

ARTICLE IX

DESTRUCTION OF IMPROVEMENTS

9.01 Restoration of the Property. Except as otherwise provided in this Declaration, in the event of any destruction of any portion of the Property, the repair or replacement of which is the responsibility of the Association, it shall be the duty of the Association to restore and repair the same to its former condition, as promptly as practical. The proceeds of any insurance maintained for reconstruction or repair of the Property shall be used for such purpose, unless otherwise provided herein. The Board shall be authorized to have prepared the necessary documents to effect such reconstruction as promptly as practical. The Property shall be reconstructed or rebuilt substantially in accordance with the Condominium Plan and the original construction plans if they are available, unless changes recommended by the Architectural Committee have been approved in writing by seventy-five percent (75%) of the Owners and by the Beneficiaries of seventy-five percent (75%) of first Mortgages upon the Condominiums. If the amount available from the proceeds of such insurance policies for such restoration and repair is at least eighty-five percent (85%) of the estimated cost of restoration and repair, a Reconstruction Assessment shall be levied by the Board of Directors to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purpose. If the amount available from the proceeds of such insurance policies for such restoration and repair is less than eighty-five percent (85%) of the estimated cost of restoration and repair, the Owners by the vote or written consent of not less than seventy-five percent (75%) of the Owners, together with the approval of the Beneficiaries of at least seventy-five percent (75%) of the first Mortgages on Condominiums in the Project, shall determine whether the Board shall levy a Reconstruction Assessment and proceed with such restoration and repair. If the Owners and their Mortgagees, as provided above, determine that the cost of such restoration and repair would be substantial and that it would not be in their best interest to proceed with the same, the Owners may, at their discretion, proceed as provided in Section 9.02 below.

9.02 Sale of Property and Right to Partition. If the amount available from the proceeds of the insurance policies maintained by the Association is less than eighty-five percent (85%) of the cost of reconstruction, a certificate of the resolution authorizing such reconstruction may be recorded within six (6) months from the date of such destruction and, if such certificate is not recorded within said period, it shall be conclusively presumed that the Owners have determined not to rebuild said improvements. No Owner shall have the right to partition of his interest in the Condominium and there shall be

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no judicial partition of the Project, or any part thereof; except that if a certificate of a resolution to rebuild or restore the Project has not been recorded as provided above, within six (6) months from the date of any partial or total destruction, or if restoration has not actually commenced within said period, and the vote or written consent to such a partition is obtained from the Owners of sixty-seven percent (67%) of the Condominiums in the Project, then conditions for partition as set forth in Subdivision (4) of Section 1359(b) of the California Civil Code shall be deemed to have been satisfied. In such event, the Association, acting through a majority of the Board, shall prepare, execute and Record, as promptly as practical, the certificate stating that a majority of the Board may properly exercise an irrevocable power of attorney to sell the Project for the benefit of the Owners with the exception of the Veterans Administration, and such other documents and instruments as may be necessary for the Association to consummate the sale of the Property at the highest and best price obtainable, either in its damaged condition, or after damaged structures have been razed. Such certificate shall be conclusive evidence of such authority for any person relying thereon in good faith. The net proceeds of such sale and the proceeds of any insurance carried by the Association shall be divided proportionately among the Owners, such proportions to be determined in accordance with the relative appraised fair market valuation of the Condominiums as of a date immediately prior to such destruction (or condemnation), expressed as percentages, and computed by dividing such appraised valuation of each Condominium by the total of such appraised valuations of all Condominiums in the Project. The Board is hereby authorized to hire one (1) or more appraisers for such purpose and the cost of such appraisals shall be a Common Expense of the Association. Notwithstanding the foregoing, the balance then due on any valid encumbrance of record shall be first paid in order of priority, before the distribution of any proceeds to an Owner whose Condominium is so encumbered. Nothing herein shall be deemed to prevent partition of a cotenancy in any Condominium. Except as provided above, each Owner and the successors of each Owner, whether by deed, gift, devise, or by operation of law, for their own benefit and for the Units and for the benefit of all other Owners, specifically waive and abandon all rights, interests and causes of action for a judicial partition of the tenancy in common ownership of the Project and do further covenant that no action for such judicial partition shall be instituted, prosecuted or reduced to judgment.

9.03 Interior Damage. With the exception of any casualty or damage insured against by the Association, restoration and repair of any damage to the interior of any individual Unit, including without limitation all fixtures, cabinets and improvements therein, together with restoration and repair of all interior paint, wall coverings and floor coverings, shall be made

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by and at the individual expense of the Owner of the Unit so damaged. In the event of a determination to rebuild the Property after partial or total destruction, as provided in this Article IX, such interior repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with plans approved by the Architectural Committee as provided herein.

