



- a. The right of the Association to reasonably limit the number of guests of Owners using the Association Property and facilities thereon;
- b. The right of the Association to establish and enforce reasonable Rules and Regulations pertaining to the use of the Association Property;
- c. The right of the Association, in accordance with its Articles, By-Laws and this Declaration, to borrow money with the assent of sixty-seven percent (67%) of the voting power of the Association, excluding Declarant and any Merchant Builders, and/or 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, for the purpose of improving or repairing the Association Property and related facilities;
- d. The right of the Association to suspend the voting rights and rights and easements of any Member, (and the persons depriving such rights and easements from any Member) to use and enjoy any recreational amenities, if any, on the Association Property for the 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 noncontinuing violation of this Declaration or Rules and Regulations, it being understood that any suspension for either nonpayment of any Assessments or breach of such Rules shall not constitute a waiver or discharge of the Member's obligations to pay Assessments as provided herein;
- e. Subject to the terms and provisions of the Article herein entitled "Mortgagee Protection," the right of the Association to dedicate or transfer all or any part of the Association Property 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 Association Property shall not require the prior approval of the Members of the Association;
- f. The right of Declarant and Merchant Builders (and their respective sales agents, representatives, customers and prospective purchasers) to the nonexclusive use of the Association Property and facilities thereon without charge for sales, display access and exhibit purposes related to selling, marketing, showing and otherwise disposing of Lots in the Project, which right Declarant hereby reserves. Such use shall not unreasonably interfere with the rights of enjoyment of other Owners as provided herein;

g. The right of the Association, acting by and through its Architectural Control Committee, to enact uniform and reasonable Architectural Standards (as described in the Article herein entitled "Architectural Control");

h. The right of Declarant and Merchant Builders to designate additional Association Property pursuant to the terms of the Article herein entitled "Annexation of Additional Property;"

i. The right of Declarant and Merchant Builders to exercise all rights and reservations of rights set forth in this Declaration.

j. The right of the Association to perform and exercise its duties and powers as set forth herein;

k. Other rights of the Association, the Architectural Control Committee, the Board, the Owners and Declarant with respect to the Association Property as may be provided for in this Declaration;

l. The right of Declarant and Merchant Builders to grant and transfer easements on, over and across all portions of the Project and the Annexation Property for the development, installation, construction 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 and/or Association Property; and

m. Any limitations, restrictions or conditions affecting the use, enjoyment or maintenance of the Association Property imposed by Declarant or by the City, or other governmental agency having jurisdiction to impose any such limitations, restrictions or conditions, including, but not limited to, the rights of the City or such other governmental agency having jurisdiction to use their vehicles or appropriate equipment over those portions of the Association Property designed for vehicular movement to perform municipal functions or emergency or essential public services.

**3.4 Delegation of Association Property Use Rights.** Any Owner who resides within the Project may delegate his rights of use and enjoyment to the Association Property to the members of his immediate family and any other persons residing within his Residence. In the event an Owner has rented or leased his Residence, his rights of use and enjoyment to the Association Property shall be automatically delegated to his tenants or lessees for the duration of their tenancy, and the Owner shall forfeit any rights of use and enjoyment to the Association Property (except those portions reasonably necessary to access said Owner's Lot to perform normal functions of a landlord) for the duration of such tenancy. With respect to an installment land sales contract, the seller under the contract shall be deemed to have delegated his rights of use and enjoyment to the Association Property to the purchaser under the contract.

3.5 Easements For Public Utilities. All Lots in the Project shall be subject to permanent, nonexclusive easements for public utility purposes in favor of the City. Such easements shall extend approximately five feet (5') into the Lot, as measured from the right-of-way, and are shown on the recorded subdivision map for Tract 13601. The easements are intended to establish the right to install, maintain, inspect, repair and replace, as necessary, electricity lines, transformers and/or service junction boxes, telephone lines, cable television lines, street light standards, mailboxes, fire hydrants, utility meters or other equipment designed to serve the Project.

3.6 Easements For Public Services. In addition to the foregoing easements over the Association Property, there are hereby created, established and granted easements for public services, including, but not limited to, the right of police, fire, ambulance and other public services to enter upon any part of the Association Property for purposes of serving the health and welfare of all Owners in the Project.

