

**BYLAWS**  
**OF**  
**BIG TREE HOMEOWNERS ASSOCIATION**

## TABLE OF CONTENTS

	PAGE
ARTICLE I	NAME AND LOCATION ..... 1
ARTICLE II	DEFINITIONS ..... 1
ARTICLE III	VOTING RIGHTS IN ASSOCIATION ..... 1
ARTICLE IV	MEMBERSHIP ASSESSMENTS AND LIENS ..... 1
Section 4.1	Regular Assessments ..... 1
Section 4.2	Special Assessments ..... 1
Section 4.3	Individual Special Assessments ..... 1
Section 4.4	Lien Rights ..... 2
Section 4.5	Payment of Assessments by Declarant ..... 2
Section 4.6	Commencement of Assessments ..... 2
ARTICLE V	MEMBERSHIP RIGHTS, PRIVILEGES AND PENALTIES ..... 2
Section 5.1	Rights and Privileges ..... 2
Section 5.2	Suspensions and Penalties ..... 2
ARTICLE VI	MEETINGS OF MEMBERS ..... 3
Section 6.1	Place and Conduct of Meeting ..... 3
Section 6.2	Annual Meetings ..... 3
Section 6.3	Special Meetings ..... 3
Section 6.4	Notice of Meetings ..... 3
Section 6.5	Quorum ..... 3
Section 6.6	Proxies ..... 4
Section 6.7	Presumption of Notice ..... 4
Section 6.8	Consent of Absentees ..... 4
Section 6.9	Action Without Meeting ..... 4
Section 6.10	Voting ..... 4
ARTICLE VII	ELECTION AND REMOVAL OF DIRECTORS ..... 4
Section 7.1	Number and Qualifications of Directors ..... 4
Section 7.2	Term of Office ..... 4
Section 7.3	Nomination ..... 5
Section 7.4	Election ..... 5
Section 7.5	Removal ..... 5
Section 7.6	Vacancies ..... 5
Section 7.7	Committees ..... 6
Section 7.8	Compensation ..... 6
Section 7.9	Indemnity ..... 6
ARTICLE VIII	MEETINGS OF DIRECTORS ..... 6
Section 8.1	Place of Meetings ..... 6
Section 8.2	Regular Meetings ..... 6

	<u>PAGE</u>
Section 8.3	Special Meetings ..... 6
Section 8.4	Notice of Meetings ..... 7
Section 8.5	Quorum ..... 7
Section 8.6	Attendance ..... 7
Section 8.7	Action Without Meeting ..... 7
ARTICLE IX	POWERS AND DUTIES OF THE BOARD OF DIRECTORS ..... 8
Section 9.1	Right to Enforce ..... 8
Section 9.2	Payment of Taxes ..... 8
Section 9.3	Insurance ..... 8
Section 9.4	Goods and Services ..... 8
Section 9.5	Delegation ..... 9
Section 9.6	Budgets and Financial Statements ..... 9
Section 9.7	Rules ..... 9
Section 9.8	Disciplinary Proceedings ..... 9
Section 9.9	Right to Enter ..... 9
Section 9.10	Select Officers ..... 10
Section 9.11	Fill Vacancies on Board ..... 10
Section 9.12	Capital Expenditures ..... 10
Section 9.13	Sale of Association Property ..... 10
Section 9.14	Management of Business ..... 10
Section 9.15	Management of Property ..... 10
Section 9.16	Notification to Mortgagees ..... 10
Section 9.17	Notice to Federal Home Loan Mortgage Corporation ..... 11
Section 9.18	Payment of Common Area Utilities ..... 11
Section 9.19	Litigation ..... 11
	(a) Code of Civil Procedure Section 383 ..... 11
	(b) Civil Code Section 1368.4 ..... 11
	(c) Civil Code Section 1354 ..... 12
	(d) Civil Code Section 1366.3 ..... 12
	(e) Civil Code Section 1375 ..... 13
Section 9.20	Right to Permit Use of Common Area and Common Maintenance Area .. 13
Section 9.21	Release of Bonds ..... 13
Section 9.22	Alternative Dispute Resolution ..... 13
Section 9.23	General Rights and Powers ..... 14
ARTICLE X	OFFICERS AND THEIR DUTIES ..... 14
Section 10.1	Enumeration of Officers ..... 14
Section 10.2	Election of Officers ..... 14
Section 10.3	Term ..... 14
Section 10.4	Special Appointments ..... 14
Section 10.5	Resignation and Removal ..... 14
Section 10.6	Vacancies ..... 14
Section 10.7	Multiple Offices ..... 14
Section 10.8	Duties ..... 14
	(a) President ..... 14



PAGE

	(b) Vice President .....	14
	(c) Secretary .....	15
	(d) Chief Financial Officer .....	15
Section 10.9	Deposits By Property Manager .....	15
Section 10.10	Signing Checks, Etc. ....	15
Section 10.11	Compensation .....	16
ARTICLE XI	BOOKS, RECORDS AND FINANCIAL STATEMENTS .....	16
Section 11.1	Books and Records .....	16
Section 11.2	Financial Statements .....	17
Section 11.3	Budget .....	17
Section 11.4	Review of Operating and Reserve Accounts .....	18
Section 11.5	Withdrawal From Reserve Accounts .....	19
ARTICLE XII	AMENDMENTS .....	20
Section 12.1	Prior to Escrow Closings .....	20
Section 12.2	After Escrow Closings .....	20
Section 12.3	Mortgagee Approval of Amendment .....	20
ARTICLE XIII	MISCELLANEOUS .....	21
Section 13.1	Fiscal Year .....	21
Section 13.2	Corporate Seal .....	21
Section 13.3	Voting By Declarant .....	22
Section 13.4	Conflict Between Documents .....	22
Section 13.5	Notice to Lenders .....	22
Section 13.6	Statement of Association's Assessment and Collection Policies .....	22
Section 13.7	Distribution to Members of Information About Insurance .....	22
Section 13.8	Annexation .....	23
Section 13.9	References to Statutes .....	23



**BYLAWS**  
**OF**  
**BIG TREE HOMEOWNERS ASSOCIATION**

**ARTICLE I**

**NAME AND LOCATION**

The name of the corporation is BIG TREE HOMEOWNERS ASSOCIATION ("Association"). The principal office of the Association shall be located in the County of Riverside, California.

**ARTICLE II**

**DEFINITIONS**

The words used in these Bylaws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in the Declaration of Restrictions for Big Tree filed in the Office of the County Recorder of Riverside County, California, as amended from time to time ("Declaration"), unless the context indicates otherwise.

**ARTICLE III**

**VOTING RIGHTS IN ASSOCIATION**

The Association shall have two (2) classes of voting membership as set forth in the Declaration.

