

ARTICLE XI.

MORTGAGE PROTECTION

Section 11.1 Subordination of Lien and Foreclosure.

(a) Liens created or claimed under the provisions of this Declaration (including, without limitation, any assessment lien provided for under the provisions of Article VI above) prior to the recordation of a mortgage shall have priority over the mortgage. Liens created or claimed under the provisions of this Declaration (including, without limitation, any assessment lien provided for under the provisions of Article VI above) after recordation of any first mortgage are expressly made subject and subordinate to the rights of any first mortgage that encumbers all or a portion of the Property, or any Lot, made in good faith and for value, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of such mortgage unless the mortgagee expressly subordinates his interest, in writing, to such lien or a Notice of Claim of Lien is of record with respect to the Lot encumbered prior to recordation of such first mortgage.

(b) If any Lot is encumbered by a first mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration for assessments, or installments of assessments, shall not operate to affect or impair the lien of such mortgage except as set forth in the first sentence of Section 11.1(a). Upon foreclosure of a first mortgage, the foreclosure-purchaser shall take title to the Lot free of the lien for assessments, or installments, that have accrued up to the time of the foreclosure sale except as noted above. On taking title to the Lot the foreclosure-purchaser shall only be obligated to pay assessments or other charges levied or assessed by the Association after the foreclosure-purchaser acquired title to the Lot except as noted above. The subsequently levied assessments or other charges may include previously unpaid assessments provided all Owners, including the foreclosure-purchaser and his successors and assigns, are required to pay their proportionate share as provided for herein except as noted above.

Section 11.2 Mortgagees Not Required to Cure Certain Breaches. A first mortgagee who acquires title by judicial foreclosure or as a result of a trustee's sale under the power of sale provisions of such first mortgage shall not be obligated to cure a then-existing breach of this Declaration which is of a type not reasonably practical or feasible for such acquirer to cure.

Section 11.3 Estoppel Certificate. The Association shall, at the request of a mortgagee of an interest in any Lot located

within the Property, report any unpaid assessments due from the Owner of such interest in the Lot.

Section 11.4 Effect of Breach of Declaration. No breach of any of the covenants, restrictions or provisions contained in this Declaration shall cause any forfeiture of title or reversion or bestow any right of re-entry whatsoever, but violation of any one or more of these covenants, restrictions and provisions may be enjoined or abated by Declarant, its successors and assigns, by the Association, or by any Lot Owner, by action of any court of competent jurisdiction, and damages may also be awarded against such violation; 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 as to the Property or any part thereof, but said covenants, restrictions and provisions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale or otherwise.

Section 11.5 Mortgagee's Right to Attend Meetings. Because of its financial interest in the Property, a mortgagee under a recorded mortgage affecting any portion of the Property may appear (but may not vote) at meetings of the Members of the Association and the Board.

Section 11.6 Notification of Breach. Subject to Section 11.14, the holder of a first mortgage on a Lot located within the Property, upon written request, shall be entitled to written notification from the Association of any default by the mortgagor of such Lot in the performance of such mortgagor's obligations under this Declaration, the Bylaws and/or with respect to any rule promulgated by the Association or the Architectural Committee pursuant to the provisions of this Declaration, which default is not cured within sixty (60) days.

Section 11.7 Exemption From Right of First Refusal. Any holder of a first mortgage or deed of trust who obtains title to a Lot pursuant to the remedies provided in the mortgage or by foreclosure of the mortgage through judicial or trustee sale proceedings or by acceptance of a deed in lieu of foreclosure shall be exempt from any "right of first refusal" which might at any time or from time to time be provided for in this Declaration, the Bylaws or by any of the documents referred to herein.

Section 11.8 Restrictions on Certain Changes. Unless at least two-thirds (2/3rds) of the holders of first mortgages (based upon one vote for each first mortgage) or Owners (other than Declarant) of Lots located within the Property have given their prior written approval, the Association shall not be entitled to:

(a) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Association Property or any portion thereof unless due to the annexation of Additional Property as contemplated in this Declaration. Nothing to the contrary herein withstanding, the granting of

easements for public utilities, or for other purposes consistent with the intended use of the Association Property and consistent with the easements referred to and/or provided for in this Declaration shall not be deemed a transfer within the meaning of this subsection.

(b) Change the method of determining the assessments or other charges which may be levied against an Owner, except in connection with the annexation of Additional Property as contemplated in this Declaration.

(c) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of any structures on the Lots, the exterior maintenance of structures on any of the Lots, the maintenance of the Association Property including, without limitation, the maintenance of walks, fences and driveways, and the upkeep of lawns and plantings within the Property.

(d) Fail to maintain fire and extended coverage insurance on insurable property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value, based on current replacement cost.

(e) Use hazard insurance proceeds for losses to any portion of the Association Property for other than the repair, replacement or reconstruction of the Association Property.

Section 11.9 Inspection of Association Books and Records.
The holder of any first mortgage on a Lot shall have the right to examine the books and records of the Association.

