

SECTION 3: PROPERTY RIGHTS

3.01. Common Area. The Common Area shall be owned by the Association for the use and benefit of the Members. It shall be conveyed to the Association free of money encumbrances prior to or concurrently with the close of escrow of the sale of the first Lot. The Common Area shall be maintained by the Association as provided in Section 5.01. When the Common Area is conveyed by Declarant to the Association, an easement shall be deemed automatically reserved over the Common Area in favor of Declarant for common driveway purposes, drainage and encroachment purposes and for ingress and egress from the Common Areas for the purpose of completing improvements thereon or for the performance of necessary repair work, and for entry onto adjacent Property in connection with the development of additional phases of the overall Project. Said easement shall continue for the period of time provided for annexation, plus a reasonable period of time thereafter (not to exceed an additional two years) to complete construction of said improvements. Said easement shall automatically terminate four years after the recordation of this Declaration, or the recordation of any Declaration of Annexation for a subsequent phase of the Project, whichever occurs later.

In the event that said remaining phases, or any of them, are not annexed as provided above, and the easements reserved by Declarant are terminated automatically as provided above, should any of the properties described in Exhibit "B" require access for ingress and egress over private streets located within the Project, said easements shall exist for reasonable vehicular and pedestrian traffic, provided however, that the properties (and the Owners thereof) shall be obligated to pay their equitable share of the cost of maintenance and repair of said private streets, and shall be subject to a lien or liens for said maintenance and repair costs.

3.02. Partition Prohibited. The Common Area shall remain undivided as set forth above. Except as provided by California Civil Code Section 1359, no Owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Project. Judicial partition by sale of a single Lot owned by two or more persons and division of the sale proceeds is not prohibited hereby, but partition of title to a single Lot is prohibited.

3.03. Annexation of Additional Property. Additional Property may be annexed to and become subject to this Declaration by any of the following methods set forth in this Section. Upon annexation, additional parcels shall become subject to this Declaration without the necessity of amending individual sections thereof.

a) Annexation Pursuant to Plan: The Property described on Exhibit "B" shall be annexed to and become part of the Project, subject to this Declaration, and subject to the jurisdiction of the Association, without the assent of the Association or its Members, or without the assent of the Owners, on condition that:

i) No Unreasonable Burden. Any annexation pursuant to this Section shall not result in an unreasonable diminution of the benefits to, or an unreasonable increase in the burdens upon, existing Owners in the Project and shall be consistent with the phasing plan presented to the California Department of Real Estate at the time of application for the original Final Public Report for the sale of Lots in the Project.

ii) Declaration of Annexation: A Declaration of Annexation shall be recorded covering the applicable portion of the Property to be annexed. Said Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added Property, as are consistent with the scheme of this Declaration. Said Declaration shall include designation of Lots and/or Common Areas for the purpose of this Declaration.

b) Annexation Pursuant to Approval: Upon approval in writing of the Association, pursuant to vote or written consent of 66-2/3% of the total votes residing in Members other than the Declarant, the Association and the Owner of any Property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Declaration of Annexation. Said Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added Property, as are consistent with the scheme of this Declaration. Said Declaration shall include designation of Lots and/or Common Areas for the purpose of this Declaration.

c) Effect of Annexation: Assessments collected from Owners in the Property may be expended by the Association without regard to the particular phase from which such assessments came. All Owners shall have ingress and egress to all portions of the Common Area throughout the Property, subject to the provisions of this Declaration, the Bylaws of the Association and the Rules and Regulations of the Association in effect from time to time.

d) Quality of Construction: Future improvements to the Project will be consistent with initial improvements in terms of materials used and quality of construction.

3.04. Reserves for Rental Program in Annexed Phase. Declarant shall pay to the Association, concurrently with the closing of the escrow for the first sale of a Lot in an annexed phase, appropriate amounts for reserves for replacement or deferred maintenance of Common Area improvements in the annexed phase necessitated by or arising out of the use and occupancy of residential units under a rental program conducted by Declarant which has been in effect for a period of at least one year as of the date of closing of the escrow for the first sale of a Lot in the annexed phase.

3.05. Easements. In addition to any and all other easements contained in this Declaration, the Properties shall be subject to the following easements:

a) Owners' Easements. Every Owner shall have a right and nonexclusive easement of enjoyment in and to the Common Area, including ingress and egress to and from his/her Lot. Each such nonexclusive easement shall be appurtenant to and shall pass with the title to the Lot, subject to the following provisions:

i) Section 9 of this Declaration authorizes the Board to impose monetary penalties, temporary suspensions of an Owner's rights as a Member of the Association or other appropriate discipline for failure to comply with the governing instruments provided that the established procedures are followed for notice and hearing which satisfy the minimum requirements of Corporations Code Section 7341 with respect to the accused Member before a decision to impose discipline is reached. These procedures are set out in Section 12 of the Bylaws.

ii) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds of the Members agreeing to such dedication or transfer has been recorded, provided, however, that no such dedication shall impair the ingress and egress to any individual Lot.

