

ARTICLE 13

COVENANT AGAINST PARTITION

13.1 Covenant Against Partition. By acceptance of his deed, each Owner shall be deemed to covenant for himself, and for his heirs, representatives, successors and assigns, that he will not institute legal proceedings to effect judicial partition of his interest in the Project, unless the Project: (a) has been in existence in excess of fifty (50) years, (b) is obsolete and uneconomical, and (c) the Owners of fifty percent (50%) of the total of all Lots in the Project join in such action for partition.

ARTICLE 14

INSURANCE

14.1 Required Insurance Coverage. The Association, acting by and through the Board, shall obtain for the Association and shall maintain in force and pay the premiums for the following insurance coverages:

a. Casualty and Fire Insurance. A policy or policies of casualty and fire insurance ("special form") with extended coverage endorsement in an amount equal to one hundred percent (100%) of the current replacement cost (without deduction for depreciation or co-insurance) of insurable improvements located on the Association Property. Said policies shall be maintained for the benefit of the Association, the Owners and their respective Mortgagees, as their interests may appear. The loss payable clause shall be in the name of the Association, or in the name of an insurance trustee for the benefit of the Owners. Unless a higher maximum amount is required by California law, the maximum deductible amount shall be the lesser of Ten Thousand Dollars (\$10,000.00) or one percent (1%) of the policy face amount. Such policy must be written by an insurance carrier that meets the requirements of FNMA and/or FHLMC, as applicable.

b. General Liability Insurance. A comprehensive policy or policies of full coverage general liability insurance (with cross-liability endorsement, if obtainable) insuring the Association, the Board, the Owners, Declarant any Merchant Builder and the agents and employees of each of the foregoing against any liability to the public or to any Owner, his family, invitees and/or tenants, arising from or incident to the ownership, occupation, use, maintenance and/or repair of the Association Property. The limits of liability under this section shall be set by the Board and shall be reviewed at least annually by the Board and increased or decreased at the discretion of the Board; provided, however, that said limits shall not be less than Three Million Dollars (\$3,000,000.00) per occurrence for bodily injury, including deaths of persons and property damage arising out of a single occurrence; and provided further, that if FHLMC and/or FNMA participate in the financing of Lots in the Project, said limits shall not be

less than the minimum limits required under the then current FHLMC and/or FNMA regulations.

c. **Directors and Officers Liability Insurance.** A policy or policies of individual liability insurance coverage for officers and Directors of the Association for negligent acts or omissions of those persons acting in their capacity as officers and Directors. The limits of coverage shall be Three Million Dollars (\$3,000,000) per occurrence, or as otherwise required by § 1365.9 of the California Civil Code, and any successor statutes.

d. **Fidelity Bonds or Insurance.** Fidelity bonds or fidelity insurance naming all persons signing checks or otherwise possessing fiscal responsibilities on behalf of the Association, including, but not limited to, officers, the Board, trustees and employees of the Association, and officers, employees and agents of any management company employed by the Association who handle or are responsible for the administration of Association funds, if obtainable against negligent or dishonest acts or omissions of the Association's officers, directors, managers (and such manager's employees), agents, representatives, employees or volunteers responsible for handling the funds of the Association. Such coverage shall be in an amount deemed reasonably appropriate by the Association, but shall not be less than the estimated maximum funds, including reserves, in the custody of the Association, or its manager at any given time during the term of such bonds or insurance. However, in no event shall the aggregate amount of such bonds or insurance be less than three (3) months' Regular Assessments (including reserves) on all Lots then subject to the payment of Assessments. The bonds or insurance shall include a provision which requires the bonding company or insurance company to provide not less than twenty (20) days prior written notice to the Association of cancellation, material modification or election not to renew said bonds or insurance.

