

(c) The right of the Association to reasonably limit the number of guests of Members using the Common Area facilities.

(d) The right of the Association in accordance with the Articles, Bylaws and this Declaration, with the vote or written assent of the majority of the Association's voting power other than Grantor, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof, and, subject to the provisions of Article XIII of this Declaration, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of such Mortgagee shall be subordinated to the rights of the Owners.

(e) Subject to the provisions of Article XIII of this Declaration, the right of the Association to dedicate, release, alienate or transfer the Common Area to any public agency, authority, utility or other person for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, release, alienation or transfer shall be effective unless an instrument signed by Members entitled to cast at least two-thirds (2/3) of the voting power of the Association other than Grantor, agreeing to such dedication, release, alienation or transfer, has been recorded.

(f) The right of the Association (by action of the Board) to reconstruct, replace or refinish any improvement or portion thereof upon the Common Area, in accordance with the original design, finish or standard of construction of such improvement, or of the general improvements within the Properties, as the case may be; and not in accordance with such original design, finish or standard of construction only with the vote or written consent of the Owners holding seventy-five percent (75%) of the voting power of the Association, subject to the provisions of Article XIII.

(g) The right of the Association to replace destroyed trees or other vegetation and plant trees, shrubs and ground cover upon any portion of the Common Area.

(h) The right of the Association, acting through the Board, to reasonably restrict access to areas of the Common Area.

(i) The right of the Association to suspend the voting rights and right to use of the recreational facilities by a member or resident for the period of time during which any assessment against his Lot remains unpaid and for a period not to exceed thirty (30) days for any infraction of the Association's published rules and regulations after appropriate notice and opportunity for hearing has been given pursuant to California Corporation Code 7341.

Section 2. Easements for Parking. The Association, through its officers, committees and agents is hereby empowered to establish "Parking" and "No Parking" areas within the Common Area in accordance with Section 22658 of the California Vehicle Code, or any similar statute hereinafter enacted, as well as to enforce these parking limitations by all means lawful for such enforcement on city streets, including the removal of any violating vehicles by those so empowered.

Section 3. Easements for Vehicular Traffic. In addition to the general easements for use of the Common Area reserved herein, there shall be, and

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Grantor hereby reserves and covenants for himself and all future Owners within the Properties, non-exclusive easements appurtenant for vehicular traffic over all private drives within the Common Area, subject to the parking provisions set forth in Section 2 of Article II hereof.

Section 4. Easements for Public Service Use. In addition to the foregoing easements over the Common Area, there shall be, and Grantor hereby reserves and covenants for himself and all future Owners within the Properties, easements for public services, including but not limited to, the right of the police to enter upon any part of the Common Area, for the purpose of enforcing the law (including the provisions of the California Vehicle Code).

Section 5. Waiver of Use. No Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release the Lot or other property owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area and the facilities thereon or by abandonment of his Lot or any other property in the Properties.

Section 6. Taxes. Each Owner shall execute such instruments and take such action as may reasonably be specified by the Association to obtain separate real estate tax assessment of each Lot. If any taxes or assessments may, nevertheless, be against the Association, said taxes and assessments may be paid by the Association and each Owner shall be obligated to pay or to reimburse the Association for, as the case may be, the taxing against the Association and attributable to his own Lot.

Section 7. Title to the Common Area. Grantor hereby covenants for itself, its successors and assigns, that it will convey to the Association fee simple title to the Common Area, free and clear of any and all encumbrances and liens, subject to reservations, easements, covenants and conditions then of record, including those set forth in this Declaration. Said conveyance shall be made prior to the conveyance of the first Lot to a purchaser from grantor pursuant to a Final Subdivision Public Report covering the Properties.

Section 8. Reciprocal Easements. Grantor hereby reserves to itself, its successors and assigns, the right to grant nonexclusive easements to use the Common Area and facilities of Lots X, Y & Z of Tract #11796-1 to: (i) Owners of residential Lots 1 through 41, inclusive, of Tract #11796-1 and (ii) upon development thereof, to Owners of future residential Lots which are subject to annexation under this declaration. In the event of such future annexation, the owners of Residential Lots 1 through 41, inclusive, of Tract #11796-1 will have nonexclusive easements to use the Common Area and facilities of such future annexed Common Area Lot(s) which shall become effective upon recordation of the Supplemental Declarations of Annexation for said annexed Lots as described more fully elsewhere in this Declaration.