9.04 Notice to Owners and Listed Mortgagees. The Board, immediately upon having knowledge of any damage or destruction affecting a material portion of the Common Property, shall promptly notify all Owners and Beneficiaries, insurers and guarantors of first mortgages on Condominiums in the Project, who have filed a written request for such notice with the Board. The Board, immediately upon having knowledge of any damage or destruction affecting a Unit, shall promptly notify any Beneficiary, insurer or guarantor of any mortgage encumbering such Unit who has filed a written request for such notice with the Board.

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ARTICLE X

EMINENT DOMAIN

10.01 Definition of Taking. The term "taking" as used in this Article shall mean condemnation by eminent domain, or by sale under thereof, of all or part of the Property.

10.02 Representation by Board in Condemnation Proceeding. In the event of a taking, the Board shall, subject to the right of all Mortgagees who have requested the right to join the Board in the proceedings, represent all of the Members in an action to recover all awards. No Member shall challenge the good faith exercise of the discretion of the Board in fulfilling its duties under this Article. The Board is further empowered, subject to the limitations herein set forth, to serve as the sole representative of the Members in all aspects of condemnation proceedings not specifically covered herein.

10.03 Distribution of Award. In the event of a taking of Condominiums, the Board shall distribute the award forthcoming from the taking authority according to the provisions of this Section 10.03 after deducting therefrom fees and expenses related to the condemnation proceeding, including, without limitation, fees for attorneys and appraisers and court costs. In the event that the taking is by judgment of condemnation and said judgment apportions the award among the Owners and their respective Mortgagees, the Board shall distribute the amount remaining after such deductions among such Owners and Mortgagees on the allocation basis set forth in such judgment. In the event that the taking is by sale under threat of condemnation, or if the judgment of condemnation fails to apportion the award, the Board shall distribute the award among the Owners in the affected Project and their respective Mortgagees based upon the relative values of the Condominiums affected by such taking as determined by the fair market value of each such Condominium as determined by an appraisal made by an independent M.A.I. appraiser engaged by the Board for such purpose. The determination by such appraiser as to the value and degree each Condominium within the Project has been affected by the taking shall be final and binding on all Owners and Mortgagees. Nothing contained herein shall entitle an Owner to priority over a Mortgagee of his Condominium as to the portion of the condemnation award allocated to his Condominium. In no event shall any portion of such award be distributed by the Board to an Owner and/or the Mortgagees of his Condominium in a total amount greater than the portion allocated hereunder to such Condominium.

10.04 Inverse Condemnation. The Board is authorized to bring an action in inverse condemnation. In such event, the provisions of this Article shall apply with equal force.

10.05 Revival of Right to Partition. Upon a taking which renders more than twenty percent (20%) of the Units in the affected Project incapable of being restored to at least ninety-five percent (95%) of their floor area and substantially their condition prior to the taking, the Board shall call a meeting of the Owners of Units within the Project within sixty (60) days after the date of the taking, by mailing notice thereof to each such Owner at his address as shown on the records of the Association. The Owners may, by a sixty-seven percent (67%) vote at such meeting or by the written consent of not less than sixty-seven percent (67%) of the Owners, based on one (1) vote for each Unit, elect to permit sale and partition of the entire Project, in which case the right of any Owner within the Project to partition through legal action as described in Article XVII hereof, shall forthwith revive. The determination as to whether Condominiums partially taken are capable of being so restored shall be made by the Board, whose decision shall be final and binding on all Owners and Mortgagees.

10.06 Awards for Members' Personal Property and Relocation Allowances. Where all or part of the Property is taken, each Member shall have the exclusive right to claim all of the award made for his personal property, and any relocation, moving expense, or other allowance of a similar nature designed to facilitate relocation. Notwithstanding the foregoing provisions, the Board shall represent each Member in an action to recover all awards with respect to such portion, if any, of Members' personal property as is at the time of any taking, as a matter of law, part of the real estate comprising any Condominium, and shall allocate to such Member so much of any awards as is attributable in the taking proceedings, or failing such attribution, attributable by the Board, to such portion of Members' personal property.

10.07 Notice to Members. The Board, immediately upon having knowledge of any taking or threat thereof with respect to the Property, or any portion thereof, shall promptly notify all Members and all First Mortgagees who have appropriately requested such notice in writing.

10.08 Change of Condominium Interest. In the event of a taking, subject to the provisions of Article VIII hereof, but notwithstanding the provisions of Article XVII hereof, the Board may amend the Condominium Plan to reflect the change in the affected Project. In the event that the Board decides to record such amendment to the Condominium Plan, all Owners within such Project and the record holders of all security interests in such Project shall execute and acknowledge said amendment so that it will comply with Section 1351 of the California Civil Code or any similar statute then in effect. Said Owners and holders of security interests shall also execute such other documents or

take such other actions as required to make such amendment effective. The Board shall cause a notice of change in the Condominium Plan to be sent to each Owner and Mortgagee in such Project within ten (10) days of the filing of such amendments in the County Recorder's Office of the County in which the Project is located.

