

(d) a nonexclusive right to utilize the Common Area and Association Maintenance Areas and any unassigned open parking spaces in connection with its program for the sale of Lots in the Project.

**2.5 Easements Reserved Over Common Property.** At such time as the Common Property conveyed by Declarant to the Association, an easement shall be deemed automatically reserved over the Common Property so conveyed in favor of Declarant, and for the benefit of the remaining Annexation Property as not yet annexed, for ingress, egress, and access, and for the construction and completion of utility hookups, landscaping and amenities included in plans approved by the County, and for the construction use, maintenance and operation of Annexation Property not yet annexed to the Project as of the date of conveyance to the Association, and are part of the future Phase of the Project. Such nonexclusive easements are appurtenant to the Annexation Property and are reserved for a period of twelve (12) years from the date of the first Close of Escrow for the sale of Lots in Phase 1 for the benefit of Declarant, Merchant Builders and their respective authorized agents and representatives and their successors and assigns, and Declarant reserves the right to grant such easements to owners and lessees of property in the Annexation Property. Exercise of the nonexclusive easements and the rights over the Common Property reserved to Declarant under this Declaration shall not unreasonably interfere with the use and enjoyment of the Common Property by the Owners.

**2.6 Non-Liability of Declarant.** The purpose of this Article is merely to describe Declarant's proposed plans for the development of the Project. Without limiting the generality of the foregoing, nothing in this Section 2.6 or elsewhere in this Declaration shall limit the right of Declarant, its successors and assigns, to complete construction of the Project, to alter same, or to construct such additional Improvements as Declarant shall deem advisable prior to the completion, sale and disposition of all Lots and other property in the Project and within the Annexation Property. Declarant may assign any or all of its rights under this Declaration to any successor to all or any part of Declarant's interest in and to the Project, by an express written assignment recorded in the Office of the County Recorder.

### ARTICLE 3

#### RESERVATION OF EASEMENTS AND OTHER PROPERTY RIGHTS IN THE ASSOCIATION MAINTENANCE AREAS

**3.1 Amendment to Eliminate Easements.** As long as Declarant is an Owner, or has an interest in any portion of the Annexation Property, this Declaration cannot be amended to modify or eliminate any easements created, established and reserved herein in favor of Declarant without the prior written approval of Declarant, and any attempt to do so shall have no effect. Any attempt to modify or eliminate the easements created, granted and reserved herein shall likewise require the prior written approval of Declarant and the County.

**3.2 Owners' Easements.** Every Owner shall have a nonexclusive right and easement of access, use and enjoyment in and to the Common Area. Said right and easement shall be appurtenant to and shall pass with title to every Lot, subject to the limitations set forth in Section 3.3 below.

**3.3 Limitations on Owners' Easement Rights.** The rights and easements of access, use and enjoyment set forth in Section 3.2 above shall be subject to the provisions of this Declaration, including, but not limited to, the following:

a. The right of Declarant or Merchant Builders to designate additional Common Area and additional Improvements to be annexed to the Project by recordation of one (1) or more Notices of Annexation, pursuant to the provisions of the Article herein entitled "Annexation of Additional Property";

b. The right of the Association to suspend the voting rights and rights and easements of use and enjoyment of the common Property (if applicable) of any Member, and the persons deriving such rights and easements from any Member for any period during which any Assessment against such Member's Lot remains unpaid and delinquent; and after Notice and Hearing, to impose monetary penalties or suspend such use rights and easements for a period not to exceed thirty (30) days for any non-continuing infraction of the Rules and Regulations, it being understood that any suspension for either nonpayment of any Assessments or breach of such restrictions shall not constitute a waiver or discharge of the Member's obligations to pay Assessments as provided herein;

c. The right of the Association, in accordance with its Articles, By-Laws and this Declaration, to borrow money for the purpose of improving the Common Property and related Improvements with the assent of sixty-seven percent (67%) of the voting power of the Association and/or, subject to the terms and provisions of the Article herein entitled "Mortgagee Protection," to mortgage, pledge, deed in trust or otherwise hypothecate any or all of its real or personal property, as security for money borrowed or debts incurred;

d. Subject to the terms and provisions of the Article herein entitled "Mortgagee Protection," the right of the Association to dedicate any Common Area or transfer all or any part of the Association Maintenance Areas to any Public Agency, private party, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless: (1) an instrument approving said dedication or transfer is signed by two authorized officers of the Association attesting that Owners representing at least sixty-seven percent (67%) of the voting power of the Association, excluding Declarant, approved such action and is recorded in the Office of the County Recorder, and (2) a written notice of the proposed dedication or transfer is sent to every Owner not less than fifteen (15) days nor more than thirty (30) days in advance; provided, however, that the dedication or transfer of easements for utilities or for other public purposes consistent with the intended use of the Common Property shall not require the prior approval of the Members of the Association;