**ARTICLE IV**

**MEMBERSHIP ASSESSMENTS AND LIENS**

**Section 4.1. Regular Assessments.** The Board shall fix and determine from time to time regular assessments to be paid by each Owner as set forth in the Declaration. The regular assessments shall include an adequate reserve fund for the periodic maintenance, repair and replacement of the Common Area and Common Maintenance Area.

**Section 4.2. Special Assessments.** In addition to regular assessments, the Board may levy special assessments to be paid by each Owner as set forth in the Declaration.

**Section 4.3. Individual Special Assessments.** The Board may levy a special assessment against an individual Member or a single Lot as set forth in the Declaration.

**Section 4.4. Lien Rights.** The Association shall have a lien against the interest of an Owner in the Owner's Lot to secure the full and prompt payment of assessments levied by the Association as set forth in the Declaration.

**Section 4.5. Payment of Assessments by Declarant.** Declarant shall pay all assessments levied by the Association against any Lot owned by it as set forth in the Declaration.

**Section 4.6. Commencement of Assessments.** Assessments shall commence and be payable as set forth in the Declaration.

## **ARTICLE V**

### **MEMBERSHIP RIGHTS, PRIVILEGES AND PENALTIES**

**Section 5.1. Rights and Privileges.** No Member shall have the right without the prior approval of the Board to exercise any of the powers or to perform any of the acts delegated to the Board in Article IX of these Bylaws. Unless otherwise provided in the Declaration and subject to the rules and regulations adopted by the Board, each Member, his or her immediate family, guests and tenants shall have the right to use and enjoy the Common Area. If a Lot has been leased, the tenant and not the Member shall have the right to use and enjoy the Common Area.

**Section 5.2. Suspensions and Penalties.**

(a) The membership rights and privileges, together with the voting rights of any Member, may be suspended by the Board for any period of time during which the assessment on his Lot remains delinquent, and for a period not to exceed thirty (30) days for any infraction of the Association's published rules and regulations, after reasonable written notice and an opportunity for a hearing before the Board.

(b) The Board may adopt rules and regulations imposing reasonable monetary penalties for breach or non-compliance.

(c) Should the Board decide to meet to consider or impose discipline on a Member, the Board shall notify the Member in writing, by either personal delivery or first-class mail, at least ten (10) days prior to the meeting date. The notification shall contain, at a minimum, the date, time and place of the meeting, the nature of the alleged violation for which the Member may be disciplined, and a statement that the Member has a right to attend and may address the Board at the meeting. The Board shall meet in executive session if requested by the Member being considered for discipline. If the Board imposes discipline on a Member, the Board shall provide the Member a written notification of the disciplinary action, by either personal delivery or first-class mail, within fifteen (15) days following the action. CIVIL CODE Section 1363(h) provides that a disciplinary action shall not be effective against a Member unless the Board fulfills the requirements of this **Subsection 5.2(c)**.

(d) No suspension shall affect the rights of the Member to access to his Lot. A monetary penalty, other than a penalty for non-payment of assessments, shall not be a lien against the Member's Lot.



## ARTICLE VI

### MEETINGS OF MEMBERS

**Section 6.1. Place and Conduct of Meeting.** Meetings of Members shall be held within the Properties or at such other location in Riverside County, California, in reasonable proximity to the Properties, as may be designated in the notice of the meeting. Meetings of Members shall be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Board may adopt.

**Section 6.2. Annual Meetings.** The first annual meeting of Members shall be held no later than six (6) months after the first close of escrow for the sale of a Lot to a Purchaser in the first Phase. Subsequent annual meetings of the Members shall be held each year thereafter within thirty (30) days before or after the anniversary date of the first annual meeting of Members. If the day for any annual meeting of the Members is on a weekend or legal holiday, the meeting will be held at the same place and hour on a day during the next seven (7) days as determined by the Board. An election of directors shall be held at the first annual meeting of Members and all positions of director shall be filled at that election.

**Section 6.3. Special Meetings.** Special meetings of Members, for any purpose, may be called at any time by the president or by a majority of a quorum of the Board, and shall be called by the Board upon receipt of a written request for a special meeting of five percent (5%) or more of the voting power of the Members.

**Section 6.4. Notice of Meetings.** Written notice of a meeting of the Members shall be given by, or at the direction of, the Board by either (a) mailing a copy of the notice by first class mail, postage prepaid, or (b) any means which is appropriate given the physical set up of the Properties. The notice shall be given at least ten (10) but not more than ninety (90) days before the meeting to each Member entitled to vote, addressed to the Member's address last appearing on the books of the Association or supplied by the Member to the Association for the purpose of notice, and to the holder of a first Mortgage encumbering any Lot who has requested the notice in writing. The notice shall specify the place, day and hour of the meeting and those matters which the Board at the time of the mailing of the notice intends to present for action by the Members; however, except as otherwise provided by law, any proper matter may be presented at the meeting. The holder of a first Mortgage encumbering any Lot shall be entitled to designate a representative who shall have the right to attend all meetings of Members but, except as otherwise provided in the Declaration or Bylaws, the holder of the first Mortgage shall have no voting rights.

**Section 6.5. Quorum.** The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, a majority of the total voting power of Members shall constitute a quorum for any action except as otherwise provided in the Articles, the Declaration or the Bylaws. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment notwithstanding the withdrawal of enough voting power to leave less than a quorum. If, however, a quorum shall not be present or represented at any meeting, the Members present in person or by proxy may not transact business but shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented or, unless otherwise provided by law, may adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days following the time the original meeting was called, at which meeting the quorum requirement shall be twenty-five percent (25%) of the total voting power of Members. If a time and place



for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed for regular meetings.

**Section 6.6. Proxies.** Every person entitled to vote or execute consents shall have the right to do so either in person or by a written proxy executed by the person and filed with the secretary of the Association. Any form of proxy or written ballot distributed by any person to the membership of the Association shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon, except it shall not be mandatory that a candidate for election to the governing body be named in the proxy or written ballot. The proxy or written ballot shall provide that, where the Member specifies a choice, the vote shall be cast in accordance with that choice. The proxy shall also identify the person or persons authorized to exercise the proxy and the length of time it will be valid; however, no proxy shall be valid for more than eleven (11) months following the date of the proxy. The transfer of title to any Lot shall void any outstanding proxy pertaining to the voting rights of the membership appurtenant to that Lot.

**Section 6.7. Presumption of Notice.** A recitation in the minutes of a membership meeting that notice of the meeting had been properly given shall be prima facie evidence that notice was so given.

