

### SECTION 13: MORTGAGEE PROTECTIONS

13.01. Mortgages Permitted. Any Owner may encumber his/her Lot with Mortgages.

13.02. Priority of Mortgage. Notwithstanding any other provision of this Declaration, it is hereby provided that a breach of any of the conditions contained in the Project Documents by any Owner or of any re-entry by reason of such breach, shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to said Lot or any part thereof. Any lien which the Association may have on any Lot in the Project for the payment of common expense assessments attributable to such Lot will be subordinate to the lien or equivalent security interest of any first mortgage on the Lot recorded prior to the date of recordation of a notice of delinquent assessment.

13.03. Payment of Taxes or Premiums by Mortgagees. Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area, unless such taxes or charges are separately assessed against the Owners, in which case the rights of Mortgagees shall be governed by the provisions of their Mortgages. Mortgagees may, jointly or singly, also pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Area and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any Mortgagee which requests the same to be executed by the Association.

13.04. Effect of Breach. No breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith and for value, but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee's sale, or otherwise.

13.05. Mortgagee's Rights. A First Mortgagee's rights shall include, but not be limited to, the following:

a) Attend Meetings. Any First Mortgagee, upon written request, shall receive written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

b) Furnish Information. Any Mortgagee may furnish information to the Board concerning the status of any Mortgage.

c) Inspect Books and Records. The Association shall make available to Owners, prospective purchasers and First Mortgagees current copies of the Project Documents and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours.

In addition, if the Project contains 50 or more Lots, the Association must provide an audited financial statement for the immediately preceding fiscal year if the First Mortgagee submits a written request for it. Said financial statement shall be furnished by the Association within a reasonable time following such request. If the Project contains fewer than 50 Lots and there is no audited financial statement available, any First Mortgagee should be allowed to have an audited financial statement prepared at its own expense.

13.06. No Restriction on Owner's Right to Ingress and Egress. Except as allowed in Section 16.09, there shall be no restriction upon any Owner's right to ingress and egress to his/her Lot, which right shall be perpetual and appurtenant to his/her Lot ownership.

13.07. Notices of Mortgagees. Upon written request to the Association, any First Mortgagee shall be entitled to timely written notice of the following:

a) Any proposed amendment to the Project Documents effecting a change in:

i) The boundaries of any Lot or the exclusive use rights appurtenant thereto, if any;

ii) The interests in the general or exclusive use Common Areas, if any, appurtenant to any Lot or the liability for common expenses appurtenant thereto;

iii) The number of votes in the Association appurtenant to any Lot; or,

iv) The purposes to which any Lot or the Common Area are restricted.

b) Any proposed termination of the legal status of the Project as a planned development.

c) Any condemnation or casualty loss which affects either a material portion of the Project or any Lot on which there is a First Mortgage held, insured or guaranteed by such requesting party.

d) Any 60-day delinquency in the payment of Assessments or Individual Charges owed by an Owner subject to a First Mortgage held, insured or guaranteed by such requesting party.

e) Any default in the performance by the affected Owner of any obligation under the Project Documents which is not cured within 60 days.

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

g) Any proposed action which requires the consent of a specified percentage of First Mortgagees as specified in Section 13.08.

13.08. FNMA, FHLMC, FHA, VA Mortgages.

a) Conditions When This Section Applicable. The provisions of this Section 13.08 shall apply if any of the following conditions exist pertaining to First Mortgages on any of the Lots:

i) Any First Mortgage is sold or transferred to FNMA;

ii) Any First Mortgage is sold or transferred to FHLMC; or,

iii) Any First Mortgage is FHA insured or a United States Department of Veterans Affairs ("VA") mortgage.