- e. The right of Declarant and Merchant Builders (and their employees, sales agents, prospective purchasers, customers and representatives) to enter upon the Common Area, for the benefit of Declarant or the Merchant Builders or the Annexation Property, or any combination thereof, to complete the construction of any landscaping or other Improvements to be installed thereon, as well as the right to non-exclusive use of the Common Property and the facilities thereof, without charge, for sales, display, access, ingress, egress, exhibition and occasional special events for promotional purposes, which right Declarant hereby reserves; provided, however, that such use rights shall terminate on the date on which neither Declarant nor any Merchant Builder owns a Lot in the Project and all of the Annexation Property has been added to the Project. Such use shall not unreasonably interfere with the rights of enjoyment of the other Owners as provided herein.
- f. The right of the Association, acting by and through its ACC, to enact uniform and reasonable Architectural Standards, in accordance with the Article herein entitled "Architectural and Landscaping Control";
- g. The right of the Association to fulfill its obligations for maintenance, operation, repair and replacement of all Common Property under its jurisdiction.
- h. The right of the Association to reasonably restrict access to the Common Property;
- i. The right of the Association to perform and exercise its duties and powers as set forth herein;
- j. Other rights of the Association, the ACC, the Board, the Owners and Declarant with respect to the Association Maintenance Areas as may be provided for in this Declaration;
- k. The right of Declarant to grant and transfer easements on, over and across all portions of the Project and the Annexation Property for the development, installation, constructions and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines and drainage facilities, as shown on any recorded subdivision map covering the Project, and as may be reasonably necessary for the proper maintenance, development and conveyance of Lots, Common Area and/or Association Maintenance Areas; and
- l. Any limitations, restrictions or conditions affecting the use, enjoyment or maintenance of the Common Area and/or Association Maintenance Areas imposed by Declarant or Public Agencies, or such other governmental agency having jurisdiction to use their vehicles or appropriate equipment over those portions of the Common Area and/or Association Maintenance Areas designed for vehicular movement to perform municipal functions or emergency or essential public services. Such

limitations, restrictions or conditions affecting the use, enjoyment or maintenance of the Common Area Association Maintenance Areas shall include, without limitation, the County's rights over the Association Maintenance Areas imposed by the County in its approval of the Project.

m. The Association's right, acting through the Board, to reasonably restrict access to slopes and other sensitive landscaped areas, maintenance facilities, open space areas and similar areas of the Common Property. The Association shall have exclusive control over all of the Common Property, subject to the powers and rights of the Public Agencies.

**3.4 Waiver of Use.** No Owner may exempt himself from personal liability for Assessments duly levied by the Association, nor release his Lot or other property owned by him from the liens and charges imposed by the Association by waiver of the use and enjoyment of the Association Maintenance Areas, and any facilities thereon, or by abandonment of his Lot or any other property in the Project.

**3.5 Easements for Utilities.** The rights and duties of the Owners of Lots within the Project with respect to sanitary sewer, water, electricity, gas and telephone lines, cable television (or CATV) lines and other facilities shall be governed by the following:

a. Each respective utility company shall maintain all utility facilities and connections on the Project owned by such utility company; provided, however, that if any company shall fail to do so, it shall be the obligation of each Owner to maintain those facilities and connections located upon such Owner's Lot, and it shall be the obligation of the Association to maintain those facilities and connections located upon the Association Maintenance Areas;

b. Wherever sanitary sewer, water or gas connections, television cables, electricity or telephone lines are installed within the Project, and it becomes necessary to gain access to said connections, cables and/or lines through a Lot owned by someone other than the Owner of the Lot served by said connections, cables and/or lines, the Owner of the Lot served by said connections, cables and/or lines shall have the right, and is hereby granted an easement to the full extent necessary therefor, to enter upon such other Lot or to have the utility companies enter upon such other Lot to repair, replace and generally maintain said connections, cables and/or lines;

