

voting power of the Membership has been recorded, agreeing to such dedication or transfer. The certificate of the President and the Secretary of the Association attached to such instrument certifying that the Members signing such instrument represent two-thirds (2/3) of the voting power of the Association shall be deemed conclusive proof thereof;

(f) the right of the Association to establish, in cooperation with the County (or other appropriate governmental authority), a special tax assessment district for the performance of all or a portion of the maintenance and other functions now within the responsibility of the Association, together with the right of the Association to convey, lease or otherwise transfer, subject to the provisions of this Section, all or any portion of the Common Areas to said District; and

(g) the rights of Declarant set forth herein.

12.2 Delegation of Use. Any Member may delegate such Member's right of enjoyment to the Common Areas to the members of such Member's family or such Member's tenants who reside on such Member's Lot, or to such Member's guests, subject to this Declaration and to the Association Rules. In the event and for so long as an Owner delegates said rights of enjoyment to such Owner's tenants, said Owner shall not be entitled to said rights. Owner shall indemnify and hold harmless the Association for any claims, losses, liabilities, costs and expenses (including reasonable attorneys' fees and costs) suffered by the Owner's delegate pursuant to this Section.

12.3 Waiver of Use. No Member may exempt himself from personal liability for Assessments duly levied by the Association, nor release the Lot owned by them from the liens, charges or other provisions of this Declaration, the Articles, Bylaws and Association Rules, by waiver of the use and enjoyment of the Common Areas, or the abandonment of such Member's Lot.

ARTICLE XIII EASEMENTS

13.1 Amendment to Eliminate Easements. This Declaration cannot be amended to modify or eliminate the easements reserved to Declarant without prior written approval of Declarant and any attempt to do so shall have no effect. Any attempt to modify or eliminate this Section shall likewise require the prior written approval of Declarant.

13.2 Nature of Easements. Unless otherwise set forth herein, any easement reserved to Declarant herein shall be nonexclusive.

13.3 Certain Rights and Easements Reserved to Declarant.

(a) **Utilities.** Easements over the Covered Property for the installation and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines and drainage facilities as are needed to service the Covered Property are hereby reserved by Declarant, together with the right to grant and transfer the same; *provided, however,* such easements shall not unreasonably interfere with the use and enjoyment by the Members of their Lots or the Common Areas.

(b) **Cable Television.** There is hereby reserved to Declarant over the Covered Property, together with the right to grant and transfer the same, the right to place on, under

or across the Covered Property, transmission lines and other facilities for a community antenna television system or similar television system as technological changes may permit, and thereafter to own and convey such lines and facilities and the right to enter upon the Covered Property to service, maintain, repair, reconstruct and replace said lines or facilities; *provided, however*, the exercise of such rights shall not unreasonably interfere with any Owner's reasonable use and enjoyment of his Lot.

(c) Water Rights. There is hereby reserved to Declarant with the full right and power, among others, to transfer or assign to others or to use or utilize on any other property owned or leased by Declarant, any and all water rights or interests in water rights no matter how acquired by Declarant, and owned or used by Declarant in connection with or with respect to the Covered Property, whether such water rights shall be riparian, overlying, appropriative, percolating, prescriptive or contractual, *provided, however*, the reservation made herein shall not reserve to or for the benefit of Declarant any right to enter upon the surface of the Covered Property in the exercise of such rights.

(d) Drainage Easements. There is hereby reserved to Declarant, together with the right to grant and transfer same, easements in and over portions of Lots for the purpose of the installation and placement of drainage devices in order to drain water from Lots, including roofs of Lots and/or Common Areas. No Owner shall interfere with the operation of such drainage devices.

