

SECTION 12: INSURANCE, DESTRUCTION, CONDEMNATION

12.01. Insurance. In addition to other insurance required to be maintained by the Project Documents, the Association, through its Board, shall obtain from generally accepted insurance carriers, and maintain in effect at all times, the following insurance at common expense:

a) Liability Insurance. The Association shall obtain and maintain comprehensive public liability insurance insuring the Association and each Owner against any liability incident to the ownership, use or maintenance of the Common Area, maintenance of the Lots and other maintenance obligations, including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than \$2,000,000 covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance may include protection against water damage liability, liability for nonowned and hired automobiles, liability for Property of others, and such other risks as are customarily covered with respect to Projects similar in construction, location and use. Such policy may provide for a reasonable deductible.

b) Fire, Casualty and Extended Coverage Insurance. The Association shall also obtain and maintain a policy of fire, casualty and extended coverage insurance for the full insurable replacement value (without deduction for depreciation) of all of the improvements within the Project (including the Common Area and all Lots). Such policy may provide for a reasonable deductible. The form, content, term of policy, its endorsements and the issuing company shall meet the reasonable standards of all First Mortgagees and shall be consistent with good sound insurance coverage for properties similar in construction, location and use. The policy shall name as insured the Association for the benefit of the Owners and Declarant, as long as Declarant is the Owner of any Lot, and all Mortgagees as their respective interests shall appear, and may contain a loss payable endorsement in favor of any trustee described below.

c) Individual Fire Insurance Limited. Except as provided in this Section, no Owner shall separately insure his/her Lot against loss by fire or other casualty covered by any insurance carried under Section 12.01(b). If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under policies described above that results from the existence of such other insurance shall be chargeable to the Owner who acquired other insurance, and such Owner shall be liable to the Association to the extent of any such diminution. An Owner may insure his/her personal property against loss. In addition, any improvements made by an Owner to his/her Lot may be separately insured by the Owner, but the insurance is to be limited to the nature of coverage commonly known as "tenant's improvements". All such insurance that is individually carried must contain a waiver of subrogation rights by the carrier as to other Owners, the Association, Declarant and the First Mortgagee of such Lot.

d) Trustee. All fire, casualty and extended coverage insurance proceeds payable under Section 12.01(b) above for losses to real Property and improvements may be paid to a trustee, to be held and expended for the benefit of the Owners, Mortgagees, and others, as their respective interests shall appear. Said trustee shall be a commercial bank, savings and loan or trust company in the county in which the Project is located that agrees in writing to accept such trust.

e) Other Insurance. The Board shall purchase and maintain worker's compensation insurance, to the extent that it is required by law, for all employees or uninsured contractors of the Association. The Board also shall purchase and maintain fidelity bonds or insurance (which shall be in an amount not less than 150% of each year's estimated annual operating expenses and reserves and shall contain an endorsement of coverage of any person who may serve without compensation) sufficient to meet the requirements of any First Mortgagee. The Board shall also purchase and maintain insurance on personal property owned by the Association, and any other insurance that it deems necessary, that is required by any First Mortgagee or that is customarily obtained for Projects similar in construction, location and use.

f) Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to Sections 12.01(a), (b) and (e). With respect to these sections, the Board is granted full right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

g) Officer and Director Insurance. The Association may purchase and maintain insurance on behalf of any Director, Officer, or Member of a committee of the Association (collectively the "agents") against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not the Association would have the power to indemnify the agent against such liability under applicable law.

h) Waiver of Subrogation. All insurance carried by the Association, or the Owners, shall contain provisions whereby the insurer waives rights of subrogation as to the Association, Directors, Officers, Declarant, Owners, occupants of Lots, their family, guests, agents and employees.

i) Notice of Cancellation. All insurance carried by the Association shall require the insurer to notify any First Mortgagee and Declarant requesting such notice at least 15 days prior to the effective date of any reduction or cancellation of the policy.

j) Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board in order to ascertain whether the coverage contained in the policies is adequate.

k) Payment of Premiums. Premiums on insurance maintained by the Association shall be a common expense funded by Assessments levied by the Association.

l) Actions Against Owners. Any cause of action in tort against any Owner of a Unit arising solely by reason of an ownership interest as a tenant in common in the Common Area shall be brought only against the Association and not against the individual Owner of the Unit if both of the insurance requirements in the following paragraphs (1) and (2) are met:

i) The Association maintained and has in effect for this cause of action, one or more policies of insurance which include coverage for general liability of the Association.

ii) The coverage described in paragraph (1) is in the following minimum amounts:

a) At least two million dollars (\$2,000,000) if the Project consists of 100 or fewer Units.

b) At least three million dollars (\$3,000,000) if the Project consists of more than 100 separate interests.

12.02. Destruction.

a) Minor Destruction Affecting Common Area. Notwithstanding Section 12.02(b), the Board shall have the duty to repair and reconstruct the Common Area without the consent of Members and irrespective of the amount of available insurance proceeds or other funds, in all instances of partial destruction where the estimated cost of repair and reconstruction does not exceed 5% of the budgeted gross expenses of the Association for that fiscal year. The Board may levy a Special Assessment for the cost of such repair and reconstruction to the extent insurance proceeds or other funds are unavailable.

b) Major Destruction Affecting Common Area.

i) Destruction: Proceeds Exceed 85% of Reconstruction Costs. If there is a total or partial destruction of the Common Area, and if the available proceeds of the insurance carried pursuant to Section 12.01 or other available funds are sufficient to cover not less than 85% of the costs of repair and reconstruction, the Common Area shall be promptly rebuilt unless, within 90 days from the date of destruction, Members then holding at least 75% of the voting power of each class determine that repair and reconstruction shall not take place.

