

ARTICLE 9
EASEMENTS AND RIGHTS

Section 9.1. Nature of Easements: Unless otherwise set forth herein, all easements reserved to Declarant herein shall be nonexclusive.

Section 9.2. Reservations to Master Declarant: There is hereby reserved to Master Declarant, together with the right to grant and transfer the same:

(a) Oil and Mineral Rights: All oil, oil rights, minerals, mineral rights, natural gas rights, and other hydrocarbons by whatsoever name known, geothermal steam, and all products derived from any of the foregoing, that may be within or under the Property together with the perpetual right of drilling, mining, exploring and operating therefor and storing in and removing the same from said land or any other land, including the right to whipstock or directionally drill and mine from lands other than the Property, oil or gas wells, tunnels and shafts into, through or across the subsurface of the Property and to bottom such whipstocked or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits thereof, and to redrill, retunnel, equip, maintain, repair, deepen and operate any such wells or mines without, however, the right to drill, mine, store, explore and operate through the surface or the upper five hundred (500) feet of the subsurface of the Property.

(b) Cable Television: The right to emplace on, under or across the Property transmission lines and other facilities for a cable television or a community antenna television system and the right to enter upon the Property to service, maintain, repair, reconstruct and replace said lines or facilities;

Section 9.3. Reservations to Declarant: There is hereby reserved to the Declarant, together with the right to grant and transfer same:

(a) Improvements: Easements (i) over the Common Property for the purpose of constructing, erecting, operating and maintaining thereon, therein or thereunder roads, streets, walks, driveways, parkways and park areas, and (ii) over the Property for the installation and maintenance of electric, telephone, cable television, water, gas, irrigation lines, sanitary sewer lines and drainage facilities;

(b) Construction and Sales: Easements for construction, display, maintenance, sales and exhibit

purposes over the Nonexclusive Use Common Area and the Association Property in connection with the erection and sale or lease of Condominiums within the Property provided, however, that such use shall not be for a period beyond (i) five (5) years after conveyance of the Association Property within Phase 1 to the Association, or (ii) the sale by Declarant of all Condominiums within the Development, whichever of (i) or (ii) occurs first;

(c) Utilities Shown on Tract Map: Easements over the Property for the installation and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines and drainage facilities as shown on any recorded final tract or parcel map covering the Property; and

(d) Ingress and Egress: Easements over the private streets within the Property for ingress, egress, use and enjoyment for the benefit of the Annexation Property.

(e) Completing Improvements: Easements over the Common Area and the Association Property for the purpose of completing Improvements required to be made by Declarant provided that access for such purpose is not otherwise reasonably available; and

(f) Repairs: Easements over and upon the Nonexclusive Use Common Area and the Association Property for the purpose of making repairs pursuant to contracts of sale made with Unit purchasers.

The easements reserved to Declarant in this Section shall not unreasonably interfere with the use and enjoyment by the Owners of the Property and any damage, repair or restoration necessitated by any such installation, construction or maintenance shall be completed by Declarant within a reasonable time after the occurrence of such damage or need for restoration.

Declarant's rights to come on the Nonexclusive Use Common Area and the Association Property under this Section shall terminate upon the earlier of (i) the expiration of seven (7) years after conveyance of the Association Property within Phase 1 to the Association, or (ii) the sale by Declarant of all Condominiums within the Development, whichever is first to occur; provided, however, in no event shall Declarant's rights hereunder terminate prior to the exoneration of any Bond in favor of the Association described in the Article entitled "Enforcement of Bonded Obligations" of this Declaration.

Section 9.4. Easements for Owners: There is hereby reserved to Declarant, together with the right to grant and transfer same:

(a) Ingress, Egress and Recreational Rights: Easements for ingress, egress, use and enjoyment (which includes, without limitation, the unrestricted right of ingress and egress to such Owner's Residence) on and upon the Nonexclusive Use Common Area and the Association Property. Such easement shall be appurtenant to each Condominium within the Property;

(b) Access for Maintaining Telephone Wiring: Easement for reasonable access over the Common Area for the purpose of maintaining the internal and external telephone wiring servicing such Owner's Residence; and

(c) Exclusive Use Common Area Easement: Easements over the Exclusive Use Common Area appurtenant to such Unit. These may include any or all of the following:

(i) Concrete pads constructed for the purpose of providing a location and support for air conditioning units for the individual Units as actually constructed and located within the Project or as dimensioned in the Condominium Plan and designated upon the Condominium Plan by the letters "AC" and the Unit number to which they are assigned.