**Section 6.8. Consent of Absentees.** The transactions of any meeting of Members, however called and noticed, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present either in person or by proxy and if, either before or after the meeting, each of the Members entitled to vote, not present in person or by proxy, signs a written waiver of notice, or a consent to the holding of the meeting or an approval of the minutes of the meeting. All waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

**Section 6.9. Action Without Meeting.** Any action, which under the provisions of the California CORPORATIONS CODE may be taken at a meeting of the Members, except the election of directors where cumulative voting is a requirement, may be taken without a meeting if done in compliance with the provisions of Section 7513 of the California CORPORATIONS CODE.

**Section 6.10. Voting.** Voting of the Members at a meeting may be by voice or by ballot, except that the election of directors shall be by secret written ballot.

## **ARTICLE VII**

### **ELECTION AND REMOVAL OF DIRECTORS**

**Section 7.1. Number and Qualifications of Directors.** The Board shall consist of not less than three (3) nor more than five (5) directors. Initially, the Board shall consist of three (3) directors. The number of directors may be changed within the limits set forth in Section 7.2 by approval of the Board. If the Board increases the number of directors to five (5), the Board shall also provide for staggered terms for the directors with terms of two (2) years. Directors need not be members of the Association.

**Section 7.2. Term of Office.** At the first annual meeting of Members, the Members shall elect three (3) directors for a one (1) year term. If the Board increases the number of directors to five (5) members, at the first election in which there will be five (5) directors, the members shall elect two (2)



directors for a term of one (1) year and three (3) directors for a term of two (2) years. Thereafter, directors shall be elected at each annual meeting of Members to fill the vacancies of those directors whose term then expires and the term of each director so elected shall be two (2) years. All directors shall hold office until their successors are elected.

**Section 7.3. Nomination.** Nomination for election to the Board may be made by a Nominating Committee. Nominations may also be made from the floor at a meeting of Members. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board, and two (2) or more Members. The Nominating Committee shall be appointed by the Board prior to each annual meeting of the Members to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not fewer than the number of vacancies that are to be filled. Nominations may be made from among the Members or non-members. Anything herein to the contrary notwithstanding, at the first annual meeting nominations for election of the Board shall be made only from the floor. Each nominee shall be given a reasonable opportunity to communicate to the Members the nominee's qualifications and the reasons for the nominee's candidacy. Each nominee shall be given a reasonable opportunity to solicit votes and the Members shall be given a reasonable opportunity to choose among the nominees.

**Section 7.4. Election.** Election to the Board shall be by secret written ballot. No Member shall have the right to cumulate his votes unless the candidates' names have been placed in nomination prior to the voting and the Member has given notice to the meeting prior to the voting of the Member's intention to cumulate votes. If one Member is entitled to cumulate votes, all Members shall have the right to cumulate votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which he is entitled, or to distribute his votes on the same principle among as many candidates as he shall think fit. The candidates receiving the highest number of votes up to the number of directors to be elected shall be elected. Anything contained herein to the contrary notwithstanding, at the first election of directors by Members and thereafter for so long as a majority of the voting power of Members is held by Declarant, or so long as there are two (2) outstanding classes of membership, not fewer than twenty percent (20%) of the directors may be elected solely by the votes of Members other than Declarant.

**Section 7.5. Removal.** The entire Board may be removed from the Board, with or without cause, by a majority vote of the Members. Unless the entire Board is removed, an individual director shall not be removed if the number of votes against the resolution for his removal or not consenting in writing to his removal would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes were cast and the entire number of directors authorized at the time of the most recent election of directors were then being elected. However, any director elected to office solely by the votes of Members other than Declarant may be removed from office prior to the expiration of his term only upon the vote of a simple majority of the voting power of Members other than Declarant.

**Section 7.6. Vacancies.**

(a) Vacancies on the Board created by death or resignation may be filled by a majority of the remaining directors, though less than a quorum, and each director so elected shall hold office until his successor is elected by the Members.



(b) Vacancies on the Board created by the removal of any director may be filled only by the vote of the Members.

(c) The Members may at any time elect directors to fill any vacancy not filled by the directors, and may elect the additional directors at the meeting at which an amendment of the Bylaws is voted, authorizing an increase in the number of directors. No reduction of the number of directors shall have the effect of removing any director prior to the expiration of his term of office.

**Section 7.7. Committees.** The Board shall appoint a Nominating Committee, as provided in the Bylaws, and an Architectural Committee, as provided in the Declaration. In addition, the Board shall appoint other committees as deemed appropriate in carrying out its purpose.

**Section 7.8. Compensation.** No director shall receive compensation from the Association for any services he may render to the Association unless the compensation is, by vote at a meeting or by written ballot without a meeting pursuant to California CORPORATIONS CODE Section 7513, approved by a majority of the voting power of Members of the Association, other than Declarant, constituting a quorum consisting of more than fifty percent (50%) of the voting power of Members of the Association, other than Declarant. However, any director may be reimbursed by the Association for his actual expenses incurred in the performance of his duties.

**Section 7.9. Indemnity.** In the event any present or former director or officer of the Association is made a party to a civil or criminal proceeding by reason of the fact the director or officer was an agent of the Association, the Association shall indemnify the director or officer against expenses, judgments, fines, settlements and other amounts actually incurred to the fullest extent authorized by California CORPORATIONS CODE Section 7237, or any successor statute, and may advance to the person funds to pay expenses that may be incurred in defending any action or proceeding on receipt of an undertaking by or on behalf of the person to repay the amount unless it is ultimately determined that the person was entitled to indemnification under this provision.

## **ARTICLE VIII**

### **MEETINGS OF DIRECTORS**

**Section 8.1. Place of Meetings.** Meetings of the Board shall be held within the Properties unless adequate space for the meeting is not available, in which event, the meeting shall be held at the nearest reasonable location which has adequate space.

**Section 8.2. Regular Meetings.** Regular meetings of the Board shall be held at periodic intervals as determined by the Board, but not less frequently than semi-annually, at such place and hour as may be fixed from time to time by resolution of the Board. Should the meeting day fall upon a legal holiday, then the meeting shall be held at the same time on the next day which is not a legal holiday.

**Section 8.3. Special Meetings.** Special meetings of the Board shall be held when called by written notice signed by the president of the Association, or by any two (2) directors other than the president.



**Section 8.4. Notice of Meetings.**

(a) Notice of regular meetings of the Board shall be posted in a prominent place within the Properties and communicated to the directors not fewer than four (4) days before the meeting; provided, however, notice of a regular meeting of the Board need not be given to a director who has signed a waiver of notice or a written consent of the holding of the meeting. If the Common Area is unsuitable for posting the notice, the Board shall communicate the notice of the time and place of the meeting to the Members by any means it deems appropriate.