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ARTICLE XI

COVENANT AGAINST PARTITION AND RESTRICTION

ON SEVERABILITY OF CONDOMINIUM COMPONENT INTEREST

11.01 No Partition; Exceptions; Power of Attorney. The right of partition is hereby suspended, except that the right to partition shall revive and the Property or any Project within the Property may be sold as a whole when the conditions for such action set forth in Articles IX or X hereof have been met; provided, however, notwithstanding the foregoing, any Owner may, upon the prior written approval of the First Mortgagee of his Unit, bring an action for partition by sale of the Project, as provided in Section 1359 of the Civil Code of the State of California or any similar statute then in effect upon the occurrence of any of the events therein provided. Provided, further, that if any Unit shall be owned by two (2) or more co-tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such co-tenants. The Association, acting through its Board, is hereby granted an irrevocable power of attorney, coupled with an interest, to sell the Project for the benefit of all Owners of Condominiums within the Project and their Mortgagees of record, as their respective interests appear, when partition of the Project may be had under Section 1359 of the California Civil Code, and to the extent permitted by law when partition of this Project may be had under the provisions of Articles IX and/or X hereof. The foregoing irrevocable power of attorney shall be exercisable only after recordation of a certificate executed by a majority of the Members of the Board of the Association, which certificate shall state that said power of attorney is duly exercisable under the circumstances. Such certificate shall be conclusive evidence to the effect that the said power of attorney is properly exercisable under the circumstances in favor of any person relying thereon in good faith.

11.02 Proceeds of Partition Sale .

(a) Whenever an action is brought for the partition by sale of the Project, whether upon the occurrence of any of the events provided in Section 1359 of the Civil Code of the State of California (or similar statute then in effect) or upon the revival of the right to partition pursuant to the provisions of Articles IX or X hereof, the Owners of Units in the Project shall share in the proceeds of such sale in the same proportion as the relative values of their respective Condominiums. As used in the foregoing sentence, the relative value of each Condominium shall be determined by comparing (i) the fair market value of an Owner's Condominium on the date of partition as established by an

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independent appraiser conducted by an M.A.I. Appraiser selected by the Association to (ii) the total of such assessed valuation for all Units in such Project on said date.

(b) The distribution of the proceeds of any such partition sale shall be adjusted as necessary to reflect any prior distribution of insurance proceeds or condemnation award as may have been made to Owners and their Mortgagees pursuant to Articles IX and/or X hereof. In the event of any such partition and sale, the liens and provisions of all Mortgages or assessment liens encumbering Units within the Project or Projects so encumbered shall extend to each applicable Owner's interest in the proceeds of such Partition and sale. The interest of an Owner in such proceeds shall not be distributed to such Owner except upon the prior payment of any Mortgage or assessment encumbering such proceeds as aforesaid.

11.03 No Separate Conveyance of Condominium Components. No Owner shall be entitled to sever the component interests respecting his Condominium, including, but not limited to, the fact that the Unit may not be severed from that portion of the Common Areas appurtenant to the Unit. Component interests respecting a Condominium may not be severally sold, conveyed, encumbered, hypothecated or otherwise dealt with and any such attempt to do so in violation of this provision shall be void as a severance and of no effect as such. The provisions of this Section shall terminate on the date that judicial partition has been decreed or a partition in accordance with the provisions of this Article XII has been otherwise properly affected.

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ARTICLE XII

EASEMENTS

12.01 Amendment to Eliminate Easements. This Declaration cannot be amended to modify or eliminate the easements reserved to Declarant without prior written approval of Declarant and any attempt to do so shall have no effect. Any attempt to modify or eliminate this Section shall likewise require the prior written approval of Declarant.

12.02 Nature of Easements. Unless otherwise set forth herein, any easement reserved to Declarant herein shall be nonexclusive.

12.03 Certain Rights and Easements Reserved to Declarant.

(a) Utilities. Easements over the Property for the installation and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines and drainage facilities as are needed to service the Property are hereby reserved by Declarant, together with the right to grant and transfer the same; provided, however, such easements shall not unreasonably interfere with the use and enjoyment of the Property by the members.

(b) Cable Television. There is hereby reserved to Declarant over the Property, together with the right to grant and transfer the same, the right to place on, under or across the Property transmission lines and other facilities for a community antenna television system and thereafter to own and convey such lines and facilities and the right to enter upon the Property to service, maintain, repair, reconstruct and replace said lines or facilities; provided, however, that the exercise of such rights shall not unreasonably interfere with any Owner's reasonable use and enjoyment of his Unit.