Section 9. Sidewalks. Each Owner owns that portion of the Sidewalks which are within such Owner's Lot. Declarant, for each Lot owned by it, hereby covenants, and each Owner of any Lot within the Properties, by acceptance of a Deed or other conveyance therefor, whether or not it shall be so expressed in any such Deed or other conveyance, is and shall be deemed to have granted to each other Owner of a Lot within the Properties a non-exclusive easement over the Sidewalks within the Properties and each portion thereof within each Lot, for access, ingress and egress of such Owner, their family, guests, invitees and licensees with respect to the use and enjoyment of the Sidewalks. The Association shall be responsible for repairs of the Sidewalks. Each Lot Owner will be responsible

for maintenance and any applicable insurance coverage of the Sidewalks within each Owner's Lot.

### ARTICLE III

#### MEMBERSHIP IN ASSOCIATION

Section 1. Membership. Every Owner of a Lot shall be a Member of the Association, and no Owner shall have more than one membership in the Association. Memberships in the Association shall not be assignable, except to the Person to which title to the Lot has been transferred, and every membership in the Association shall be appurtenant to and may not be separated from the fee ownership of such Lot. Ownership of such Lot shall be the sole qualification for membership in the Association.

Section 2. Transfer. The Association membership held by any Owner of a Lot shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Lot, and then only to the purchaser or Mortgagee of such Lot. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. A Member who has sold his Lot to a contract purchaser under an agreement to purchase shall be entitled to delegate to such contract purchaser his membership rights in the Association. Such delegation shall be in writing and shall be delivered to the Board before such contract purchaser may vote. However, the contract seller shall remain liable for all charges and assessments attributable to his Lot until fee title to the Lot sold is transferred. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his name to the purchaser of such Lot upon transfer of fee title thereto, the Board of Directors shall have the right to record the transfer upon the books of the Association.

### ARTICLE IV

#### VOTING RIGHTS

Section 1. Classes of Voting Membership. The Association shall have two (2) Classes of voting membership as follows:

Class A. Class A Members shall originally be all Owners with the exception of the Grantor for so long as there exists a Class B membership. Class A Members shall be entitled to one (1) vote for each Lot owned and subject to assessment. Grantor shall become a Class A Member with regard to Lots owned by Grantor upon conversion of Grantor's Class B membership as provided below. When more than one Person holds an interest in any Lot, all such Persons shall be Members. The vote for such Lot shall be exercised in accordance with Article IV, Section 2 of this Declaration, and in no event shall more than one (1) Class A vote be cast with respect to any Lot.

Class B. The Class B Member shall be the Grantor and Grantor shall be entitled to three (3) votes for each Lot owned by Grantor and subject to assessment. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earliest:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- (b) The second anniversary of the original issuance by the California Department of Real Estate of the most recently issued Final Subdivision Public Report for a phase of the development; or

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- (c) Four years following the date of the original issuance of the Public Report by the California Department of Real Estate for Phase 1 of the development.

Except with respect to action to enforce the obligations of Grantor under any completion bond, membership approval of action to be taken by the Association shall require the vote or written consent of the prescribed percentage of each class of membership during the time that there are two classes of membership. Except with respect to action to enforce the obligations of Grantor under any completion bond, any requirement in the Articles of Incorporation, Bylaws or Declaration of Restrictions, that the vote of the Grantor shall be excluded in any determination, shall be applicable only if there has been a conversion of Class B members to Class A members, and the same shall be read as requiring the prescribed percentage of Class A members and the prescribed percentage of Class A members other than the Grantor.

Section 2. Vote Distribution. Class A members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. When more than one Person holds such interest or interests in any Lot ("co-owner"), all such co-owners shall be Members and may attend any meeting of the Association, but only one such co-owner shall be entitled to exercise the vote to which the Lot is entitled. Such co-owners may from time to time all designate in writing one of their number to vote. Fractional votes shall not be allowed, and the Class A vote for each Lot shall be exercised, if at all, as a unit. Where no voting co-owner is designated or if such designation has been revoked, the vote for such Lot shall be exercised as the majority of the co-owners of the Lot mutually agree. Unless the Board receives a written objection from a co-owner, it shall be presumed that the corresponding voting co-owner is acting with the consent of his or her co-owners. No vote shall be cast for any Lot where the majority of the co-owners present in person or by proxy and representing such Lot cannot agree to said vote or other action. The non-voting co-owner or co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Lot and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or in the Bylaws, shall be deemed to be binding on all Owners, their successors and assigns. Said voting rights shall be subject to the restrictions and limitations provided in this Declaration, the Articles and Bylaws.