(b) Notice of special meetings of the Board shall be posted or communicated in the manner prescribed for notice of regular meetings and sent to the directors not fewer than seventy-two (72) hours before the meeting; provided, however, notice of a special meeting of the Board need not be given to a director who has signed a waiver of notice or a written consent to the holding of the meeting. Notice of a special meeting of the Board shall specify the time and place of the meeting and the nature of any business to be conducted.

**Section 8.5. Quorum.** A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

**Section 8.6. Attendance.** Regular and special meetings of the Board shall be open to all Members. The Board may, upon the vote of a majority of a quorum, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved and matters which relate to the formation of contracts with third parties. In any matter relating to the discipline of a Member, the Board shall meet in executive session if requested by the Member and the Member shall be entitled to attend the executive session. Except as otherwise provided in this Section 8.6, only members of the Board and its invited consultants shall be entitled to attend executive sessions. The nature of any and all business to be considered in executive session shall first be announced in open session. Any matter discussed in executive session shall be generally noted in the minutes of the immediately following Board meeting open to the entire membership. In any matter relating to the discipline of a Member, the Board shall meet in executive session if requested by that Member, and the Member shall be entitled to attend the executive session.

The Board shall permit any Member to speak at any meeting of the Members or the Board, except meetings of the Board held in executive session. A reasonable time limit for all Members of the Association to speak to the Board or before a meeting of Members shall be established by the Board.

**Section 8.7. Action Without Meeting.** Any action required or permitted to be taken by the Board may be taken without a meeting, if all members of the Board consent in writing to the action. Action by written consent shall have the same force and effect as a unanimous vote of the Board. Written consent or consents shall be filed with the minutes of the proceedings of the Board. An explanation of the action to be taken or actually taken by the Board shall be given to the Members of the Association within three (3) days after all written consents have been obtained. The explanation shall be given in the same manner as provided in the Bylaws for the giving of notice of regular meetings of the Board. Failure to give notice shall not render the action to be taken or actually taken invalid.



## ARTICLE IX

### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Subject to the provisions of the Declaration, the Articles and the California Nonprofit Mutual Benefit Corporation Law, the Board shall have the following powers and duties:

**Section 9.1. Right to Enforce.** To enforce the provisions of the Declaration, Articles, Bylaws, rules and regulations adopted by the Board, any agreement to which the Association is a party and other instruments for the ownership, management and control of that portion of the Properties which is within the jurisdiction of the Association.

**Section 9.2. Payment of Taxes.** To pay taxes and assessments which are, or could become, a lien on the Common Area or any portion of the Common Area.

**Section 9.3. Insurance.** To procure and maintain fire, casualty, liability, fidelity and other insurance adequately insuring the Common Area, the Association and property owned or maintained by the Association as required by the Declaration.

**Section 9.4. Goods and Services.** To contract and pay for goods and services relating to the Common Area and Common Maintenance Area, and to employ personnel necessary for the operation and maintenance of the same, including legal and accounting services. Anything herein to the contrary notwithstanding:

(a) The term of any contract with a third person for supplying goods or services to the Common Area, Common Maintenance Area or for the Association shall not exceed a term of one (1) year unless a longer term is, by vote at a meeting or by written ballot without a meeting pursuant to California CORPORATIONS CODE Section 7513, approved by a majority of the voting power of Members of the Association, other than Declarant, constituting a quorum consisting of more than fifty percent (50%) of the voting power of Members of the Association, other than Declarant, with the following exceptions:

(1) A contract with the public utility company for materials or services the rates for 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;

(2) A contract for prepaid casualty and/or liability insurance policies may be for a term of not to exceed three (3) years, provided that the policy permits short rate cancellation by the Association;

(3) A management contract, the terms of which have been approved by the United States Department of Veterans Affairs and the Federal Housing Administration, may exceed a term of one (1) year;

(4) Agreements for cable television services and equipment or satellite dish television services and equipment may be for a term of not to exceed five (5) years'

duration, provided that the supplier is not an entity in which Declarant has a direct or indirect ownership interest of ten percent (10%) or more;

(5) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services may be for a term of not to exceed five (5) years' duration, provided that the supplier or suppliers are not entities in which Declarant has a direct or indirect ownership interest of ten percent (10%) or more;

(6) Contracts with a term not to exceed three (3) years which are terminable by the Association without cause, penalty or other obligation after one (1) year upon ninety (90) days' written notice of termination given by the Association to the other party; and

(7) Contracts approved by the California Department of Real Estate during the period of time prior to conversion of the Class B membership in the Association to Class A membership.

(b) Any agreement for management and any agreement for services by Declarant shall be terminable for cause upon thirty (30) days' written notice, and without cause or payment of a termination fee upon not more than ninety (90) days' written notice. Management agreements shall be renewable with the consent of the Board and the management agent.

(c) The Board shall not terminate professional management and assume self-management without the prior written approval of Mortgagees holding the first Mortgages encumbering sixty-seven percent (67%) or more of the Lots which are encumbered by a Mortgage.

(d) No contract with the Association negotiated by Declarant shall exceed a term of one (1) year except for those agreements set forth in Subsections 9.4(a)(1) through (7).

**Section 9.5. Delegation.** To delegate any of its rights and duties to others, including committees, officers or employees.

**Section 9.6. Budgets and Financial Statements.** To prepare budgets and financial statements as provided in the Bylaws.

**Section 9.7. Rules.** To adopt rules and regulations governing the use of the Common Area and Common Maintenance Area and facilities owned or controlled by the Association.

**Section 9.8. Disciplinary Proceedings.** To initiate and execute disciplinary proceedings against Members for violations of the provisions of the Articles, Bylaws, Declaration, and rules and regulations adopted by the Board.

**Section 9.9. Right to Enter.** To enter onto any Lot as necessary in connection with construction, maintenance or emergency repair of the Common Area or Common Maintenance Area or for the benefit of the Owners in common.



**Section 9.10. Select Officers.** To select, remove and supervise officers, agents and employees of the Association and prescribe their powers and duties.

**Section 9.11. Fill Vacancies on Board.** To fill vacancies on the Board, except for a vacancy created by the removal of a member of the Board by vote of the Members.

**Section 9.12. Capital Expenditures.** To make capital expenditures for and on behalf of the Association; provided, however, expenditures during any fiscal year for capital improvements to the Common Area and Common Maintenance Area shall not exceed five percent (5%) of the budgeted gross expenses of the Association for the fiscal year unless the capital expenditure is, by vote at a meeting or by written ballot without a meeting pursuant to California CORPORATIONS CODE Section 7513, approved by a majority of the voting power of Members of the Association, other than Declarant, constituting a quorum consisting of more than fifty percent (50%) of the voting power of Members of the Association, other than Declarant.