(e) Construction and Sales. For a period of time extending until all Improvements have been completed within the Covered Property, a non-exclusive easement in, over, under and through the Covered Property is hereby reserved to Declarant, together with the right to grant and transfer same to Declarant's sales agents and representatives for ingress and egress and for the purpose of: (1) completing the development of the Covered Property, including without limitation the transportation of development and construction related materials over the private streets, constructing, maintaining, retaining and relocating all Improvements on the Covered Property now or hereafter planned to be constructed on the Covered Property by Declarant, or required to be constructed on the Covered Property by any municipal or governmental agency; (2) marketing, leasing, selling and re-selling the Lots therein; and (3) customer relations and providing post-sale customer service to Owners; and in connection with such easement the right, but not the obligation: (a) to perform any and all architectural, engineering, grading, construction, excavation, landscaping and related work and activities; (b) to erect, maintain and relocate upon the Covered Property storage buildings, storage areas, temporary sewage disposal facilities, water wells and other related facilities; (c) to store and use materials, equipment, vehicles, tools and machines which may be necessary or desirable in connection with such construction; (d) to display signs and erect, maintain and operate, for sales, resales, and administrative purposes, a fully staffed customer relations, customer service, sales, and resales office complex on the Covered Property; (e) to show the Covered Property, unsold Lots and any Lots which are offered for resale to, and to arrange for the use of the Common Areas by, prospective purchasers, (f) to perform maintenance, repair and replacement work on, and to make custom improvements, alterations and additions to improvements, and (g) to construct improvements on any Lots or Common Areas. No such activities shall be deemed to be a nuisance. No Owner (other than a Developer Party) shall enter any construction area or cross any fence or other barricade constructed to prevent such entry or otherwise impede or interfere with such development and construction.

(f) General Use and Enjoyment. There is hereby reserved to Declarant, together with the right to grant and transfer same, easements in, on, over and across all Common

Areas, Special Maintenance Areas, and District Areas as necessary or appropriate for the completion, use, and enjoyment of the Development.

13.4 Certain Easements for Owners.

(a) Rights and Duties: Utilities and Cable Television. Wherever sanitary sewer house connections, water house connections, electricity, gas, telephone and cable television lines or drainage facilities are installed within the Covered Property, the Owners of any Lot 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 Owners an easement to the full extent necessary for the full use and enjoyment of such portion of such connections which service his Lot, and to enter upon the Lots owned by others, or to have utility companies enter upon the Lots owned by others, in or upon which said connections, lines or facilities, or any portion thereof lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below, provided that such Owner or utility company shall promptly repair any damage to a Lot caused by such entry as promptly as possible after completion of work thereon.

(b) Ingress, Egress and Recreational Rights. Declarant hereby reserves to itself, its successors and assigns, and hereby grants to all Owners nonexclusive easements for ingress, egress, pedestrian walkway and general recreational purposes over and upon the Common Areas, Special Maintenance Areas, and District Areas. Such easements shall be subject to the rights of the Association as set forth in the Article hereof entitled "*Rights of Enjoyment.*"

(c) Solar Easements. There is hereby reserved to Declarant, for the benefit of each and every Owner of a Lot, a solar easement in and through all air space over the Covered Property for the purpose of preserving access to natural sunlight for any solar energy collector which is originally constructed by Declarant. No Owner of a Lot, or person in control of a Lot, shall allow a tree or shrub to be placed, or if placed, to grow on such property, subsequent to the installation of a solar collector on the property of another so as to cast a shadow greater than ten percent (10%) of the collector absorption area upon that solar collector on the Lot of another at any one time between the hours of 10:00 a.m. and 2:00 p.m., provided that this Section shall not apply to specific trees and shrubs which at the time of installation of a solar collector or during the remainder of that annual solar cycle cast a shadow upon that solar collector. Notwithstanding any other provisions of this Declaration, no structure, vegetation or land use shall penetrate the air space which is subject to the solar easement, unless express written permission is obtained from (1) the Board and (2) all Owners of Lots adjoining the Lot containing such structure or vegetation, or subject to such land use. This easement shall not preclude utility lines, antennae, wires and poles that are not otherwise prohibited by this Declaration, which penetrate the airspace covered by this solar easement.

(d) Corrections. Throughout the Development, it is anticipated that over the course of time certain properties may be sold which contain errors in descriptions and/or actual use exceeds boundary lines. To accommodate such situations, Declarant hereby reserves easements over the Common Areas to allow for encroachment, and easements over Lots solely for corrective purposes.

13.5 Certain Easements for Association.

(a) **Association Rights.** There is hereby reserved to Declarant easements over the Covered Property, which easements are hereby granted to the Association, for the purpose of permitting the Association to discharge its obligations and powers as described in this Declaration.

