

ciation, the Board, their respective agents and employees, and all other Owners. Such other policies shall not adversely affect or diminish any liability under insurance obtained by the Association. If any loss intended to be covered by insurance carried by the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association to the extent of such reduction for application by the Board to the same purposes as the reduced proceeds are to be applied.

13.9 Trustee for Policies. The Association is hereby appointed and shall be deemed trustee for the interests of all insureds under the policies of insurance maintained by the Association. All insurance proceeds under such policies shall be paid to the Board, as trustees, and the Board shall have full power to receive such funds on behalf of the Association, the Owners and their respective Mortgagees, and to deal therewith as provided for in this Declaration.

13.10 Mortgage Clause. All insurance policies must have the "standard mortgage clause," or equivalent endorsement, providing that coverage of a Mortgagee under the insurance policy will not be adversely affected or diminished by an act or neglect of the Mortgagor, which is commonly accepted by private institutional mortgage investors in the area in which the Project is located, unless such coverage is prohibited by applicable law. Mortgages owned by FNMA must name as a Mortgagee either FNMA or the servicers for the Mortgages held by FNMA encumbering the Lots. When a servicer is named as the Mortgagee, its name should be followed by the phrase "its successors and assigns." If the Mortgage is owned in whole by FHLMC, the name of the servicer of the Mortgage followed by the phrase "its successors and assigns, beneficiary" should be named as Mortgagee instead of FHLMC. The mortgage clause must be endorsed to fully protect FHLMC's interests or the interest of FHLMC and the servicer where applicable. If FHLMC must be named as Mortgagee, the endorsement should show the servicer's address in lieu of FHLMC's address. A mortgage clause in favor of Mortgagees holding Mortgages on Lots is not required on a policy insuring the Common Property.

ARTICLE 14

MORTGAGEE PROTECTION

14.1 Mortgagee Protection Provisions. Notwithstanding any other provisions in this Declaration to the contrary, in order to induce lenders and investors to participate in the financing of the sale of Lots in the Project, the following provisions contained within this Article are added hereto, and, to the extent these added provisions conflict with any other provisions in this Declaration, these added provisions shall control. This Declaration, the Articles and the By-Laws for the Association are hereinafter collectively referred to in this Article as the "constituent documents."

a. The right of an Owner to sell, transfer or otherwise convey his Lot shall not be subject to any right of first refusal or any similar restriction in favor of the Association;

b. The lien of the Assessments provided for herein shall be subordinate to the lien of any first Mortgage now or hereafter recorded upon any Lot. The sale or transfer of any Lot shall not affect the Assessment lien; however, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage, or pursuant to any remedies provided for in the Mortgage, shall extinguish the lien of such Assessments as to payments which became due prior thereto. No sale or transfer shall relieve such Lot from liability for Assessments due thereafter. Any first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage, or foreclosure of the Mortgage, or any purchaser at a foreclosure sale of a first Mortgage, will not be liable for unpaid Assessments or charges which accrue prior to the acquisition of title to such Lot by the Mortgagee (except for claims for a share of such Assessments or charges resulting from a reallocation of such Assessments or charges to all Lots, including the mortgaged Lot);

c. Except as provided by statute in case of condemnation or substantial loss to the Lots and/or the Common Property, unless sixty-seven percent (67%) of the Owners, other than Declarant, or sixty-seven percent (67%) of the first Mortgagees (based upon one [1] vote for each first Mortgage owned) have given their prior written approval, neither the Association nor the Owners shall be entitled to:

(1) Change the method of determining the obligations, Assessments, dues or other charges which may be levied against an Owner's Lot, or the method of allocating distributions of hazard insurance proceeds or condemnation awards;

(2) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer all or any portion of the Common Property. The granting of easements for public utilities or for other public purposes consistent with the intended uses of the Common Property shall not be deemed a transfer within the meaning of this clause;

(3) Use hazard insurance proceeds for losses to the Common Property for other than repair, replacement or reconstruction;

(4) Effect any decision of the Association to terminate professional management and assume self-management of the Project, where such professional management was previously a requirement by a holder, insurer or guarantor of any first Mortgage;

(5) By act or omission, change, waive or abandon any provisions of this Declaration, or enforcement thereof, pertaining to architectural design of the Residences situated on a Lot, or the maintenance and operation of the Common Property within the Project, including, without limitation, sidewalks, fences, driveways and landscaping within the Project;