**Section 9.13. Sale of Association Property.** To sell property of the Association; provided, however, sales of property of the Association during a fiscal year having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for a fiscal year shall not be made unless the sale is, by vote at a meeting or by written ballot without a meeting pursuant to California CORPORATIONS CODE Section 7513, approved by a majority of the voting power of Members of the Association, other than Declarant, constituting a quorum consisting of more than fifty percent (50%) of the voting power of Members of the Association, other than Declarant.

**Section 9.14. Management of Business.** To conduct, manage and control the affairs and business of the Association.

**Section 9.15. Management of Property.** To manage, operate, maintain and repair the Common Area and Common Maintenance Area and all improvements located on the Common Area and Common Maintenance Area.

**Section 9.16. Notification to Mortgagees.** To give, upon written request to the Association identifying the name and address of the holder, insurer or guarantor and the Lot number or address, any first Mortgage holder or insurer or guarantor of a Mortgage encumbering the Lot timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Common Area or any Lot on which there is a first Mortgage held, insured or guaranteed by the Mortgage holder or insurer or guarantor, as applicable.

(b) Any delinquency in the payment of assessments or charges owed by an Owner of a Lot encumbered by a first Mortgage held, insured or guaranteed by the Mortgage holder or insurer or guarantor, which remains uncured for a period of sixty (60) days.

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Any proposed action which would require the consent of a specified percentage of first Mortgage holders as required in the Bylaws or the Declaration.

**Section 9.17. Notice to Federal Home Loan Mortgage Corporation.** To give notice in writing to the Federal Home Loan Mortgage Corporation ("FHLMC"), in care of the servicers of FHLMC loans on Lots, provided the servicers have informed the Association in writing of their addresses, of any loss to or taking of the Common Area if the loss or taking exceeds \$10,000.00, and of any damage to a Lot if the damage exceeds \$1,000.00.

**Section 9.18. Payment of Common Area Utilities.** To pay all charges for water, electricity, gas, CATV, trash collection and other utility services for the Common Area and Common Maintenance Area and, to the extent not separately metered or charged, for each Lot.

**Section 9.19. Litigation.**

(a) ***Code of Civil Procedure Section 383.*** Pursuant to Section 383 of the CODE OF CIVIL PROCEDURE, the Association shall have standing to institute, defend, settle or intervene in litigation, arbitration, mediation or administrative proceedings in its own name as the real party in interest and without joining with it the individual Owners, in matters pertaining to the following:

- (1) Enforcement of the Declaration and related governing documents;
- (2) Damage to the Common Area or Common Maintenance Area;
- (3) Damage to improvements to the Lots which the Association is obligated to maintain or repair; and
- (4) Damage to improvements to the Lots which arises out of, or is integrally related to, damage to the Common Area or Common Maintenance Area.

(b) ***Civil Code Section 1368.4.*** Pursuant to CIVIL CODE Section 1368.4:

(1) Not later than thirty (30) days prior to the filing of any civil action by the Association against Declarant or other developer of the Properties for: alleged damage to the Common Area or Common Maintenance Area which the Association is obligated to maintain or repair; or alleged damage to dwellings on Lots which arise out of, or are integrally related to, damage to the Common Area or Common Maintenance Area (which the Association is obligated to maintain or repair), the Board of Directors 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; and
- (C) The time and place of this meeting.



(2) Notwithstanding Subsection (1) above, if the Board 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 thirty (30) days after the filing of the action.

(c) **Civil Code Section 1354.** The Association shall comply with CIVIL CODE Section 1354, which, in brief summary and in part, provides as follows:

(1) Unless the applicable time limitation for commencing the action would expire within 120 days prior to filing a civil action by the Association or Owner, the Association and Owners shall endeavor to submit their disputes to a form of alternative dispute resolution, such as mediation or arbitration with respect to claims for injunction, declaratory relief or monetary damages of \$5,000 or less.

(2) Any party to such a dispute may initiate the process by serving on another party to the dispute a Request for Resolution, as described in CIVIL CODE Section 1354.

(3) The Association shall annually provide a summary of the provisions of CIVIL CODE Section 1354, which specifically references that Section. The summary shall include the following language:

"Failure by any member of the association to comply with the prefiling requirements of Section 1354 of the CIVIL CODE may result in the loss of your rights to sue the association or another member of the association regarding enforcement of the governing documents."

The summary shall be provided either at the time the pro forma budget is distributed as required by Section 1365 of the CIVIL CODE or in the manner specified in Section 5016 of the CORPORATIONS CODE.

(d) **Civil Code Section 1366.3.** The Association shall comply with CIVIL CODE Section 1366.3 which, in part, provides that assessment collection proceedings continue to be exempt from the alternative dispute resolution requirements of CIVIL CODE Section 1354, unless the Member elects to follow the dispute resolution procedure established by CIVIL CODE Section 1366.3. CIVIL CODE Section 1366.3 requires the Association to notify a Member that an assessment collection dispute may be resolved through alternative dispute resolution as provided in CIVIL CODE Section 1354, by civil action, or by any other procedure available to the Association to resolve collection disputes if:

(1) The Member pays the Association the amount in dispute, late charges, interest and all fees and costs associated with the preparation and filing of the notice of delinquent assessment, including all mailing costs and attorney's fees not to exceed \$425.00; and



(2) The Member notifies the Association in writing by certified mail not more than thirty (30) days following recordation of a notice of delinquent assessment that the assessment payment is made under penalty of protest.

CIVIL CODE Section 1366.3 sets forth other limitations and requirements.

(e) **Civil Code Section 1375.** The Association shall comply with CIVIL CODE Section 1375 which is a complex statute which sets forth various requirements pertaining to claims for defects in design or construction of the project, including requirements which must be met before such a claim is filed. Some of the matters covered by CIVIL CODE Section 1375 include the following:

- (1) A requirement of written notice before an action is commenced.
- (2) Listing defects.
- (3) Surveying or questioning Owners regarding the nature and extent of defects.
- (4) Meetings, settlement attempts and alternative dispute resolution between the Board and Declarant, subcontractors, design professionals and insurers.
- (5) Possible tolling of statutes of limitations.
- (6) Inspection and testing and making available the results of the inspections and tests.
- (7) Procedures for a settlement offer.
- (8) Procedures for holding a meeting of the Owners if the Association rejects a settlement offer.

**Section 9.20. Right to Permit Use of Common Area and Common Maintenance Area.** To permit utility suppliers and others to use the Common Area and Common Maintenance Area reasonably necessary for the on-going development or operation of the Properties.

**Section 9.21. Release of Bonds.** To take all actions necessary, including the adoption of Board resolutions, required to release bonds posted by Declarant in favor of the Association, provided that the conditions for release of the bond have been satisfied. In the event the Board wrongfully fails to take the required action, the Association shall be responsible to Declarant for the additional bond premiums and attorney's fees incurred by Declarant as a result of the Board's failure to take the required action.