3.7 Easements For Utilities. The rights and duties of the Owners of Lots within the Project with respect to sanitary sewer, water, electricity, gas, television cable (or CATV service) and telephone 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 Property;
- 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. In the event that any damage shall be proximately caused by such entry, said Owner or utility company shall repair the same at its respective expense;
- 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;

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, all as shown on the recorded map of the Project and as may be hereafter required or needed to service the Project, are hereby reserved by Declarant, together with the right to grant and transfer the same; and

f. Each Lot is granted to an Owner subject to easements for utility installation and maintenance, storm drains and other purposes, as shown on the recorded subdivision map for the Project. Any installation or construction of landscaping or structures within said easement areas may be done only in accordance with the terms, conditions and provisions of said easements.

3.8 Easements Over Association Property. Declarant hereby expressly reserves for the benefit of the Association, acting through its Board, an easement on, over, across and through the Association Property (including, without limitation, any Association Property located outside the boundaries of the Project) for inspection, maintenance, repair and replacement of Improvements for which the Association is responsible. Such easement shall include the right to enter a Lot to inspect, repair and maintain any portion of the Association Property. Subject to the procedures described in the Article herein entitled "Architectural Control," no Owner shall interfere with the exercise by the Association of its rights pursuant to the easement described herein. No Owner shall alter or remove any Improvements within the Association Property.

3.9 Easements For Maintenance of Debris Basins. All property in the Project and the Annexation Property, including all Association Property, Lots and rights-of-way, shall be subject to permanent, nonexclusive easements in favor of the City for the purpose of allowing City vehicles to inspect and maintain the drainage and debris basins both within and without the Project. Declarant and the Association hereby covenant to indemnify, protect and defend the City and its elected and appointed officers, employees and agents, and hold them free and harmless from any claim, demand or judgment for personal injury, wrongful death and/or property damage arising out of the City's inspection and maintenance of the drainage and debris basins, including damage to the rights-of-way from wear and tear caused by City vehicles which are in excess of the weight that such public rights-of-way are built to sustain.

3.10 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 the event the approved grading plans make provisions for "cross drainage," whereby water runoff from one (1) or more contiguous Lots drains across another Owner's Lot, all Lots affected by such "cross-Lot drainage" shall be noted on the approved grading plans and on "as-built" plans on file in the principal office of the Association. Each Owner covenants and agrees that he shall not obstruct or otherwise interfere with said drainage patterns of waters from adjacent Lots or Association Property in the Project over his

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 his Lot, such Owner shall make provision to preserve proper drainage according to the approved grading plans for the Project. Easements created and reserved herein shall at all times be subject to the Protective Covenants created in this Declaration, and such Rules and Regulations as may be adopted, from time to time, by the Board.

**3.11 Easements For Master Antennae, Cable Television and Alarm System Cabling.** There are hereby reserved for the benefit of Declarant and any Merchant Builder, and its 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 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 or Merchant Builders, or their 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 the respective Merchant Builder, or their 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 Easements For Maintenance of the Association Property.** There is hereby created, granted and reserved a nonexclusive easement in favor of the Association for ingress, egress and access on, over and across all portions of the Project as reasonably required by the Association to perform its maintenance obligations set forth in this Declaration. In the event it becomes necessary for the Association to enter upon any Lot for purposes of: (a) maintaining the Association Property; or (b) bringing an Owner and/or his Lot into compliance with this Declaration, in accordance with the provisions set forth herein, 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, no notice of entry is required for maintenance purposes of the Association Property in the Project in the event of an emergency.

**3.13 Easements For Clustered Mailboxes.** In order to comply with the various requirements of the City and the United States Postal Service, kiosk-style mailboxes may be installed on certain Lots within the Project. Easements are hereby created on and over the affected Lots in favor of all Owners and the United States Postal Service for delivery and deposit of mail, and for reasonable access to and from such mailboxes.