(ii) Separately designated decks designated upon the Condominium Plan by the letter "D" and the Unit number to which they are assigned.

(iii) Separately designated patio spaces designated upon the Condominium Plan by the letter "P", and the Unit number to which they are assigned.

(iv) Any internal and external telephone wiring designed to serve a single Unit, but located outside the boundaries of such Unit.

The easement of enjoyment over the Common Area granted to Owners in this Section shall not apply to those portions of the Common Area designated as Exclusive Use Common Area.

These rights shall be subject to control and management by the Association as more particularly provided in the Association Management Documents.

Such easements when granted to Owners shall be subject to all of the easements, covenants, conditions, restrictions and other provisions contained in the Association Management Documents, including the prior rights of the Association.

Section 9.5. Easements for Association: There is hereby reserved to Declarant, together with the right to grant and transfer the same to the Association with the right of the Association to grant and transfer same, easements over the Property for the purpose of permitting the Association to (i) grant utility easements under, through or across Condominium Common Area other than Exclusive Use Common Area which are reasonably necessary to the ongoing development and operation of the Property, (ii) perform emergency repairs or to do other work reasonably necessary for the proper maintenance of the Property, and (iii) discharge any other obligations and powers as described in the Association Management Documents including without limitation a right of entry for such purpose as provided in the Bylaws.

Any damage to Improvements upon the Property resulting from the exercise of any of the easement rights granted pursuant to this Section shall be repaired by the entity exercising such rights within a reasonable time after the occurrence of such damage unless otherwise specified in the document by which such easement was conveyed.

Section 9.6. Support, Settlement and Encroachment: There is hereby reserved to Declarant, together with the right to grant and transfer the same, the following reciprocal easements for the purposes set forth below:

(a) an easement appurtenant to each Residence which is contiguous to another Residence or Common Property which Residence shall be the dominant tenement and the contiguous Residence or Common Property shall be the servient tenement; and

(b) an easement appurtenant to the Common Property contiguous to a Residence or other Common Property, which Common Property shall be the dominant tenement and which contiguous Residence or Common Property shall be the servient tenement.

Said easements shall be for the purposes of:

(a) engineering errors, errors in construction, reconstruction, repair, support, and accommodation of the natural settlement or shifting of any portion of the Improvements and for the maintenance thereof;

(b) minor encroachments by reason of a roof or eave overhang and for the maintenance of such roof or

eave overhang by the owner of the dominant tenement for as long as such encroachments exist; and

(c) encroachment of fireplaces, doorsteps, foundations, footings, garage doors, utilities and other appurtenances or fixtures and the maintenance thereof by the owner of the dominant tenement, which, in the construction of the structures upon the dominant tenement or from any reconstruction or modifications of such structures, project beyond the external surface of the outer walls of such structures.

The rights and obligations of owners of the dominant tenements shall not be altered in any way by said encroachments, settlement or shifting provided, however, that in no event shall an easement for encroachment be created in favor of an owner of the dominant tenement if said encroachment occurred due to the willful misconduct of any such owner. In the event any portion of a structure on the Property is partially or totally destroyed and then repaired or rebuilt, each such owner agrees that minor encroachments over adjoining Residences or Common Property shall be easements for the maintenance of said encroachments as long as they shall exist.

Section 9.7. Utilities and Cable Television:

Wherever sanitary sewer house connections, water house connections, air conditioning connections or ducts, electricity, gas, telephone and cable television lines or drainage facilities are installed within the Property, the Association or any Owner as the owner of any property served by said connections, lines or facilities shall have the right, and there is hereby reserved to Declarant, together with the right to grant and transfer the same to any such owner, an easement to the full extent necessary for the full use and enjoyment of such portion of such connections which service such owner's property, and to enter, or have utility or cable television companies enter upon any portion of the Property including without limitation, upon the Residences in or upon which said connections, lines or facilities or any portion thereof lie, to repair, replace and generally maintain said connections, lines and facilities as and when the same may be necessary, provided that any damage caused by such entry shall be repaired by such owner, utility or cable television company as promptly as possible after completion of work thereon.