b) Future Exclusive Use Common Areas. The Association may grant an Owner an easement on the Common Area adjacent to the Owner's Lot for the purpose of maintaining a fenced patio area, air conditioning and heating units, a fireplace structure and any other amenity or utility to the use of the Lot.

c) Easements for Utilities and Maintenance. Easements over and under the Project for the installation, repair and maintenance of electric, telephone, water, gas and sanitary sewer lines and facilities, heating facilities, cable or master television antenna lines, drainage facilities, walkways and landscaping as shown on the recorded map of the Property, and as may be hereafter required or needed to service the Project, are hereby reserved by Declarant and its successors and assigns, including the Association, together with the right to grant and transfer the same.

d) Encroachment Easements. Each Lot within the Project is hereby declared to have an easement over all adjoining Lots and the Common Area for the purpose of accommodating any encroachment due to minor engineering errors, minor errors in original construction, settlement or shifting of the building, or any other cause. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots or Common Area due to minor engineering errors, minor errors in construction, or settlement or shifting of the building, shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

e) Entry for Repairs. The Board may authorize its agents and employees to enter upon any Lot when necessary in connection with any maintenance, or construction for which the Association is responsible, to effect emergency repairs or to effect necessary repairs which the Lot Owner has failed to perform as required by this Declaration. Such entry shall be made with as little inconvenience to the Owner as practicable and any damage caused thereby shall be repaired by the Board at the expense of the Association. Except in case of an emergency, 24 hour advance notice shall be given to the Owner or occupant.

f) Declarant's Reservation of Easements. Declarant hereby reserves easements over the Common Area for common driveway purposes, for drainage and encroachment purposes, and for ingress and egress from the Common Areas for the purpose of completing improvements thereon or for the performance of necessary repair work. Said easement shall automatically terminate four years after the recordation of this Declaration.

3.06. Owners Easement for Party Wall. Each attached Lot that shares a Party Wall with an adjoining Lot and its Owner is declared to have an easement appurtenant, and the same is granted by Declarant, on, over, and upon such adjoining Lot for such Party Wall, including the right to enter such adjoining Lot to service and maintain such easement and to service, maintain, repair, or replace the improvements constituting such Party Wall. Such entry shall be at reasonable times after prior notice, except that in case of emergency the right of entry shall be immediate. No Owner shall alter the shape, size, or construction or use any materials different from those used in the initial construction of any such Party Wall without the written consent of the Association.

3.07. Party Walls. The following provisions shall apply with regard to Party Walls in this development:

a) General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a Party Wall, and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding Party Walls and liability for Property damage due to negligence or willful acts or omissions shall apply thereto.

b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Owners on each side of the Party Wall.

c) Destruction by Fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, the Owner on either side of it may restore it, and the other Owner shall contribute one-half of the cost of restoration, without prejudice however, to the right of any such Owners to call for a larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions.

d) Weatherproofing. Notwithstanding any other provision of this Section, an Owner who by his/her negligent or willful act causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

e) Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

f) Arbitration. If any dispute arises concerning a Party Wall, or under the provisions of this Section, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all arbitrators.

3.08. Provisions Restricting Delegation of Use. Any Owner may delegate their rights of use and enjoyment of the Project, including any recreational facilities located within the project, to the Members of their family, their guests, tenants, employees, and invitees, and to such other persons as may be permitted by the Bylaws and the Association Rules, subject however, to this Declaration. However, if an Owner has sold his/her Lot to a contract purchaser or has leased or rented it, the Owner, Members of the Owner's family, guests, employees, and invitees shall not be entitled to use and enjoy any of such rights in the Project, including the recreational facilities, while the Owner's Lot is sold to the contract purchaser or rented to tenants. Instead, the contract purchaser, or tenants, while occupying such Lot, shall be entitled to use and enjoy such rights, including the recreational facilities, and can delegate the rights of use and enjoyment in the same manner as if such contract purchaser or tenants were an Owner during the period of their occupancy. Each Owner shall notify the Secretary of the Association of the names of any contract purchasers of such Owner's Lot or tenants of such Owner's Lot. Each Owner, contract purchaser, or tenant also shall notify the Secretary of the Association of the names of all persons to whom such Owner, contract purchaser, or tenant has delegated any rights of use and enjoyment and the relationship that each such persons bears to the Owner, contract purchaser, or tenant. Any delegated rights of use and enjoyment are subject to suspension to the same extent as are the rights of Owners. No such delegation shall relieve an Owner from liability to the Association or to other Owners for payment of assessments or performance of the covenants, conditions and

restrictions contained in this Declaration. Any lease, rental agreement or contract of sale entered into between an Owner and a tenant or contract purchaser of a Lot shall require compliance by the tenant or contract purchaser with all of the covenants, conditions and restrictions contained in this Declaration, which provision shall be for the express benefit of the Association and each Owner. The Association and each Owner shall have a right to action directly against any tenant or contract purchaser of an Owner, as well as against the Owner, for nonperformance of any of the provisions of this Declaration to the same extent that such right of action exists against such Owner.