**Section 9.22. Alternative Dispute Resolution.** At the discretion of the Board, to perform any act reasonably necessary to resolve any civil claim or action through alternative dispute resolution proceedings, including mediation, binding arbitration or non-binding arbitration proceedings.

**Section 9.23. General Rights and Powers.** To exercise for the Association all powers and duties vested in or delegated to the Association and not reserved to the Members by the Articles, Bylaws or Declaration.

## **ARTICLE X**

### **OFFICERS AND THEIR DUTIES**

**Section 10.1. Enumeration of Officers.** The officers of the Association shall be a president and vice president, who shall at all times be members of the Board, a secretary and a chief financial officer, and such other officers as the Board may from time to time by resolution create.

**Section 10.2. Election of Officers.** The election of officers shall take place at the first meeting of the Board following each annual meeting of the Members.

**Section 10.3. Term.** The officers of the Association shall be elected annually by the Board, and each officer shall hold office until he shall resign, or be removed, or is otherwise disqualified to serve.

**Section 10.4. Special Appointments.** The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may from time to time determine.

**Section 10.5. Resignation and Removal.** Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. A resignation shall take effect on the date of receipt of the resignation or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**Section 10.6. Vacancies.** A vacancy in any office may be filled by appointment by the Board. The officer appointed to fill a vacancy shall serve for the remainder of the term of the officer he replaces.

**Section 10.7. Multiple Offices.** One (1) person may hold two (2) or more offices.

**Section 10.8. Duties.** The duties of the officers are as follows:

(a) ***President.*** The president shall be the chief executive officer of the Association and shall, subject to the control of the Board, have general supervision, direction and control of the business and officers of the Association. The president shall preside at all meetings of the Members and at all meetings of the Board. The president shall be ex-officio a member of all standing committees, including the executive committee, if any, and shall have the general powers and duties of management usually vested in the office of president of a corporation, and shall have such other powers and duties as may be prescribed by the Board or by the Bylaws.

(b) ***Vice President.*** In the absence or disability of the president, the vice president shall perform all the duties of the president, and when so acting shall have all powers of and be subject to all the restrictions upon the president. The vice president shall have such other powers



and perform such other duties as from time to time may be prescribed for him by the Board or by the Bylaws.

(c) **Secretary.** The secretary shall keep, or cause to be kept, a book of minutes at the principal office or such other place as the Board may order of all meetings of directors and Members, with the time and place of holding, whether regular or special and if special how authorized, the notice thereof given, the names of those present at the directors' meetings, the number of memberships present or represented at Members' meetings and the proceedings thereof. The secretary shall give, or cause to be given, notice of all the meetings of the Members and of the Board required by the Bylaws or by law to be given, and he shall have such other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

(d) **Chief Financial Officer.** The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Association, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital and surplus. The books of account shall at all times be open to inspection by any director.

Except for deposits made by a professional property manager pursuant to Section 10.9 below, the chief financial officer shall deposit all moneys and other valuables in the name and to the credit of the Association with such depositories as may be designated by the Board. He or she shall disburse the funds of the Association as may be ordered by the Board, shall render to the president and directors, whenever they request it, an account of all of his or her transactions as chief financial officer and of the financial condition of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

**Section 10.9. Deposits By Property Manager.** The Board may designate a professional property management company to collect assessments and make deposits. A separate trust account shall be established for the Association so that the Association's deposits will not be commingled with non-Association funds. Another separate trust account, complying with the requirements of Section 11.5 below, shall be established in the name of the Association for the deposit of reserves and the Association shall require its property manager, if one is designated, to deposit reserves in such separate account on at least a monthly basis. In the event the Association authorizes a property manager to collect assessments or make deposits, the Association shall maintain a fidelity bond in an appropriate amount naming the Association as obligee and insuring against loss by reason of the acts of the management agent and its employees. The fidelity bond shall be in an amount equal to not less than three (3) months' aggregate regular assessments (including reserves) by the Association against all Lots then subject to assessment.

**Section 10.10. Signing Checks, Etc.** All checks, notes, leases and deeds of trust of the Association shall be signed by at least two persons who hold offices of this Association, and one such person must be the president or the vice president. The signatures of at least (i) two directors or (ii) one officer who is not a director and the signature of a director shall be required for the withdrawal of moneys from the Association's reserve accounts.



The Board may designate a professional property management company to pay the Association's operating expenses from the non-reserve trust account established pursuant to the Section above entitled "Deposits By Property Manager".

**Section 10.11. Compensation.** No officer of the Association shall receive compensation from the Association for his services performed in the conduct of the business of the Association, unless the compensation is, by vote at a meeting or by written ballot without a meeting pursuant to California CORPORATIONS CODE Section 7513, approved by a majority of the voting power of Members of the Association, other than Declarant, constituting a quorum consisting of more than fifty percent (50%) of the voting power of Members of the Association, other than Declarant; provided, however, any officer may be reimbursed by the Association for his actual expenses incurred in the performance of his duties.

## **ARTICLE XI**

### **BOOKS, RECORDS AND FINANCIAL STATEMENTS**

**Section 11.1. Books and Records.** Members shall have access to Association records in accordance with Article 3 (commencing with Section 8330) of Chapter 13 of Part 3 of Division 2 of Title 1 of the California CORPORATIONS CODE. The membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the Members, the minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the Board, other than executive sessions (which Board minutes shall be available to Members within thirty (30) days following the Board meeting, and which shall be distributed to any Member upon written request and upon reimbursement to the Association of the cost of the distribution), and copies of the Declaration, Bylaws and Rules and Regulations of the Board shall, during reasonable business hours, be subject to inspection and copying by any Member or by his duly appointed representative, and by the holder, insurer or guarantor of any first Mortgage encumbering a Lot, at the principal office of the Association or at another location within the Properties as the Board may prescribe. The Board shall establish reasonable rules with respect to:

- (a) Notice to be given to the custodian of the records by the Member wishing to make the inspection;
- (b) Hours and days of the week when such an inspection may be made; and
- (c) Payment of the costs of reproducing copies of documents requested by a Member.

Members shall be notified in writing at the time the budget described in Section 11.3 of the Bylaws is distributed to Members, or at the time of any general mailing to the Members of the right of each Member to have copies of the minutes of meetings of the Board, and how and where those minutes may be obtained. Every director of the Association shall have the absolute right at any reasonable time to inspect the Common Area and Common Maintenance Area, and all books, records and documents of the Association. The right of inspection by a director shall include the right at his expense to make extracts and copies of documents.