b) Approval of Material Amendments. The approval of 67% of the total voting power of the Association and 51% or more of the Eligible First Mortgagees (based upon one vote for each first mortgage owned) must be obtained for amendments of a material nature to the Project Documents. A change to any of the following would be considered as material:

i) Voting rights;

ii) Assessments, assessment liens, or subordination of assessment liens;

iii) Reserves for maintenance, repair and replacement of Common Areas or any other portions of the Project which the Association has a duty to maintain, repair and replace;

iv) Responsibility for maintenance and repairs;

vii) Reallocation of interests in the general or exclusive use Common Areas, if any, or rights to their use;

vi) Boundaries of any Lot;

vii) Convertibility of Lots into Common Areas or vice-versa;

viii) Expansion or contraction of the Project or the addition, annexation or withdrawal of Property to or from the Project;

ix) Insurance or fidelity bonds;

x) Leasing of Lots;

xi) Imposition of any right of first refusal or similar restriction on a Lot Owner's right to sell, transfer or convey his/her Lot;

- xii) A decision by the Owner's Association to establish self management when professional management has been required previously by a First Mortgagee;
- xiii) Restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in the Project Documents;
- xiv) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or,
- xv) Any provisions that expressly benefit First Mortgagees, insurers or guarantors.

An addition or amendment to the Project Documents shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only.

If an addition or amendment is not considered as a material change, approval will be implied when a First Mortgagee fails to submit a response to any written proposal for an amendment within 30 days after the proposal is submitted.

c) Termination of Legal Status. Except as provided above, any election to terminate the legal status of the Project as a planned development must be approved by at least 67% of the voting power of the Association and 67% of the Eligible First Mortgagees based upon one vote for each First Mortgage owned.

d) Reallocation of Interests in the Common Area. No reallocation of interests in the Common Area resulting from a partial condemnation or partial destruction of the Project shall be effected without the approval of 51% of the Eligible First Mortgagees based upon one vote for each First Mortgage owned.

e) Restriction on Certain Changes. Unless at least 66-2/3% of the First Mortgagees (based on one vote for each First Mortgage owned) and 66-2/3% of the Owners other than Declarant have given their prior written approval, the Association shall not:

- i) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area (the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area by the Association shall not be deemed a transfer within the meaning of this clause); or,

- ii) Change the method of determining the Assessments, or other charges which may be levied against a Lot Owner; or,

- iii) 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 Lots, the exterior maintenance of Lots, the maintenance of any Common Area Party Walls or common fences and driveways, or the upkeep of lawns and plantings in the Project; or,

- iv) Fail to maintain fire and extended coverage on insurable Common Area and other portions of the Project which the Association has a duty to insure on a current replacement cost basis in an amount not less than 100% of the insurable value (based on current replacement cost); or,

- v) Use hazard insurance proceeds for losses to any Common Area or other Project improvements for other than the repair, replacement or reconstruction of such Common Area or improvements.

f) No Right of First Refusal. The right of an Owner to sell, transfer or otherwise convey his/her Lot shall not be subject to any "right of first refusal" or similar restriction.

g) Foreclosure Eliminates Unpaid Assessments. Each holder of a first mortgage lien on a Lot who comes into possession of the Lot by virtue of foreclosure of the mortgage or any purchaser at a foreclosure sale, will take the Lot free of any claims for unpaid Assessments and charges against the Lot which accrue prior to the time such holder comes into possession of the Lot, except for claims for a pro rata

share of such Assessments or charges resulting from a pro rata reallocation of such Assessments or charges of all Project Lots, including the mortgaged Lot.

h) Mortgage Priority in Case of Distribution. No provision in any Project Document will entitle a Lot Owner or other party to priority over any rights of the First Mortgagee on the Lot pursuant to its Mortgage in the case of a distribution to such Lot Owner of insurance proceeds or condemnation awards for losses to or a taking of the Lot and/or Common Area.