ii) Destruction; Proceeds Less than 85% of Reconstruction Costs. If the proceeds of insurance carried pursuant to Section 12.01 or other available funds are less than 85% of the costs of repair and reconstruction, repair and reconstruction shall not take place unless, within 90 days from the date of destruction, Members then holding at least a majority of the voting power of Members of each class determine that repair and reconstruction shall take place. If repair and reconstruction is to take place, the Board shall execute, acknowledge and record in the office of the County Recorder not later than 120 days from the date of destruction a certificate declaring the intention of the Members to rebuild.

iii) Special Assessment to Rebuild. If the determination is made to rebuild pursuant to the above Sections, the Association may levy a Special Assessment against all Lot Owners to cover the cost of rebuilding not covered by insurance proceeds or other funds.

iv) Rebuilding Contract. If the determination is made to rebuild, the Board shall obtain bids from at least three reputable contractors, and shall award the repair and reconstruction work to the least expensive bidder. The Board shall have the authority to enter into a written contract with the contractor for the repair and reconstruction, and the insurance proceeds shall be disbursed to said contractor according to the terms of the contract. It shall be the obligation of the Board to take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date.

c) Destruction Affecting Lots.

i) Duty to Rebuild. If there is a total or partial destruction of a Lot, the affected Lot shall be promptly rebuilt by the Association unless the Association is relieved of the obligation to rebuild by the approval of Members holding at least 75% of the voting power of the Members of each class, including all Owners of Lots within the attached group of Lots (connected by Party Walls) and including the affected Lot.

ii) Rebuilding Procedure. All insurance proceeds will be paid to the Board as trustee or to any insurance trustee provided for in Section 12.01(d), or be held for the benefit of the Owner and Mortgagee(s) of the affected Lot as their interests shall appear.

If the Lot is to be rebuilt, the Board may levy a Special Assessment against all Lot Owners to cover the cost of rebuilding not covered by insurance proceeds or other funds.

The Lot shall be rebuilt or repaired in substantial conformity to the exterior appearance, design and structural integrity of the Lot prior to the date of destruction. Notwithstanding the foregoing, any Owner of an affected Lot may apply to the Board for reconstruction of his/her Lot in a manner which will provide for an exterior appearance and/or design which is different from that which existed prior to the date of the destruction. Application for such approval shall be made in writing, together with full and complete plans, specifications, maps and working drawings showing the proposed reconstruction and the end result thereof. The Board shall grant such approval only if it finds that the reconstructed Lot will be compatible in exterior appearance and/or design with the other Lots in the Project, provides the structural support required to fulfill the Owners Party Wall and roof support obligations and will not impose an unreasonable maintenance burden on the Association. Failure of the Board to approve or reject any such proposed change within 60 days after the date of submission thereof shall be conclusively deemed an approval thereof. If the Board approves such proposed change, the Owner, within 15 days thereafter, shall deposit with the Association, or an insurance trustee, cash or other acceptable security in an amount sufficient to pay the difference between the cost of rebuilding the Lot as it was prior to destruction and the cost of rebuilding it as proposed.

When the amount held by the Association or insurance trustee is sufficient to pay the costs of repair and reconstruction, the Board shall obtain bids from at least three reputable contractors, and shall award the repair and reconstruction work to the most reasonable bidder. The Board shall have the authority to enter into a written contract with the contractor for the repair and reconstruction, and the insurance proceeds held by the trustee shall be disbursed to said contractor according to the terms of the contract. It shall be the obligation of the Board to take all steps necessary to assure the commencement and completion of the authorized reconstruction at the earliest possible date.

iii) Lot Not to be Rebuilt. If the determination is made not to rebuild a Lot (subject to any agreement among the Owner and Mortgagee(s) of the affected Lot, the Association and other Owners of Lots relieving the Association from the obligation to rebuild it), the insurance proceeds and other funds held for rebuilding the Lot, together with any portion of the reserve funds of the Association reserved for the Lot, shall be distributed to the Owner of the affected Lot and his/her Mortgagee(s) as their interests shall appear.

12.03. Condemnation.

a) Condemnation Affecting Common Area

i) Sale in Lieu. If an action for condemnation of all or a portion of the Common Area is proposed or threatened by an entity having the right to eminent domain, then on the unanimous written consent of all of the Owners and subject to the rights of all Mortgagees, the Common Area, or a portion of it, may be sold by the Board. Subject to Corporations Code Section 8724, the proceeds of the sale shall be distributed among the Lots on the same basis as their Regular Assessment obligations and between the Lot Owners and their Mortgagees as their respective interests shall appear.

ii) Award. If the Common Area, or a portion of it, is not sold, but is instead taken, the judgment of condemnation shall by its terms apportion the award among the Owners and their respective Mortgagees. If the judgment of condemnation does not apportion the award, then the award shall be distributed as provided above.

b) Condemnation Affecting Lots. If an action for condemnation of all or a portion of, or otherwise affecting a Lot is proposed or threatened, the Owner and the Mortgagees of the affected Lot, as their respective interests shall appear, shall be entitled to the proceeds of any sale or award relating to the affected Lot.

If any Lot is rendered irreparably uninhabitable as a result of such a taking, the Lot shall be deemed deleted from the Project and the Owners and Mortgagees of the affected Lot, upon receiving the award and any portion of the reserve funds of the Association reserved for the Lot, shall be released from the applicability of the Project Documents and deemed divested of any interest in the Common Area.