**Section 11.2. Financial Statements.** The Board shall cause an annual report consisting of the following to be distributed to the Members within one hundred twenty (120) days after close of the Association's fiscal year:

- (1) A balance sheet as of the end of the fiscal year;
- (2) An income and expense statement for the fiscal year;
- (3) A statement of changes in financial position for the fiscal year;
- (4) A statement of the place where the names and addresses of the current Members are located;
- (5) Any information required to be reported under Section 8322 of the California CORPORATIONS CODE; and
- (6) For any fiscal year in which the gross income to the Association exceeds \$75,000, a copy of a review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy.

If the annual report referred to above is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association stating that the report was prepared from the books and records of the Association without independent audit or review.

**Section 11.3. Budget.** The Board shall cause a pro forma operating statement (budget) for the Association to be prepared for the second and each succeeding fiscal year of the Association, a copy of which shall be distributed personally or by mail to the Members not fewer than forty-five (45) days nor more than sixty (60) days prior to the beginning of the fiscal year to which the budget relates. The budget shall include the following information:

(a) The estimated revenue and expenses of the Association on an accrual basis for the next fiscal year.

(b) A summary of the Association's reserves based upon the most recent review or study conducted pursuant to Section 11.4 of the Bylaws. The summary shall be printed in bold type and shall include the following information:

(1) The current estimated replacement cost, estimated remaining life and estimated useful life of each major component of property or facilities, the maintenance and replacement of which is the responsibility of the Association;

(2) As of the end of the fiscal year for which the study is prepared:

(A) The current estimate of the amount of cash reserves necessary to repair, replace, restore or maintain each major component;

(B) The current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain major components.

(3) The percentage that the amount determined pursuant to clause (2)(B) above is to the amount determined pursuant to clause (2)(A) above.

(c) A statement as to whether the Board has determined or anticipates that the levy of one or more special assessments will be required to repair, replace or restore any major component or to provide adequate reserves to repair, replace or restore any major component of the property or facilities, the maintenance and replacement of which is the responsibility of the Association.

(d) A general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the property or facilities, the maintenance and replacement of which is the responsibility of the Association.

In lieu of the distribution of the budget to Members, the Board may elect to distribute to Members a summary of the budget which summarizes the items set forth in Subsections (a) through (d) above. The summary shall include a written notice that the budget is available at the business office of the Association or at another suitable location within the Properties, and that copies will be provided upon request and at the expense of the Association. If any Member requests a copy of the budget to be mailed to the Member, the Association shall provide the copy to the Member by first-class United States mail at the expense of the Association within five (5) business days following receipt of the request. The written notice that is distributed to Members shall be in at least ten-point (10-point) bold type on the front page of the budget summary.

#### **Section 11.4. Review of Operating and Reserve Accounts.**

(a) The Board shall review, at least quarterly:

(1) A current reconciliation of the Association's operating accounts.

(2) A current reconciliation of the Association's reserve accounts.

(3) The current year's actual reserve revenues and expenses compared to the current year's budget.

(4) The latest account statements prepared by the financial institutions where the Association has its operating and reserve accounts.

(5) An income and expense statement for the Association's operating and reserve accounts.

(b) Pursuant to California CIVIL CODE Section 1365.5(e), at least once every three years the Board shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components which the Association is obligated to repair, replace, restore or maintain as part of a study of the reserve account requirements of



the Properties to be conducted if the current replacement value of the major components which the Association is obligated to repair, replace, restore or maintain is equal to or greater than one-half of the gross budget of the Association for any fiscal year which excludes the Association's reserve account for that period. As used in the Bylaws, "reserve account requirements" means the estimated funds which the Board has determined are required to be available at a specified point in time to repair, replace or restore the major components which the Association is obligated to maintain. The Board shall review the study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of the review. The study shall include:

- (1) Identification of the major components which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years;
- (2) Identification of the probable remaining useful life of the major components identified in clause (1) as of the date of the study;
- (3) An estimate of the cost of repair, replacement, restoration or maintenance of each major component identified in clause (1) during and at the end of its useful life; and
- (4) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

**Section 11.5. Withdrawal From Reserve Accounts.**

(a) Except as provided in Subsection (b) below, 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 of the Properties which the Association is obligated to repair, restore, replace or maintain, and for which the reserve fund was established.

(b) The Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash flow requirements or other expenses, provided the Board has made written findings, included in the Board's minutes, explaining the reasons 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 following 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 maintaining the integrity of the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits required by this Subsection. A special assessment made by the Board pursuant to this Subsection (b) is subject to the limitation imposed by Section 1366 of the California CIVIL CODE. The Board may extend the date the payment of the 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.



(c) In the event the Board decides to use reserve funds or to temporarily transfer money from the reserve funds to pay for litigation, the Board shall notify the Members of the decision in the next available mailing to Members pursuant to Section 5016 of the California CORPORATIONS CODE and of the availability of an accounting of those expenses. The Board shall provide an accounting of expenses related to the litigation at least quarterly and shall make the accounting available for inspection by Members at the office of the Association.

(d) The signatures of at least two persons, either two members of the Board or one member of the Board and an officer who is not a member of the Board, shall be required for the withdrawal of monies from the Association's reserve accounts. As used in the Bylaws, "reserve accounts" means monies the Board has identified for use to defray the future repair or replacement of, or additions to, those major components which the Association is obligated to maintain.

## **ARTICLE XII**

### **AMENDMENTS**

**Section 12.1. Prior to Escrow Closings.** Prior to the date escrow closes for any sale of a Lot to an Owner, these Bylaws may be unilaterally amended by Declarant.

**Section 12.2. After Escrow Closings.** The following provisions shall apply after the close of the first escrow for a sale of a Lot to an Owner. During the period of time prior to conversion of the Class B membership in the Association to Class A membership, new Bylaws may be adopted or these Bylaws may be amended or repealed by the vote of the Members entitled to exercise a majority or more of the voting power of each class of Members of the Association or by the written assent of such Members. After conversion of the Class B membership to Class A membership, these Bylaws may be amended or repealed by the vote of (i) Members entitled to exercise a majority of the voting power of the Association, and (ii) at least a majority of the voting power of Members of the Association other than Declarant. Notwithstanding the above provisions, the percentage of the voting power necessary to amend a specific clause or provision in the Bylaws shall not be less than the percentage of affirmative votes necessary for action to be taken under that clause or provision.

**Section 12.3. Mortgagee Approval of Amendment.** Anything herein stated to the contrary notwithstanding, no material amendment to the Bylaws shall be made without the prior written approval of Mortgagees holding first Mortgages encumbering fifty-one percent (51%) of the Lots which are subject to Mortgages. "Material amendment" shall mean, for purposes of this Article XII, any amendments to provisions of the Bylaws governing any of the following subjects:

- (a) The fundamental purpose for which the project was created (such as a change from residential use to a different use).
- (b) Assessments, assessment liens or the priority of assessment liens.
- (c) Reserve for maintenance, repair and replacement of the Common Area or Common Maintenance Area.