c. Whenever sanitary sewer, water or gas connections, television cables, electricity or telephone lines are installed within the Project, and said connections, cables and/or lines serve more than one (1) Lot, the Owner of each Lot served by said connections, cables and/or lines shall be entitled to the full use and enjoyment of such portions of same as service his Lot;

d. In the event of a dispute between Owners respecting the repair or rebuilding of the aforesaid connections, cables and/or lines, or the sharing of the cost thereof, upon written request of one (1) of such Owners addressed to the Association, the matter shall be submitted to the Board who shall decide the dispute, and the decision of the Board shall be final and conclusive on the Owners; and

e. Easements over the Project for the installation and maintenance of electric and telephone lines, water, gas, drainage and sanitary sewer connections and facilities, and television antenna cables and facilities, as shown on the recorded map of the Project or otherwise of record, and as may be hereafter required or needed to serve the Project, are hereby reserved by Declarant, together with the right to grant and transfer the same.

**3.6 Easements for Maintenance of the Association Maintenance Areas.**

In the event it becomes necessary for the Association to enter upon any Lot for purposes of: (a) maintaining the Association Maintenance Areas and Project Walls; or (b) bringing an Owner and/or his/her Lot into compliance with the Declaration, the Association, and its duly authorized agents and employees, shall have the right, after reasonable notice to the Owner and at a reasonable hour of the day, to enter upon such Owner's Lot for the performance of such work. Such entry shall be made with as little inconvenience to the Owner as is practicable, and in the event that any damage shall be proximately caused by such entry, the Association shall repair the same at its expense. Notwithstanding the foregoing, in the event of an emergency, such right of entry shall be immediate.

**3.7 Easements for Drainage.** There are hereby created and reserved over each Lot in the Project easements for drainage according to the patterns for drainage created by the approved grading plans for the Project, as well as according to the actual, natural and existing patterns for drainage. In addition, the approved grading plans make provisions for "cross-lot drainage," whereby water runoff from one (1) or more contiguous Lots might drain across an Owner's Lot. Each Owner covenants and agrees that such Owner shall not obstruct or otherwise interfere with said drainage patterns of waters from adjacent Lots in the Project over such Owner's Lot, or, in the alternative, that in the event it is necessary and essential to alter said drainage pattern for the protection and use of the Lot, such Owner shall submit all plans and specifications therefor to the ACC for prior review and approval. In the event that damage of any nature and kind to the Association Maintenance Areas or any Lot is caused, directly or indirectly, by the actions of an Owner to restrict or alter the drainage patterns of his Lot, such Owner shall bear the sole cost of all such damage. Easements created and reserved herein shall at all times be subject to the Covenants created in this Declaration, and such Architectural Standards and Rules and Regulations as may be adopted, from time to time, by the Board.

**3.8 Easements in Favor of County.** Some or all of the Lots and Association Maintenance Areas in the Project will be subject to permanent nonexclusive easements in favor of the County for the various purposes discussed below, as indicated on the recorded subdivision map for Tract No. 36668. The easements are as follows:

a. A permanent, nonexclusive easement in favor of the County for emergency vehicular ingress and egress purposes, and for maintenance of publicly owned facilities.

b. A permanent, nonexclusive easement for landscape maintenance and related purposes, and for sidewalks affecting Lots 1 through 11, inclusive, and Lots 48 through 57, inclusive, of Tract No. 36668, as shown on the recorded Subdivision Map for said Tract.

c. A permanent, nonexclusive easement for public utility purposes, as shown on the recorded subdivision map for the Tract.

**3.9 Easements in Favor of Southern California Edison.** Certain Lots within the Project shall be subject to permanent, nonexclusive easements in favor of Southern California Edison Company for aboveground and underground conduits or both, as described in instruments recorded in the Official Records of Los Angeles County, and as depicted on the recorded subdivision map for the Tract.

**3.10 Easements for Construction and Sales.** Declarant hereby creates and reserves for itself, and Merchant Builders, and their respective employees, agents, representatives, successors and assigns, until all Lots in the Project and in the Annexation Property are sold (and escrow is closed), nonexclusive easements for ingress, egress and access on, over and across the Common Property and other portions of the Project and the Annexation Property to carry on normal construction and sales activity, including the operation of models, complexes and sales offices, and the display of promotional signs, flags, exhibits and other marketing activities in order to develop, market, sale, lease or otherwise dispose of the Lots in the Project and in the Annexation Property.