14.2 **Overriding Insurance Requirements.** The Association shall obtain and continuously maintain such insurance which meets the amount, amount of the deductible term and coverage of any policy required hereunder, including the type of endorsements, amount of the deductibles, the named insureds, the loss payees, notices of changes or cancellations, the insurance company rating and other requirements and standards imposed for this type of Project by FNMA, FHLMC, VA/FHA or pursuant to California law, so long as any of which is a Mortgagee, insurer, guarantor or Owner of a Lot within the Project, except to the extent such coverage is not available or has been waived in writing by FNMA and FHLMC, as applicable. If FNMA and FHLMC requirements conflict, the more stringent requirements shall be met. If FNMA and FHLMC do not impose requirements on any policy required herein, the term, amount and coverage on any policy shall be no less than that which is customary for similar policies on similar projects in the vicinity of this Project.

14.3 **Other Insurance Coverage.** The Board shall purchase such other insurance coverage the Board deems necessary, or as required by any first Mortgagee or by law, to protect the interests of the Association and its members, including, but not limited to, directors, officers and agents liability coverage, plate glass insurance, malicious mischief and vandalism coverage and worker's compensation insurance, or such other coverage as shall be

customarily maintained in effect with respect to developments similar in construction, location and use.

14.4 Notice of Cancellation of Insurance. All policies of insurance maintained by the Association pursuant to this Article shall contain a provision that coverage under said policies may not be canceled, terminated, allowed to expire by their own terms, or be substantially modified by any party without at least twenty (20) days' prior written notice to the Board, to each Owner and to such first Mortgagees who have filed written requests with the Association for such notice. A list of the Owners and such first Mortgagees shall be made available by the Association to the insurance carrier upon request.

14.5 Annual Review of Coverage. The Board shall annually determine whether the amounts and types of insurance coverage that it has obtained pursuant to this Article shall provide adequate coverage for the Project, based upon the then current construction costs, insurance practices in the area in which the Project is located and all other factors which may indicate that either additional insurance coverage or increased coverage under the existing policies is necessary or desirable to protect the interests of the Association, the Owners and their respective Mortgagees. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain same.

The Association shall, upon issuance or renewal of insurance policies, but no less frequently than annually, notify the Members of the amount and type of insurance maintained by the Association to satisfy the insurance coverage requirements stated in § 1365.9 of the California Civil Code, and any successor and companion statutes.

14.6 Waiver by Owners. As to all policies of insurance maintained by the Association which will not be voided or impaired thereby, each Owner hereby waives and releases all claims against the Association, the Board, the Declarant and the agents and employees of each of the foregoing, and all other Owners, with respect to any loss covered by such insurance, whether or not caused by the negligence of, or breach of, any agreement by said persons, but only to the extent of the insurance proceeds received in compensation for such loss.

14.7 Premiums, Proceeds and Settlement. Insurance premiums for all blanket insurance coverage and any other insurance coverage which the Board has determined is necessary to protect the interests of the Association, the Owners and their respective Mortgagees, shall be a Common Expense to be included in the Regular Assessments levied by the Association. All insurance proceeds paid to the Association shall be disbursed as follows: (a) in the event of any damage or destruction to the Association Property, such proceeds shall be disbursed in accordance with the provisions of the Article herein entitled "Damage or Destruction to the Association Property"; and (b) in the event of any other loss, the proceeds shall be disbursed as the Board shall deem appropriate, subject to the limitations set forth in the Article herein entitled "Mortgagee Protection." The Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any two (2) Directors may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on the Association and its Members.

14.8 Rights and Duties of Owners to Insure. Each Owner shall obtain insurance on his Lot, including the Residence and all other Improvements located thereon. Nothing herein shall preclude any Owner from carrying any public liability insurance as he may deem desirable to cover his individual liability for damage to person or property occurring inside his individual Lot or elsewhere upon the Project. If obtainable, such liability insurance coverage carried by an Owner shall contain a waiver of subrogation of claims against Declarant, Merchant Builder, the Association, 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.

14.9 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.

14.10 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 Association Property.

ARTICLE 15

MORTGAGEE PROTECTION

15.1 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