Section 3. Election and Removal of Directors. The Members shall vote for the election or removal of the Directors of the Board of the Association. Each Member entitled to vote in any election for a Director may cumulate his votes for one or more nominees if the member has given notice at the meeting prior to the voting of his intention to cumulate votes. If any one Member has given such notice, then all members will be entitled to cumulate their votes. The candidates receiving the highest number of votes, up to the number of Directors to be elected, shall be deemed elected. The entire Board of Directors of the Association or any individual Director may be removed by a vote of the Members holding a majority of the outstanding memberships entitled to vote at an election of Directors. However, unless the entire Board is removed, an individual Director shall not be removed unless the affirmative votes for his removal exceed or are at least equal to the minimum number of votes required to elect a Director under cumulative voting procedures. If a Director is removed in the

manner authorized above, a new Director may be elected at the same meeting, subject to Article V, Section (1). At all times not less than 20% of the incumbents on the Board of Directors shall have been elected solely by votes of Members other than Grantor. All voting shall be by secret written ballot.

## ARTICLE V

### POWERS AND DUTIES OF ASSOCIATION

Subject to other provisions of the Declaration and to the limitations of the Articles of Incorporation, the Bylaws and the California Corporations Code as to action to be authorized or approved by the members, all corporate powers shall be exercised by or under the authority of, and the business and affairs of the Association shall be controlled by the Board. Without prejudice to such general powers but subject to the same limitations, it is hereby expressly declared that the Directors shall have the following powers and duties:

(a) Maintain and repair the private streets within the Common Area, including cleaning and periodic resurfacing.

(b) Maintain such policy or policies of casualty, liability, fidelity and flood (if applicable) insurance as provided herein with respect to the Common Area and property under the Association's jurisdiction in furthering the purposes of and protecting the interests of the Association and Members as directed by this Declaration and the Bylaws of the Association. The Association shall continuously maintain in effect said insurance requirements as established by any of the Federal Agencies so long as either is a Mortgagee, Owner or insures or guarantees a Mortgage within the Properties, except to the extent such coverage is not available or has been waived in writing by the foregoing entities.

(c) Employ or contract with a professional Manager to perform all of or any part of the duties and responsibilities of the Association, and shall have the power to delegate its powers to committees, officers and employees. The terms of said management contract shall be approved by the Veterans Administration or other federal Agencies if applicable. Any such management agreement, or any agreement providing for services by Grantor to the Association, shall be for a term not in excess of one (1) year, subject to cancellation by the Association for cause at any time upon not less than thirty (30) days' written notice, and without cause (and without penalty or the payment of a termination fee) at any time upon not less than ninety (90) days' written notice.

(d) After Notice and Hearing (pursuant to California Corporations Code §7341), without being liable to any Owner, enter upon any Lot for the purpose of enforcing by peaceful means the provisions of this Declaration, or for the purpose of maintaining and repairing any such area under the Owner's jurisdiction if for any reason whatsoever the Owner thereof fails to maintain or repair any such area as required by this Declaration. The Owner shall pay promptly all amounts due for such work.

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(e) Have the power and duty to enforce or seek enforcement of this Declaration, the Articles of Incorporation and Bylaws of the Association and the rules and regulations adopted by the Board.

(f) Have the power to establish and maintain a working capital and contingency fund in an amount to be determined by the Board of Directors of the Association.

(g) To select and remove all the officers, agents and employees of the Association, prescribe such powers and duties for them as may not be inconsistent with law, the Articles of Incorporation, the Bylaws or the Declaration.

(h) To conduct, manage and control the affairs and business of the Association, and to make such rules and regulations therefor not inconsistent with law, the Articles of Incorporation, the Bylaws or the Declaration.

(i) To contract and pay for maintenance, gardening, utilities, materials, supplies and services relating to the Common Area and properties under the Association's jurisdiction, and to employ personnel necessary for the operation and maintenance of the same, including legal and accounting services; provided, however, that the term of any contract for a third person for supplying goods or services to the Common Area or property under the Association's jurisdiction or for the Association shall not exceed a term of one (1) year unless a longer term is approved by a majority of the voting power of the Association residing in Members other than Grantor, except that a contract with a public utility company, materials or services, the rate of which are regulated by the Public Utilities Commission, may exceed a term of one (1) year so long as it does not exceed the shortest term for which the public utility will contract at the regulated rate; and except a contract for prepaid casualty and/or liability insurance policies covering the Common Area and/or property under the Association's jurisdiction may be for a term not to exceed three (3) years, provided that the policy permits short rate cancellation by the Association.

(j) To pay any taxes and governmental special assessments which are or could become a lien on the Common Area or any portion thereof.

(k) To elect the officers of the governing body.

(l) To fill the vacancies of the governing body except for a vacancy created by the removal of a Director from the governing body, which the latter will require the vote or written assent of a majority of the voting power of the Association residing in Members other than the Grantor to fill such vacancy.

(m) Maintain, repair and otherwise manage the Common Area including all facilities, improvements and landscaping thereon and property under the Association's jurisdiction including improvements and landscaping thereon in accordance with the provisions of Article II, Article VI and Article IX of this Declaration.