i) Working Capital Fund. If required by FHA, VA, FNMA or FHLMC as a condition of qualifying the Project for any mortgage purchase, guarantee or other related program, a working capital fund shall be established for the Project by the contribution to such fund, by the Owners and Declarant, of a sum not to exceed the amount of two months Regular Assessments for each Lot owned. Any amounts paid into this fund should not be considered as advance payments of regular assessments. Each Lot's share of the working capital fund should be collected at the time the sale of the Lot is closed and then should be transferred to the Association for deposit to a segregated fund. Within 60 days after closing has been held for the first Lot, the Declarant shall pay each unsold Lot's share of the working capital fund to the Association. The Declarant shall then reimburse itself for this payment from the funds collected at closing when the unsold Lots are sold.

j) Leasing Restrictions. No Owner may lease less than the entire Lot. Any lease or rental agreement must be in writing and be subject to the provisions of the Project Documents.

k) Taxes Relate Only to Individual Lots. All taxes, assessments and charges which may become liens prior to the first mortgage under local law shall relate only to the individual Lots and not to the Project as a whole.

13.09. FHA/VA Approval. During any period of time that a mortgage on any portion of the Project is held, insured or guaranteed by FHA or VA, and as long as there is a Class B Membership, the following actions shall require the prior approval of FHA or VA: amendment of the Project Documents, annexation of additional Property, dedication or mortgaging of the Common Area, merger or consolidation of the Association with another corporation.

13.10. Additional FHA Provisions. If loans secured by mortgages encumbering Lots within the development qualify for mortgage insurance by FHA, the following shall apply:

All Owners, tenants and occupants of Lots in the development covenant and agree that the administration of the development shall be in accordance with the terms and provisions of the Regulatory Agreement (FHA Form No. 3278) executed by FHA and the Association and that such terms and provisions of said Regulatory Agreement shall be fully complied with.

To the extent any matters in this Declaration or in the Articles or the Bylaws are in any way inconsistent with any matters in said Regulatory Agreement if in effect, then any such inconsistent matters in said Regulatory Agreement shall prevail. The right to lease Lots in the development shall be subject to all terms and provisions of said Regulatory Agreement.

In the event of any conflict between any of the provisions of this Section and any other provisions of this Declaration, the provisions of this Section shall control.

Any provision of this Declaration which confers a power or right upon the FHA or the Federal Housing Commissioner and all of the provisions of the Regulatory Agreement shall be inapplicable whenever there are no Lots where FHA insures the mortgage held by any First Mortgagee.

Whenever a notice is required to be sent to a Mortgagee holding an FHA insured mortgage or the approval of FHA is required, the notice or the request for approval shall be sent to the supervisor of the FHA office in which the Project is located. If FHA does not respond within 20 days after the notice is mailed or delivered, then FHA shall be deemed to have approved the request.

13.11. Compliance with FHA/VA, FHLMC or FNMA Requirements. Declarant intends that the Project shall comply with all of the requirements of the Federal Housing Administration ("FHA"), the United States Department of Veterans Affairs ("VA"), the Federal Home Loan Mortgage Corporation ("FHLMC") and the Federal National Mortgage Association ("FNMA"). All casualty and liability insurance covering any portion of the Project encumbered by a Mortgage insured by FHA, guaranteed by VA, or held by FHLMC or FNMA, shall therefore conform to the applicable FHA/VA, FHLMC or FNMA requirements. Declarant and all Lot Owners also agree that in the event the Project or the Project Documents do not comply with the applicable FHA/VA, FHLMC or FNMA requirements, the Board and each Owner shall take any action or adopt any resolutions required by Declarant or any First Mortgagee to conform such Project Documents, or the Project, to the FHA/VA, FHLMC or FNMA requirements, subject to the review and approval of the California Department of Real Estate, in accordance with applicable law, so long as the Department of Real Estate retains jurisdiction.

13.12. Waivers. A Mortgagee may waive any requirement contained in this Declaration as they pertain to such Mortgagee, provided such waiver shall be in writing.

13.13. Conflicts. In the event of a conflict between any of the provisions of this Section 13 and any other provisions of this Declaration, the provisions of this Section 13 shall control.