Section 11.10 Condemnation Awards and Insurance Proceeds.
Nothing contained in this Declaration or in any of the Restrictions shall be construed as giving any Owner or any other party priority over any rights of first mortgagees of Lots pursuant to their mortgages in the case of distribution to Lot Owners of insurance proceeds or condemnation awards for losses to or taking of all or any part of the Association Property.

Section 11.11 Establishment of Adequate Reserve Fund.
Regular Assessments shall include an adequate amount to create a reserve fund in accordance with Civil Code Sections 1365.5(c) (1) (2) for maintenance, repair and replacement of the Association Property that must be replaced on a periodic basis.

Section 11.12 Agreements for Professional Management and/or for Services of Declarant. Nothing to the contrary in the Restrictions withstanding, no agreement for professional management of the Property or any portion thereof, nor any other contract providing for services of the Declarant, shall exceed three (3) years in length, and any such agreement shall provide for

termination by either party without cause and without payment of a termination fee on not more than sixty (60) days' written notice.

Section 11.13 Payments by Mortgagees. First mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against all or any part of the Association Property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Association Property. First mortgagees making such payments shall be entitled to and owed immediate reimbursement therefor from the Association. The Association shall execute an agreement in favor of all first mortgagees of Lots within the Property reflecting the entitlement of said first mortgagees to such reimbursement.

Section 11.14 Filing of Notice; Notices and Approvals. A mortgagee shall not be entitled to receive any notice which this Declaration requires the Association to deliver to mortgagees unless and until such mortgagee, or its mortgage servicing contractor, has delivered to the Board a written notice stating that such mortgagee is the holder of a mortgage encumbering a Lot within the Property. Such notice shall state which Lot or Lots are encumbered by such mortgage and shall further state whether such mortgage is a first mortgage. Except as provided in this Section 11.14, a mortgagee's rights pursuant to this Declaration including, without limitation, the priority of the lien of mortgages over the lien of Assessments levied by the Association hereunder, shall not be affected by the failure to deliver a notice to the Board. Any notice or request delivered to the Board by a mortgagee shall remain effective without any further action by such mortgagee for so long as the facts set forth in such notice or request remain substantially unchanged.

Section 11.15 Governmental Financing Programs. If Declarant at any time or from time to time elects to use a financing program for all or a portion of the Property which involves any type of mortgage insurance issued by a governmental agency or quasi governmental agency such as the Federal Housing Administration (FHA herein) and/or involves the sale of first mortgages to a governmental agency or quasi governmental agency such as Federal Home Loan Mortgage Corporation (FHLMC herein) and/or involves a Federal National Mortgage Association (FNMA herein) type of program (the aforementioned programs being collectively referred to herein as "Governmental Financing Programs"), then it is intended that the Association and the Owners shall take whatever reasonable steps are necessary to satisfy the then existing requirements for any such Governmental Financing Program selected by Declarant including, without limitation, the requirement that, when available, the Association shall obtain and maintain such types of coverages of insurance, evidenced by policies of insurance and endorsements, when applicable, in such form and issued by such carriers as shall from time to time meet the requirements of the particular Governmental Financing Program involved which apply to the Property. Under such circumstances, all policies of hazard

insurance required to be obtained and maintained pursuant to the provisions of this Section 11.15 must contain or have attached the standard mortgagee clause commonly accepted by private institutional mortgage investors for similar projects in the area in which the Property is located, except that if a separate insurance policy is maintained covering the Association Property, such policy need not contain a mortgagee clause.

ARTICLE XII.

DAMAGE AND DESTRUCTION TO IMPROVEMENTS LOCATED WITHIN THE PROPERTY

Section 12.1 Alternatives in the Event of Damage and Destruction to Improvements. In the case of damage by casualty to the Association Property:

(a) If the insurance proceeds available to the Association are sufficient to effect total restoration, then the Association shall cause the damaged or destroyed improvements to be repaired and reconstructed substantially as they previously existed.

(b) If the insurance proceeds available to the Association are within Five Thousand Dollars (\$5,000) or less of being sufficient to effect total restoration of the damaged or destroyed improvements, then the Association shall cause such improvements to be repaired and reconstructed substantially as they previously existed, and the difference between the insurance proceeds and the actual cost of reconstruction shall be levied as a reconstruction assessment equally against the Lots and the Owners thereof as provided for in Article VI hereof.

(c) If the insurance proceeds available to the Association are insufficient by more than Five Thousand Dollars (\$5,000) to effect total restoration of the damaged or destroyed improvements, then the Association shall rebuild and restore any damaged or destroyed improvements in substantially the same manner as said improvements existed prior to the damage or destruction and raise any amount necessary to complete restoration over the amount of available insurance proceeds, if any, by levying reconstruction assessments equally against the Lots and the Owners thereof as provided for in Article VI hereof, unless, by vote or written consent, at least two-thirds (2/3rds) of the Owners other than Declarant determine either:

(i) To rebuild and restore the damaged or destroyed improvements in a way which is less expensive than replacing said improvements in substantially the same manner as they existed prior to being damaged or destroyed and which utilizes all insurance proceeds