**3.11 Easements For Master Antennae And Cable Television.** There are hereby reserved for the benefit of Declarant, and its subsidiaries, transferees, successors and assigns, nonexclusive easements of access, ingress and egress to the Project for purposes of installation, operation, maintenance, repair, inspection, replacement and removal of master antennae, cable television service lines, alarm system cabling and all related facilities and equipment. Such easements shall be freely transferable by Declarant to any other person or entity for the purpose of providing such services. All such master antennae, cable television service lines and alarm system cabling shall remain the property of Declarant, its subsidiaries, transferees, successors and assigns. The exercise of all rights reserved hereunder shall not unreasonably interfere with the reasonable use and enjoyment of the Project. Declarant, or its successors and assigns, shall be responsible for any damage in any way arising out of, or in connection with, the rights and activities reserved hereunder.

**3.12 Project Wall Easements.** Declarant reserves for the benefit of the Association (i) an easement over those portions of the Lots and Common Property located within three (3) feet of the common property line separating Common Property from the Lots for the purpose of accommodating footings and other structural components of any Project Wall located

on or immediately adjacent to such Common Property or boundary line, including any encroachments thereof onto the Lots; and (ii) an easement for access, ingress and egress over the Lots and Common Property as may be reasonably necessary for the maintenance, repair and replacement of such Association Property Walls and related Improvements.

**3.13 Utilities Shown On The Tract Map.** Easements have been created and reserved over all or pertinent portions of the Project, as applicable, for the construction, installation, maintenance, operation, repair and replacement of electric, telephone, cable television, water, gas, sanitary sewer and drainage facilities shown either on the recorded tract map or by instrument recorded in the Office of the County Recorder.

**3.14 Easements For Public Services.** In addition to the foregoing easements over the Lots and the Common Property, Declarant hereby creates, establishes, grants and reserves easements for, including, but not limited to, the right of police, fire, ambulance and other public services and agencies to enter any part of the Project for purposes of serving the health, safety and welfare of all Owners in the Project.

**3.15 Easements For Public Utilities.** Certain Lots on the Project may be subject to permanent, nonexclusive easements for public Utility purposes in favor of the County, as shown on the recorded subdivision map for the Project. The easements are intended to establish the right to install, maintain, inspect, repair and replace as and when necessary, electricity lines, transformers and/or service junction boxes, telephone lines, cable television lines, street light standards, mailboxes, fire hydrants, utilities and other equipment designed to serve the Project.

**3.16 Support, Settlement And Encroachment.** There is hereby reserved to Declarant, together with the right to grant and transfer the same, the following nonexclusive easements for support, settlement and encroachment, as set forth below:

a. An easement appurtenant to each Lot which is contiguous Lot or Common Property, which Lot shall be the dominant tenement and the contiguous Lot or Common Property shall be the servient tenement.

b. An easement appurtenant to the Common Property contiguous to a Lot or other Common Property, which Common Property shall be the dominant tenement and which contiguous Lot or Common Property shall be the servient tenement.

c. Said easements shall be for the purposes of accommodating any unintentional encroachment due to engineering errors, errors in construction, reconstruction, repair, support and for the maintenance thereof. The rights and obligations of Owners of the dominant tenements should not be altered in any way by such support, settlement and encroachment; provided, however, that no right shall be created in favor of an Owner or Owners if such encroachment occurred due to the intentional conduct of said Owner or Owners, other than adjustments by Declarant in the original construction of the Project. In the event that an error in engineering, design or construction results in

an encroachment of an Improvement into the Common Property or into an adjoining Lot, a correcting instrument may be recorded in the Official Records of the County.