(6) Fail to maintain fire and extended coverage on the insurable Common Property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value thereof (based on current replacement cost); and

(7) Abandon or terminate the Association, except for abandonment, partition or termination as may be provided by law.

d. All taxes, Assessments and charges which may become liens prior to the first Mortgage under local law shall relate only to individual Lots, and not to the Project as a whole;

e. No provision of the constituent documents shall be interpreted to give any Owner or any other party priority over any rights of the first Mortgagee in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of all or any portion of the Common Property or such Owner's Lot. All applicable fire and casualty insurance policies contain loss payable clauses acceptable to each Mortgagee, naming the Mortgagees, as their interests appear, as additional insureds;

f. The Assessments provided for in the constituent documents shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the Common Property that must be replaced on a periodic basis, and shall be payable in regular installments rather than by Special Assessments;

g. Each holder, insurer or guarantor of a first Mortgage shall, upon filing a written request with the Association, be entitled to be given timely written notice of:

i) Any condemnation or eminent domain proceeding, and any loss or taking resulting from such proceeding which affects the Project, or any portion thereof;

ii) Any substantial damage or destruction to the Project, or any portion thereof, when such loss exceeds Ten Thousand Dollars (\$10,000.00);

iii) Any default in the performance of obligations imposed by the Association Management Documents by an Owner(s) of a Lot(s) securing the respective first Mortgage, which default remains uncured for a period of sixty (60) days or more;

iv) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

and v) Any abandonment or termination of the Project;

vi) Any proposed action that requires the consent of a specified percentage of eligible Mortgagees.

h. Any agreement for professional management of the Project, or any contract providing for services of the Declarant may not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on thirty (30) days' written notice;

i. First Mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may have become a lien on the Common Property, and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Property, and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Upon demand by any first Mortgagee, the Board shall execute, on behalf of the Association, an agreement establishing the right of all first Mortgagees to such reimbursement;

j. A first Mortgagee of a Lot in the Project shall, upon written request, be entitled to:

i) Examine the books and records of the Association during normal business hours;

ii) Receive an annual audited financial statement of the Association, and other financial data as may be distributed to the Owners, within ninety (90) days following the end of any fiscal year of the Association, if such statement has been prepared for the Association; and

iii) Receive written notice of all meetings of the Association and designate, in writing, a representative to attend all such meetings, without, however, the right to vote at such meetings.

k. Each Owner shall notify the Association in writing within ten (10) days after the Close of Escrow for the purchase of his Lot of the name and address of his first Mortgagee, and, thereafter, each Owner shall promptly notify the Association of any changes of name or address for his first Mortgagee;

l. If any Lot (or portion thereof) or the Common Property (or portion thereof) is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the

institutional holder of any first Mortgage on such Lot will be entitled to timely written notice of any such proceeding or proposed acquisition; and

m. In the event any portion of the Common Property encroaches upon any Lot, or any Lot encroaches upon the Common Property as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the Project, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

14.2 Violation of Mortgagee Protection Provisions. No breach of any of the foregoing Covenants shall cause any forfeiture of title or reversion or bestow any right of reentry whatsoever, but in the event that any one or more of these Covenants shall be violated, the Declarant, its successors and assigns, the Association or any Owner in the Project may commence a legal action in any court of competent jurisdiction to enjoin or abate said violation and/or to recover damages; provided, however, that any such violation shall not defeat or render invalid the lien of any Mortgage or deed of trust made in good faith and for value. Said Covenants shall be binding upon and effective against any Owner whose title is acquired by foreclosure, trustee sale or otherwise.

ARTICLE 15

ENFORCEMENT OF BONDED OBLIGATIONS

15.1 Enforcement of Bonded Obligations. In the event that the improvements to the Common Property have not been completed prior to the issuance of a Final Subdivision Public Report by the DRE for the Project, and the Association is obligee under a bond or other arrangement (hereinafter referred to as the "Bond") to secure a performance of the commitment of Declarant or any Merchant Builders to complete such improvements, the following provisions shall apply:

a. The Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any improvements for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for such improvements in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any Common Property improvement, the Board shall consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of such extension.

b. In the event that the Board determines not to initiate action to enforce the obligations under the Bond, or in the event the Board fails to consider and vote on such question as provided above, the Board shall call a special meeting of the Members for the purpose of voting to override such decision or such failure to act by the Board. Such meeting shall be called according to the provisions of the By-Laws dealing with