Section 9.8. Additional Exclusive Use Common Areas:

There is hereby reserved to Declarant, together with the right to grant and transfer same, easements over the Common Area, or any portion thereof, for the exclusive use by an Owner or Owners of contiguous property as a yard, recreational, gardening, and/or landscaping area, and for minor encroachment of any Improvements thereon and the repair and

maintenance thereof. Any such easement when conveyed shall be deemed to be Exclusive Use Common Area (notwithstanding that all or a portion thereof may be located on Association Property) to the same extent as if so described in this Declaration or on a Condominium Plan. Such easement shall not be effective unless approved by the Board. The Board shall approve any such easement if it has determined that it would be in the best interests of the Association and the remaining Owners to create such Exclusive Use Common Areas for the benefit of any particular Owner or Owners of any such contiguous property. For example and without limitation, it would be beneficial to the Association and the remaining Owners to transfer the burden of management and maintenance of any property which in the reasonable judgment of the Board is generally inaccessible to the remaining Owners or is not likely to be used by the remaining Owners. Upon conveyance, such Exclusive Use Common Area shall be appurtenant to the property of the Owner who has the exclusive use thereof. Such easement may contain modifications of the covenants, conditions and restrictions as they pertain to such easement area and shall also be subject to any additional terms, conditions and restrictions that may be imposed by the Board.

Section 9.9. Public Bicycle and Pedestrian Trails:

There is hereby reserved to Declarant, together with the right to grant and transfer the same, an easement for public ingress and egress over any bicycle, pedestrian, equestrian or other trails shown on any recorded final tract or parcel map covering the Property. The reservation of this easement shall not imply any right of public use of the Property or Improvements.

Section 9.10. Subordination:

Except as may be otherwise provided in the grant or dedication of an easement, any easement conveyed in favor of a public authority shall be prior and superior to all other easements described herein, and any easement conveyed pursuant to the provisions of this Article to a utility company shall be prior and superior to all other easements described herein except any easement in favor of a public authority. Grantor and any grantee by acceptance of a conveyance of any easement described in this Declaration, whether or not so stated in such conveyance document, agree that such easement shall be subordinate to any such prior and superior easements and further agree to execute any document acknowledging such subordination that may be required by the holder of any such prior easement.

Section 9.11. Delegation of Use:

Any Owner may delegate his right of enjoyment to the Nonexclusive Use Common Area and Association Property to the members of his family or his tenants who reside on his Residence or to a vendee under a land sales contract subject to the rules and regulations adopted by the Board. 'In the event and for so long as

an Owner delegates said rights of enjoyment to his tenants, or a vendee said Owner shall not be entitled to the use and enjoyment of any facilities or equipment belonging to or controlled by the Association for the use and enjoyment of its Members.

Section 9.12. Waiver of Use: No Owner may exempt himself from personal liability for Assessments duly levied by the Association, or release the Condominium owned by him from the liens, charges and other provisions of the Association Management Documents by waiver of the use and enjoyment of the Nonexclusive Use Common Area and Association Property or the abandonment of his Condominium.

ARTICLE 10 USE RESTRICTIONS

Section 10.1. Commercial Use: Subject to the subsection entitled "Construction and Sales" of the Section entitled "Reservations to Declarant" of the Article entitled "Easements and Rights" of this Declaration, no part of a Residence shall be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any non-residential purposes except that a Residence may be used for business, commercial, manufacturing, mercantile, storing, vending, or similar nonresidential purposes provided that the existence of such nonresidential activity is not apparent or detectable by sight, sound or smell from the exterior of a Residence and such nonresidential activity does not generate an unreasonable amount of traffic or unreasonably limit parking for other Owners and their guests, employees, or agents.

Section 10.2. Signs: No sign or billboard of any kind shall be displayed to the public view on any portion of the Property except (i) such signs as may be used by Declarant or its sales agents in connection with the development of the Property and sale of the Condominiums, and (ii) signs installed or displayed by the Association; provided, however, that an Owner may display on his Residence a sign advertising the sale or lease of his Condominium so long as such sign shall comply with any customary and reasonable standards promulgated by the Board as to the size, color, shape or other qualification for permitted signs. The Declarant shall repair any damage to or complete any restoration of the Property caused or necessitated by the display of signs by Declarant or its sales agents within a reasonable time after the occurrence of such damage or need for restoration.

In accordance with Article 9 hereof, Declarant's right to display signs under this Section shall terminate upon the earlier of (i) the expiration of seven (7) years after con-