- (d) Responsibilities for maintenance and repairs.
- (e) Insurance or fidelity bonds.
- (f) Restoration or repair after a hazard damage or partial condemnation.
- (g) Rights to use the Common Area or Common Maintenance Area.
- (h) Expansion or contraction of the Properties or the addition, annexation or withdrawal of property to or from the Properties.
- (i) Voting rights.
- (j) Convertibility of Lots into Common Area or of Common Area into Lots.
- (k) Redefinition of boundaries of any Lot or the Common Area.
- (l) The interests in the Common Area or Common Maintenance Area.
- (m) Leasing of Lots.
- (n) Imposition of any restrictions on the right of an Owner to sell or transfer his Lot.
- (o) Any action to terminate the legal status of the Association after substantial destruction or condemnation.
- (p) The requirement of retention of professional management of the Association.
- (q) Any provision which is expressly for the benefit of Mortgagees or insurers or guarantors of Mortgages.

A Mortgagee who receives a written request delivered by certified or registered mail, return receipt requested, to approve amendments who does not deliver or mail to the requesting party a negative response within thirty (30) days following receipt of the request shall be deemed to have approved the request.

### ARTICLE XIII

#### MISCELLANEOUS

**Section 13.1. Fiscal Year.** The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation of the Association. The fiscal year of the Association may be changed by the Board.

**Section 13.2. Corporate Seal.** The Association shall have a seal in circular form having within its circumference the words: BIG TREE HOMEOWNERS ASSOCIATION, a California corporation.

**Section 13.3. Voting By Declarant.** Prior to conversion of the Class B membership in the Association to Class A membership, any procedure, action or matter for which the Bylaws require the approval of a prescribed majority of the voting power of Members of the Association other than Declarant shall require the vote or written assent of (i) a bare majority of the Class B voting power, and (ii) the prescribed majority of the Class A voting power. After conversion of the Class B membership in the Association to Class A membership, any procedure, action or matter for which the Bylaws require the approval of a prescribed majority of the voting power of Members of the Association other than Declarant shall require the vote or written assent of (A) a bare majority of the total voting power of Members of the Association, and (B) the prescribed majority of the total voting power of Members of the Association other than Declarant.

**Section 13.4. Conflict Between Documents.** In the case of any conflict between the Articles and the Bylaws, the Articles shall control; in the case of any conflict between the Declaration and the Bylaws, the Declaration shall control.

**Section 13.5. Notice to Lenders.** Upon the written request of the holder of a first Mortgage encumbering any Lot, the Association shall give to the holder (i) prior written notice of any action of the Association taken in connection with any material amendment to the Declaration, the Bylaws or the Articles, the effectuation of a decision to terminate professional management of the Common Area and the abandonment or termination of the project composed of the Lots and Common Area; (ii) written notice of any substantial damage to or destruction of any improvement located on a Lot or any part of the Common Area promptly upon such damage or destruction; (iii) written notice of any condemnation or eminent domain proceeding or proposed acquisition in lieu thereof of any Lot or the Common Area or any part thereof, promptly upon the commencement thereof; and (iv) written notification of any default by the Owner of a Lot encumbered by a first Mortgage, the holder of which requests such notice, in the performance of such Owner's obligations under the Declaration or these Bylaws which is not cured within sixty (60) days.

**Section 13.6. Statement of Association's Assessment and Collection Policies.** The Board shall comply with CIVIL CODE Section 1365.1 and distribute a statement of the Association's policies and practices in enforcing its remedies against Members for default in the payment of regular and special assessments to each Member during the sixty (60) day period immediately preceding the beginning of each fiscal year. The required form and content of said notice is expressly set forth in CIVIL CODE Section 1365.1, and includes information on the Association's foreclosure rights, the requirements set forth in CIVIL CODE Section 1367.1 for collecting delinquent assessments (*see also* Section 4.9 of the Declaration) and the delinquent Member's rights in connection with the collection process.

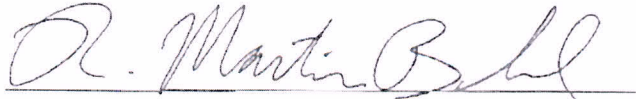
**Section 13.7. Distribution to Members of Information About Insurance.** The Board shall comply with CIVIL CODE Section 1365(e) and distribute to the Members information about the Association's insurance policies. CIVIL CODE Section 1365(e) requires, among other matters, that the Association give its Members a summary of insurance policies within sixty (60) days preceding the beginning of the Association's fiscal year and notice by first class mail, as soon as reasonably practical, if any of the policies have lapsed, been canceled and are not immediately renewed, restored or replaced or if there is a significant change, such as a reduction in coverage or limits or increase in the deductible for any policies. CIVIL CODE Section 1365(e) also requires immediate notice be given if the Association receives any notice of nonrenewal of a policy if replacement coverage will not be in effect by the date the existing coverage will lapse. CIVIL CODE Section 1365(e) sets forth various details as to the forms of notice, language which must be included in the notice, the size of type, etc.



Section 13.8. Annexation. The Association shall admit as Members, Owners of Lots in any Phase of the Properties which has been annexed pursuant to the Declaration. The Association shall accept title to the Common Area as set forth in the Declaration.

Section 13.9. References to Statutes. Several Sections of these Bylaws refer to or briefly summarize certain California statutes in order to provide information to the Members and Board about those statutes. However, (i) the references are only summary in nature and the full statutory provision should be reviewed, (ii) no attempt has been made to refer to all applicable statutes, and (iii) there is no intent to limit application of any future statutory amendments or any new statutory provisions.

IN WITNESS WHEREOF, the undersigned, being the Incorporator of the Association, hereby adopts these Bylaws as the Bylaws of the Association.

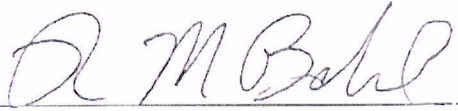
  
R. MARTIN BOHL

I, the undersigned, do hereby certify:

1. That I am the incorporator of BIG TREE HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation; and

2. That the foregoing Bylaws, comprising twenty-three (23) pages, constitute the Bylaws of said corporation duly adopted by Written Consent of Incorporator dated June 12, 2003.

IN WITNESS WHEREOF, I hereunto subscribe my name and affix the seal of said corporation this 12th day of June, 2003.

  
\_\_\_\_\_  
R. Martin Bohl, Incorporator