**3.17 Title to the Common Property.**

a. Transfer of the Common Property. As each Phase is developed by Declarant or a Merchant Builder, Declarant and such Merchant Builder, as applicable, will convey or cause to be conveyed to the Association, in fee simple or by easement, the Common Property in such Phase designated by Declarant in its sole discretion, free and clear of any and all monetary encumbrances and liens (other than non-delinquent taxes and assessments), subject to reservations, easements, covenants and conditions then of record, including those set forth in this Declaration, or as contained in the deed conveying such Common Property. Within each Phase, such conveyance shall be completed before the first Close of Escrow for a Lot in such Phase. No Owner shall interfere with the exercise by the Association of its rights hereunder, or its easement for maintenance over the Association maintenance areas which are owned in fee by such Owner.

b. Completion of the Common Property. In the event that Improvements proposed to be constructed on any portion of the Common Property have not been completed, as evidenced by a "Notice of Completion" recorded in the Office of the County Recorder, then the completion of such Improvements shall be assured in accordance with Section 11018.5 of the California Business and Professions Code, or any similar statute hereafter enacted.

c. Commencement of Maintenance. Notwithstanding any conveyance of the Common Property to the Association, the Association's responsibility to maintain the Common Property located in any Phase shall begin on the commencement of Regular Assessments in such Phase; except that if such Phase consists only of Common Property, the Association's maintenance responsibility therefor shall commence on the first day of the month immediately following the month in which the deed is recorded conveying such Property to the Association. Prior to the commencement of maintenance by the Association, such maintenance shall be the responsibility of Declarant or the Merchant Builder, as applicable, depending upon whether such Phase is being developed by Declarant or a Merchant Builder. Notwithstanding the foregoing, if the contractors or subcontractors of Declarant or Merchant Builder are contractually obligated to maintain the landscaping or other Improvements on the Common Property, the Association shall not interfere with the performance of any such warranty or contractual maintenance obligations. Such maintenance performed by the contractors or subcontractors of Declarant or Merchant Builders shall not postpone the commencement of Regular Assessments pursuant to this Declaration, nor entitle an Owner to claim any offset or reduction in the amount of such Regular Assessments.

d. Character of Improvements to The Common Property: Disputes. The nature, design, quality and quantity of all Improvements to the Common Property shall be determined by Declarant, in its sole discretion. The Association shall be obligated to



accept title to the Common Property, and undertake all maintenance responsibilities for the Common Property when title is conveyed and maintenance responsibilities are tendered by Declarant, pursuant to Subparagraphs (a) and (c) above. If a dispute arises between the Association and Declarant or any Merchant Builder in connection with the nature, design, quantity, quality or other attributes of the Common Property, the completion thereof, the state of title thereto or the acceptance of title or maintenance responsibility therefor, then the Association shall be obligated to accept title to and assume maintenance responsibility for such Common Property, and all Improvements and facilities located thereon, pending resolution of such dispute in accordance with Section 18.2 herein.

**3.18**     Declarant Easements. Declarant hereby reserves to itself, together with the right to transfer the same to others, easements of access, ingress and egress over all Lots, Common Area and Association Maintenance Areas for installation and maintenance of utilities and drainage facilities shown on one or more of the Tract Maps for the Project and for the construction, installation, operation, replacement, repair and maintenance of all utility and service lines, systems and other devices and Improvements which may be reasonably necessary for the development and marketing of Residences within the Project and the Annexation Property, including, but not limited, water, sewer, gas, electrical, telephone, television and storm drain purposes. Each Owner, by accepting a deed to a Lot in the Project, expressly consents to the foregoing easements and rights of way and authorizes and appoints Declarant (so long as Declarant owns all or any portion of the Project or the Annexation Property) as its and their attorney-in-fact of such Owner to execute any and all instruments particularly describing or locating such easements or rights of way.

## ARTICLE 4

### THE ASSOCIATION

**4.1**     Membership. Every person or entity who is an Owner, as defined in Article I above, including Declarant, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest in a Lot in the Project merely as security for the performance of an obligation. All memberships in the Association shall be appurtenant to the Lot owned by each Member, and memberships in the Association shall not be assignable, except to the person or entity to whom the title to the Lot has been transferred. Ownership of such Lot shall be the sole qualification for membership in the Association. The memberships in the Association shall not be transferred, pledged or alienated in any way, except upon the transfer of title to said Lot, and then only to the purchaser or Mortgagee of such Lot. Any attempt to make a prohibited membership transfer shall be void and will not be reflected in the books of the Association. The Association may levy a reasonable transfer fee against new Owners and their Lots (which fee shall be a Compliance Assessment chargeable to such new Owner) to reimburse the Association for the administrative cost of transferring the memberships to the new Owners on the records of the Association.