

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

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 Association 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 Association Property. The granting of easements for public utilities or for other public purposes consistent with the intended uses of the Association Property shall not be deemed a transfer within the meaning of this clause;

(3) Use hazard insurance proceeds for losses to the Association 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 Association 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 Association 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 Association 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 Association 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:

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

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

(3) Any default in the performance of obligations imposed by the constituent 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 following a written request from the Board to cure such default;

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

(5) Any abandonment or termination of the Project; and

(6) 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 ninety (90) 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 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, 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 filing written request with the Association, be entitled to:

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

(2) Require the Association to submit an annual audited financial statement if one is available, or have one prepared at the expense of the requesting entity if such statement is not otherwise prepared by the Association; provided that, upon annexation of additional Lots into the Project, such that fifty (50) or more Lots are subject to this Declaration, the Association may be required to submit such a statement without expense to the requesting entity; and

(3) 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. Each Owner hereby authorizes a first Mortgagee on a Lot to furnish information to the Board concerning the status of any such first Mortgage;

m. If any Lot (or portion thereof) or the Association 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;

n. In the event any portion of the Association Property encroaches upon any Lot, or any Lot encroaches upon the Association 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; and

o. All intended Improvements in Phases made subject to this Declaration shall be consistent with the Improvements in Phase 1 in terms of quality of construction. The requirements of this provision are for the benefit of and may be enforced only by FNMA.

15.2 Violation of Mortgagee Protection Provisions. No breach of any of the foregoing Protective 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 Protective 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 Protective Covenants shall be binding upon and effective against any Owner whose title is acquired by foreclosure, trustee sale or otherwise.

15.3 Effect of Amendments. Except as may otherwise be provided herein, no amendment of this Declaration or the Articles or the By-Laws of the Association shall affect the rights of any Mortgagee whose lien was created prior to recordation of such amendment.

15.4 Amendments to Conform With Mortgagee Requirements. It is the intent of Declarant that this Declaration and the Articles and By-Laws of the Association, and the Project in general, meet all requirements necessary to purchase, guarantee, insure and subsidize any Mortgage of a Lot in the Project by the FHLMC, FNMA and VA/FHA. In furtherance of said intent, Declarant may amend this Declaration without the consent of the Members at any time after the close of escrow for the first sale of a Lot in the Project by recording a written instrument setting forth the amendment, provided that the amendment is necessary to cause this Declaration to comply with the requirements of the DRE, FHLMC, FNMA and/or VA/FHA; provided further, however, that any such amendment shall be effective only if Declarant mails a copy of the amendment to all of the foregoing entities which are, or have agreed to be, a holder, insurer or guarantor of a first Mortgage, and does not, within thirty

(30) days thereafter, receive a notice of disapproval from any such entity. Said amendments shall not be recorded by Declarant until after the expiration of such thirty (30) day period.

ARTICLE 16

ANNEXATION OF ADDITIONAL PROPERTY

Additional property may be annexed to and become subject to this Declaration as set forth in this Article.

16.1 Phased Development of the Project. Declarant intends to sequentially develop the Project on a phased basis, each of which shall be annexed to the Project. However, Declarant is under no obligation to continue development of the Project. In addition, Declarant may elect to annex future Phases in any given order, pursuant to the provisions of Section 16.2 hereinbelow. No annexation hereunder shall be effective unless the procedures set forth in this Article have been executed.

16.2 Annexation Pursuant to General Plan of Development. All or any part of the real property described as Annexation Property in the Article herein entitled "Definitions," may be annexed to the Project and added to the scheme of this Declaration, and be subjected to the jurisdiction of the Association without the assent of the Association or its Members, provided and on condition that:

a. Any annexation pursuant to this section shall be made prior to the date which is the third (3rd) anniversary of the first close of escrow to occur after the issuance of the most recently issued Final Subdivision Public Report for the most recent Phase of the Project;

b. The development of the Annexation Property shall be in substantial conformance with the overall general plan of development for the Project originally submitted to and approved by the City, the DRE and VA/FHA; further, detailed plans for the development of each Phase shall have been submitted to and approved by VA/FHA prior to its annexation; and

c. A Notice of Annexation, as described in Section 16.4 of this Article, shall be recorded covering the Annexation Property.

16.3 Annexation Pursuant to Approval. Upon obtaining the approval in writing of the Association, pursuant to the vote or written assent of not less than sixty-seven percent (67%) of the total votes residing in the Members, excluding Declarant and Merchant Builders, and the approval of VA/FHA, if required, and the DRE, the owner of any property who desires to add said property to the scheme of this Déclaration and to subject it to the jurisdiction of the Association may record a Notice of Annexation in the manner described in Section 16.4 of this Article.