and extended coverage endorsement for at least eighty percent (80%) of the full insurable replacement value of the Common Area or such other fire and casualty insurance as the Board shall determine gives substantially equal or greater protection to the Owners and their Mortgagees as their respective interests may appear. Such coverage shall be reviewed at least annually by the Board and increased or added to at its discretion. Copies of all insurance policies carried by the Corporation (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Corporation and open for inspection by Owners at all reasonable times. All such insurance policies shall provide that they shall not be cancellable by the insurer, nor coverage reduced, without first giving at least ten days' prior notice in writing to the Corporation.

(3) A policy or policies of Comprehensive Public Liability and Property Damage coverage with a Personal Injury Liability endorsement insuring the Corporation, as well as each Owner as to his joint liability with other Owners by reason of his common

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ownership in the Project, against any liability to the public or to the Owners and their invitees or tenants incident to the ownership and/or use of the Project. Limits of liability under such insurance shall not be less than \$500,000 for any one person injured and not less than \$1,000,000 for any one accident, and not less than \$50,000 for property damage (such limits and coverage to be reviewed at least annually by the Board and increased or added to in its discretion). Such policy or policies shall be issued on a comprehensive liability basis and shall provide cross-liability endorsements wherein the rights of the named insureds under the policy or policies shall not be prejudiced as respects his, hers or their action against another named insured;

(4) Workmen's Compensation Insurance to the extent necessary to comply with the applicable laws of the State of California;

(5) Legal and accounting services necessary and proper in the operation of the Project or for the enforcement of this Declaration;

(6) The painting, maintenance, replacement, repair, supplies, equipment, labor, services and landscaping of the entire Common Area as the Board shall determine necessary and proper; Provided further, the Board shall also maintain landscaping within the center planting section of the dedicated roads within the Project so long as the County of San Diego permits such landscaping.

(7) Any other materials, supplies, furniture,

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labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Board is required to secure pursuant to the terms of this Declaration or which in the opinion of the Board shall be necessary, proper or desirable for the operation and maintenance of the Project or for the enforcement of this Declaration; provided, however, that if any such materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments are provided for a particular Residence Lot, the cost thereof shall be specially assessed to the Owner or Owners thereof and shall be collected as provided in ARTICLE 7 hereof.

(8) The Board shall also pay any amount necessary to discharge any lien or encumbrance levied against the Project, or any part thereof, which may, in the opinion of the Board, constitute a lien against the Common Area rather than merely against the interest therein of a particular Owner or Owners. Where one or more Owners are responsible for the existence of such lien, he or they will be jointly and severally liable for the cost of discharging same, and any costs incurred by the Board by reason of such lien or liens shall be specifically assessed to such Owner or Owners and shall be collected as provided for in ARTICLE 7 hereof.

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(9) The maintenance and repair of any Residence Lot and any improvements thereon, including landscaping, if such maintenance or repair is:

(a) reasonably necessary in the discretion of the Board to protect the Common Area or to preserve the appearance and value of the Project, and (b) the Owner or Owners of such Residence Lot have failed or refused to perform such maintenance or repairs after notice provided for in ARTICLE 10 hereof. The Board shall levy a special assessment against the Residence Lot of such Owner or Owners for the cost of such maintenance and repair. The same shall be collected in the manner provided for in ARTICLE 7 hereof.

6.4 Limit on Contracts of Grantor and Initial Board.

Prior to the first meeting of Members, the Grantor or the initial Board may enter into contracts and exercise the powers of the Board; provided, however, anything in this Declaration to the contrary notwithstanding, the Grantor and the initial Board may not enter into any contract or exercise any powers binding for a term longer than one year from the effective date thereof unless such contract contains reasonable provisions for the termination thereof by said initial Board or a successor Board.

6.5 Contracts. The Association shall have the exclusive right to contract for all goods, services, materials, insurance, repairs, rebuilding and replacement, payment for which is to be

made from the maintenance fund or any insurance proceeds received in the event of damage or destruction of the Common Area. In respect to each contract made by the Corporation for maintaining or repairing the Common Area or for work and/or materials relating to the maintenance, repair, rebuilding or replacement of any buildings, structure or other improvements situated in the Common Area which the amount to be paid by the Corporation exceeds Five Thousand Dollars (\$5,000.00), the Corporation shall obtain approval from Members entitled to exercise majority voting power, and shall secure at least two (2) bids from responsible contractors and shall accept the bid it considers most desirable. The Corporation may require from each contractor which it engages, a surety bond assuring the completion of the work and satisfactory evidence that adequate workmen's compensation and liability insurance is carried with respect to the employees and activities of such contractor. In cases where a completion bond is not required, the Corporation shall require labor and materials releases to be furnished by the contractor unless the Board makes a specific determination that such requirement is impractical or unnecessary to afford protection against liens.

6.6 Additions to Common Area. There shall be no structural alterations, capital additions or capital improvements to the Common Area (other than for repairing or replacing damaged or destroyed portions of the Common Area) requiring an expenditure in excess of Five Thousand Dollars (\$5,000.00) without the prior approval of Members holding a majority of the voting power.

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excluding the Grantor and its successors.

6.7 Accounting. The Board shall cause the Corporation to maintain books of account of all its receipts and expenditures and, at the election of the Members, shall cause an audit of such books to be made annually by an independent public accountant as of the close of each calendar year, and shall deliver a copy of such audit to each Owner within thirty days after its completion. Each Owner shall be entitled at reasonable times to inspect the books of the Corporation, and to have such books examined at said Owner's expense by an attorney, accountant, or other person representing such Owner, and may make excerpts or copies of such books or portions thereof, and each such Owner, at his own expense, shall have the right to have such books independently audited by a public accountant.

ARTICLE 7

THE ASSOCIATION: ASSESSMENTS FOR MAINTENANCE FUND

7.1 Power of Assessment. The Corporation, acting through the Board, has and shall have the right and power to make from time to time reasonable assessments upon the Residence Lots to establish a maintenance fund from which the Board may expend funds in connection with the exercise of any or all of the right, powers or duties of the Board as provided in this Declaration, and to change from time to time the amount, installments and/or frequency of payment of such assessments.

7.1.1 Prior to First Meeting of Members. Prior to the first annual meeting of members of the Corpora-