(b) **Rights and Duties: Utilities and Cable Television.** Wherever sanitary sewer house connections, water house connections, electricity, gas, telephone and cable television lines or drainage facilities are installed within the Covered Property, and said connections, lines or facilities serve the Common Areas, the Association shall have the right and there is hereby reserved to Declarant, together with the right to grant and transfer the same to the Association an easement to the full extent necessary for the full use and enjoyment of such portion of such connections which service the Common Areas and to enter upon the Lots owned by others, or to have utility companies enter upon the Lots owned by others, in or upon which said connections, lines or facilities, or any portion thereof lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below, provided the Association or utility company shall promptly repair any damage to a Lot caused by such entry as promptly as possible after completion of work thereon.

13.6 Certain Easements for Districts and Other Government Agencies. There is hereby reserved to Declarant easements over the Covered Property which easements may hereafter be granted to a District or any applicable Government Agency, for the purpose of permitting such District or Government Agency to discharge its obligations and powers as described in this Declaration or otherwise with respect to District Areas or Dedication Areas, as applicable.

13.7 Support, Settlement and Encroachment. There is hereby reserved to Declarant and its assigns the following reciprocal easements, which easements are hereby granted to the Owners, for the purposes set forth below:

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

(b) an easement appurtenant to the Common Areas contiguous to a Lot, which Common Areas shall be the dominant tenement and which contiguous Lot shall be the servient tenement;

(c) it is *provided, however*, that in the event Common Areas are the dominant tenement in an easement described in this Section, Declarant shall have the right to transfer said easement to the Association and not to Owners;

(d) said easements shall be for the purposes of:

(i) engineering errors, errors in original construction and support and accommodation of the natural settlement or shifting of structures;

(ii) encroachment by reason of a roof or eave overhang from a Lot and for the maintenance of such roof or eave overhang by the Owner of the dominant tenement; and

(iii) encroachment of fireplaces, chimneys, doorsteps, foundation 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.

13.8 Right to Grant and Transfer Easements. All or any part of each easement reserved to Declarant herein may be granted or transferred by Declarant to an Owner, the Association, a District, a Government Agency, or any other party.

13.9 Neighbors. Notwithstanding any other provisions herein, Declarant shall have the unilateral right to grant easements over, and/or other rights concerning, the Common Areas, to owners of properties adjacent to the Development, including, without limitation, to use streets, roadways, or infrastructure, and/or to accommodate the provisions of agreements of record between Declarant and neighboring owners. Nothing herein is intended or shall be applied to reduce or materially affect any Owner's use or enjoyment of such Owner's Lot.

ARTICLE XIV **INTEGRATED NATURE OF THE COVERED PROPERTY**

The Annexation Property and/or any other real property may be annexed to and become subject to this Declaration by any of the methods set forth hereinafter in this Article, as follows:

14.1 Development of the Covered Property. Declarant intends to sequentially develop the Annexation Property on a phased basis; *provided, however*, Declarant may elect not to develop all or any part of such real property, to annex such real property to this Declaration in increments of any size whatsoever, or to develop more than one such increment at any given time and in any given order. Moreover, Declarant reserves the right to subject all or any portion of the Annexation Property to the plan of this Declaration or one or more separate declarations of covenants, conditions and restrictions which subjects said property to the jurisdiction and powers of a homeowners association or other entity with powers and obligations similar to the Association and which is not subject to the provisions of this Declaration. Although Declarant shall have the ability to annex the Annexation Property as provided in this Article, Declarant shall not be obligated to annex all or any portion of such property, and such property shall not become subject to this Declaration unless and until a Supplemental Declaration shall have been so executed and recorded. The Owners of any property annexed to this Declaration shall have the right to the same access, use, and enjoyment of the Common Areas, including all easement rights thereto, as if such annexed property was part of the Initial Property. Notwithstanding any other provision herein, Declarant shall have the unilateral right to annex neighboring properties into this Declaration and/or establish reciprocal easements and/or other rights for such properties and the owners thereof. Nothing herein is intended or shall be applied to reduce or materially affect any Owner's use or enjoyment of such Owner's Lot.

14.2 Supplemental Declarations. A Supplemental Declaration shall be a writing in recordable form which annexes real property to the plan of this Declaration and which incorporates by reference some or all of the covenants, conditions, restrictions, easements and other provisions of this Declaration and shall contain such other provisions as set forth in this Declaration relating to Supplemental Declarations. Such Supplemental Declarations contemplated above may contain such complementary additions and modifications of the covenants, conditions and restrictions contained