**3.14 Easements Over Sidewalks.** Declarant hereby covenants for itself, and its successors and assigns, that each and every Owner, his tenants and invitees, shall have appurtenant nonexclusive reciprocal easements on, over and across all sidewalks located on portions of Lots, if any, immediately adjacent to streets within the Project for pedestrian access, use and enjoyment.

3.15 Public Bicycle and Pedestrian Trails. There is hereby reserved to Declarant, together with the right to grant and convey the same, an easement for public ingress and egress over any bicycle, pedestrian, equestrian or other trails depicted on the recorded final map of Tract 13601 or other instrument of record. The reservation of this easement shall not imply any right of public use of the Association Property or Improvements thereon.

3.16 Reservation of Construction Rights. In order that the Project be completed and established as a planned residential community, nothing in this Declaration shall limit the right of Declarant or Merchant Builders to: (a) complete construction of any Improvements in the Project; (b) redesign or otherwise modify the Improvements owned by Declarant or Merchant Builders; (c) construct such additional Improvements on any portion of the Project owned by Declarant or Merchant Builders; or (d) otherwise control all aspects of designing the Project or selling or leasing of Lots in the Project. Furthermore, nothing in this Declaration shall limit the right of Declarant to establish additional licenses, easements and rights-of-way in favor of Declarant, utility companies or others as may, from time to time, be reasonably necessary for the development of the Project. The foregoing rights established and reserved by Declarant shall be subject only to the applicable regulations and requirements of the City, the County, the VA/FHA and the DRE. The foregoing rights may be assigned to any successor to all or part of Declarant's or a Merchant Builder's interest in the Project by an express assignment recorded with the County Recorder. Such rights shall terminate at such time as Declarant or any Merchant Builder no longer owns a Lot in the Project or within the Annexation Property.

3.17 Title to the Association Property.

a. Transfer of Title to Association Property. Declarant hereby covenants, for itself, its successors and assigns, that it will convey to the Association fee simple title to, or a nonexclusive easement in, the Association Property, free and clear of all liens and encumbrances, subject to the Protective Covenants set forth in this Declaration or which are of record at the time of the conveyance. Declarant will similarly convey to the Association, from time to time, in fee simple or by easement, any Association Property located in the Annexation Property which is designated in this Declaration or in any Notice of Annexation for conveyance to the Association.

b. Completion of Association Property. In the event that Improvements proposed to be constructed on any portion of the Association Property so annexed to the Project 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 successor.

c. Commencement of Association Responsibilities. The Association's responsibility to maintain the Association Property conveyed to the Association shall commence concurrently with the commencement of Regular Assessments in such Phase. The Association shall not interfere with the performance of any warranty or other contractual maintenance obligations which the contractor or subcontractors of Declarant or Merchant Builders may be bound to perform. Notwith-

standing the foregoing, maintenance performed by such contractors or subcontractors of Declarant or any Merchant Builder shall not serve to 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 Association Property. The nature, design, quality and quantity of all Improvements to the Association Property shall be determined by Declarant, in its sole discretion. The Association shall be obligated to accept title to the Association Property and undertake all maintenance responsibilities for the Association Property when title is conveyed and maintenance responsibilities are tendered by Declarant, pursuant to Subparagraphs (a) and (c) above.

e. Disputes. In the event that a dispute arises between Declarant and the Association with respect to the nature, design, quality or quantity of the Improvements, or the acceptance of maintenance responsibilities therefor, resolution of the dispute shall be accomplished in accordance with the procedures for resolution of disputes set forth in Article 19 below.

3.18 Reservation of Association Property Easements. Declarant hereby reserves the right to grant nonexclusive easements over the Association Property in favor of Merchant Builders and the Owners of any Annexation Property which is annexed to the Project pursuant to this Declaration, and, upon the recordation of a Notice of Annexation affecting the Annexation Property, the Owners described in this Declaration shall automatically obtain nonexclusive easements over all Association Property which is a part of said Annexation Property.

## ARTICLE 4

### THE ASSOCIATION

4.1 Membership. Every person or entity who or which is an Owner (including Declarant and Merchant Builders) 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.

4.2 Classes of Membership. The Association shall have two (2) classes of voting membership, as follows: