

12. Easements.

12.1 Easement for Settlement. None of the rights and obligations of the OWNERS created herein or by the various deeds creating ownership of the UNITS shall be altered in any way by encroachments due to settlement or

373

539

AUG 29 1973

shifting of a building or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, provided, that in no event shall a valid easement for encroachment be created in favor of any OWNER or OWNERS if said encroachment occurs due to the willful conduct of said OWNER or OWNERS.

12.2 Easements for Ingress and Egress and Other Purposes.

(a) There shall be nonexclusive easements appurtenant to each UNIT for ingress and egress to and from every other UNIT located in the same PHASE in, over and through the COMMON AREAS in said PHASE, and easements for support, maintenance and encroachment as specified herein or by law.

(b) There shall be nonexclusive easements appurtenant to each UNIT for ingress and egress to and from, and for the use and enjoyment of, the ASSOCIATION PROPERTY over and through the COMMON AREAS located in the PHASE in which said UNIT is located and over and through the ASSOCIATION PROPERTY. These easements shall be created automatically and without further documentation upon the creation or designation of ASSOCIATION PROPERTY (whether ASSOCIATION PROPERTY is created pursuant to the recordation of a Declaration of Annexation or by separate grant to the ASSOCIATION) and shall be maintained by the ASSOCIATION in accordance with the terms of this Declaration.

T. 1.

AUG 29 1973

519

AUG 29 1973

12.3 The BOARD may, in its discretion, establish by rule certain areas within the COMMON AREAS and the ASSOCIATION PROPERTY which shall be used exclusively by the OWNERS of the UNITS designated in such rule or rules for the purpose of providing exclusive parking, garage and storage spaces for such OWNERS and for the purpose of limiting access to hallways, patio areas, corridors, entrance lobbies and the like solely to OWNERS owning UNITS within the structures in the PROJECT in which such hallways and the like are located. In addition, the BOARD may grant OWNERS whose UNITS are located in one PHASE the right to parking, garage and storage space physically located in another PHASE, together with reasonable access thereto; provided, that no OWNER may receive parking, storage or garage privileges in a PHASE other than the PHASE in which his UNIT is located unless all the OWNERS owning UNITS in the former PHASE have first received equal privileges in such PHASE. The BOARD shall also have the power to grant and maintain in, over and under the COMMON AREAS and the ASSOCIATION PROPERTY appropriate easements to public utilities and for other purposes where such easements benefit all or a portion of the UNITS, the COMMON AREAS or the ASSOCIATION PROPERTY.

12.4 Declarant hereby reserves from the COMMON AREAS shown on the PLAN attached hereto as Exhibit "D" a non-exclusive easement appurtenant to the Additional Property over and across that portion of said COMMON AREAS described in Exhibit "H" attached hereto. Said easement is for ingress,

AUG 29 1973

519

AUG 29 1973

egress and driveway purposes to and from the Additional Property, benefits all the Additional Property and may be used by Declarant, its successors and assigns, and any owner of the Additional Property. This reservation of easement shall expire and be of no further force and effect without further documentation after seven (7) years from the date hereof should Declarant, its successors or assigns not annex all or a portion of the Additional Property to the PROJECT within said period.

12.5 Declarant hereby grants to the ASSOCIATION, its successors and assigns a non-exclusive easement in gross for ingress, egress and driveway purposes over, across and through that certain portion of the Property described on Exhibit "I" attached hereto with the intention that such easement be ASSOCIATION PROPERTY to be held and used as provided in this Declaration. The cost of maintaining the easement shall be borne by the ASSOCIATION. No increase in the burden on the real property covered by this easement resulting from the annexation of additional PHASES pursuant to Section 14 hereof shall in any way diminish said easement or cause the apportionment thereof.

13. Condemnation.

This Section shall govern in the event all or a portion of the PROJECT is taken pursuant to exercise of the power of eminent domain. Upon receiving formal notice from the taking authority that it intends to take all or a portion of the PROJECT pursuant to its power of eminent domain, the BOARD shall, within sixty (60) days thereafter, call and hold a special meeting of the MEMBERS

T. 1.

AUG 29 1973

519

AUG 29 1973

of the ASSOCIATION. A vote of the MEMBERS shall be held to determine whether to partition and sell the PROJECT pursuant to Section 4.1 hereof.

13.1 In the event twenty-five percent (25%) or more of all the UNITS or twenty-five percent (25%) or more of the land area of all the COMMON AREAS is proposed to be taken by the taking authority and MEMBERS holding in excess of fifty percent (50%) of the voting power of the ASSOCIATION with respect to matters affecting the PROJECT as a whole (Section 16.1) vote to waive the prohibition against partition contained in Section 4.1 hereof, the prohibition against partition shall automatically be deemed waived and the BOARD, upon executing, acknowledging and recording the certificate provided for in Section 4.2 hereof, shall have and exercise the power of attorney described in Section 4.3 hereof to sell the PROJECT for the benefit of all the OWNERS and to distribute the proceeds thereof, together with the condemnation proceeds, in accordance with Section 4.2 hereof.

13.2 However, in the event Section 13.1 does not apply, the proceeds of the exercise of the power of eminent domain shall be deposited by the BOARD with a bank or savings and loan association as trustee for the OWNERS. Such proceeds shall be distributed among the OWNERS whose UNITS are partially or wholly taken by condemnation in the proportion in which their liabilities for assessments under Section 7.2 relating to such UNITS

AUG 29 1973

519

AUG 29 1973

taken bear one to another, subject to the rights of any MORTGAGEE. Thereafter, the interests in the PROJECT of such OWNERS (with respect to the UNITS so taken) shall cease, and such OWNERS shall execute all documents deemed necessary and appropriate by the BOARD to evidence the termination of such interests.

13.3 In the event one or more of the UNITS are taken through exercise of the power of eminent domain but there is no waiver of the prohibition against partition, the interests in the COMMON AREAS of the remaining OWNERS shall be readjusted appropriately and the appropriate amendments to this Declaration, to any Declaration of Annexation affected and to the BYLAWS shall be made.

14. Annexation.

If at any time or from time to time within seven (7) years from the date of this Declaration, Declarant or its successors or assigns should subdivide into CONDOMINIUMS all or a portion of the Additional Property, or should Declarant, its successors or assigns desire to create ASSOCIATION PROPERTY by conveying to the ASSOCIATION a fee interest in or an easement over a portion of the Additional Property, such additional subdivision may be annexed to and become a part of the PROJECT, and such portion of the Additional Property may become ASSOCIATION PROPERTY, solely in accordance with this Section.

1.1.

AUG 29 1973

519

AUG 29 1973

14.1 New Condominium Projects.

(a) Any portion of the Additional Property which is now or hereafter subdivided into a project consisting of condominiums (a "New Project") may be annexed to and become a part of the PROJECT without the assent or approval of the ASSOCIATION, the MEMBERS or any person or entity related to the PROJECT or the ASSOCIATION if, within seven (7) years from the date of this Declaration, Declarant or its successors or assigns properly record a Declaration of Annexation describing such portion of the Additional Property, and if the New Project located thereon meets the following criteria:

(i) the Additional Property on which the New Project is located shall be adjacent to and abut upon some portion of the PROJECT as it exists immediately prior to annexation of the New Project; and

(ii) the condominium plan recorded with reference to the New Project pursuant to Section 1351 of the California Civil Code shall be attached to the Declaration of Annexation.

(b) Each Declaration of Annexation recorded with respect to a New Project shall provide the following:

(i) a good and sufficient description of the CONDOMINIUMS to be created by such

AUG 29 1973

5:30

AUG 29 1973

Declaration of Annexation, similar to the description for Phase One contained in Section 2.1 above;

(ii) a PLAN showing the UNITS;

(iii) a metes and bounds description of that portion of the COMMON AREAS in the New Project which is to become ASSOCIATION PROPERTY, as well as a legal description of the Additional Property included within the New Project;

(iv) that the New Project, including the COMMON AREAS and UNITS located therein and any portion of the Additional Property conveyed to the ASSOCIATION as ASSOCIATION PROPERTY concurrently with the annexation, including any improvements added or constructed in the future on or about the same, shall be held, conveyed, hypothecated, encumbered, rented, used, occupied and improved subject to the limitations, restrictions, covenants and conditions contained in this Declaration for the purpose of mutually benefiting the Property, the Additional Property annexed hereto, the PROJECT, the New Project, all the UNITS therein and the future owners of such UNITS;

(v) that all of the restrictions, covenants and conditions set forth in this Declaration and in the Declaration of Annexation shall run with the land and shall be binding upon all parties having or acquiring any interest in the

1.1.

AUG 29 1973

519



AUG 29 1973

Property, the Additional Property annexed hereto,  
the PROJECT, the New Project and all UNITS therein;

(vi) that in the event of any  
inconsistency between the Declaration and the Declara-  
tion of Annexation, the provisions of the Declaration  
shall control;

(vii) that no provision of the  
Declaration of Annexation shall be effective to vary,  
modify, amend or supplement any provision of the De-  
claration except as permitted in this Declaration; and

(viii) that the Declaration is  
incorporated by reference into the Declaration of  
Annexation, with a recital of the place, date and  
document numbers of the recording of the Declaration.

(c) Upon recordation by Declarant,  
its successors or assigns of a Declaration of Annexation  
meeting the above requirements, and the sale of one or more  
CONDOMINIUMS in the New Project, the Additional Property  
described therein and the New Project shall automatically  
be annexed to and become a part of the PROJECT.

14.2 ASSOCIATION PROPERTY. Any portion  
of the Additional Property (including an easement thereon)  
may be transferred and conveyed to the ASSOCIATION by De-  
clarant, its successors or assigns, and on such transfer  
shall become ASSOCIATION PROPERTY as that term is defined  
in Section 1.3 hereof, without the assent or approval of

AUG 29 1973

519

AUG 29 1973

the ASSOCIATION, the MEMBERS or any other person or entity related to the ASSOCIATION or the PROJECT, if the following conditions are met:

(a) The transfer shall be free of charge to the ASSOCIATION; and

(b) The transfer shall be made free and clear of delinquent taxes and assessments and of encumbrances, except encumbrances on individual CONDOMINIUMS owned by MEMBERS which may affect the ASSOCIATION PROPERTY.

Once a transfer meeting the above conditions has taken place, the ASSOCIATION shall be deemed to have accepted the property (or easement) so transferred as ASSOCIATION PROPERTY and shall hold and administer the same in accordance with this Declaration.