(c) Water Rights. There is hereby reserved to Declarant with full right and power, among others, to transfer or assign to others or to use or utilize on any other property owned or leased by Declarant, any and all water rights or interests in water rights no matter how acquired by Declarant, and owned or used by Declarant in connection with or with respect to the Property, whether such water rights shall be riparian, overlying, appropriative, percolating, prescriptive or contractual, provided, however, that the reservation made herein shall not reserve to or for the benefit of Declarant any right to enter upon the surface of the Property in the exercise of such rights.

(d) Construction and Sales. There is hereby reserved to Declarant, together with the right to grant and transfer the same to Declarant's sales agents and representatives

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and prospective purchasers of Residences, over the Property as the same may from time to time exist, easements for construction, display, maintenance, sales and exhibit purposes in connection with the erection and sale or lease of Units within the Property; provided, however, that such use shall not be for a period beyond the sale by Declarant of all Units within the Property or three (3) years from the recordation hereof whichever occurs first, and provided further that no such use by Declarant and others shall otherwise restrict the members in the reasonable use and enjoyment of the Property. At the end of this period the sales office shall be restored to its original purpose or if located in a temporary building, it shall be removed from the Property.

(e) Utilities Shown on Tract Map. There is hereby reserved to Declarant, together with the right to grant and transfer the same, easements over the Property for the installation and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines and drainage facilities as shown on the recorded tract maps covering the Property.

(f) City Public Service. There is hereby reserved to Declarant, together with the right to grant and transfer the same, easement, for public services of the City, including but not limited to, the right of the police to enter in a lawful manner upon any part of the Property for the purposes of enforcing the law.

12.04 Certain Easements for Owners.

(a) Rights and Duties: Utilities and Cable Television. Wherever sanitary sewer house connections, water house connections, electricity, gas, telephone and cable television lines or drainage facilities are installed within the Property, the Owners of any Units served by said connections, lines or facilities shall have the right and there is hereby reserved to Declarant, together with the right to grant and transfer the same to Owners an easement to the full extent necessary for the full use and enjoyment of such portion of such connections which service his Unit, and to enter upon the Unit owned by others, or to have utility companies enter upon the Units owned by others, in or upon which said connections, lines or facilities, or any portion thereof lie, to repair, replace and generally maintain said connections as and when the same may be necessary, provided that such Owner or utility company shall promptly repair any damage to a Unit caused by such entry as promptly as possible after completion of work thereon. The access shall be subject to the consent of the Association whose approval shall not be unreasonably withheld. The Association may impose reasonable conditions for use of the easement.

(b) Ingress, Egress and Recreational Rights. Declarant hereby reserves to itself, its successors and assigns, and agrees that it will grant to all Owners nonexclusive easements for ingress, egress, pedestrian walkway and general recreation purposes over and upon the Common Area which is not Exclusive Use Common Area. Such easements when granted to Owners shall be subject to the rights of the Association and the Declarant as set forth in the Article hereof entitled "Rights of Enjoyment".

(c) Exclusive Restricted Common Area Easement. There is hereby reserved to Declarant, together with the right to grant and transfer the same, exclusive easements which shall be appurtenant to the Units, over the Exclusive Use Common Area. The Unit shall be the dominant tenement and the exclusive easement shall burden the Exclusive Use Common Area as the servient tenement. Subject to the rights of the Association as provided in this Declaration, the benefit of such easement shall inure only to the Owners of Units and their families and guests. The easement of enjoyment over the Common Area granted to Members in the Section entitled "Ingress, Egress and Recreational Rights" of this Article shall not apply to those portions of the Common Area designated as Exclusive Use Common Area.

(d) Drainage. There is hereby reserved to Declarant, together with the right to grant and transfer the same to Owners, easements for drainage over the Common Area from the drainage line as initially constructed by Declarant and located in the Garage Element of the Units, if any.

12.05 Certain Easements for Association. Declarant hereby reserves to itself, its successors and assigns, and agrees that it will grant to the Association nonexclusive easements over the Property for the purpose of permitting the Association to discharge its obligations as described in this Declaration.

12.06 Support, Settlement and Encroachment. There is hereby reserved to Declarant, together with the right to grant and transfer the same to Owners, the following reciprocal easements for the purpose set forth below:

(a) An easement appurtenant to each Unit which is contiguous to another Unit or Common Area which Unit shall be the dominant tenement and the contiguous Unit or Common Area shall be the servient tenement;

(b) An easement appurtenant to the Common Area contiguous to a Unit, which Common Area shall be the dominant tenement and which contiguous Unit shall be the servient tenement;

12.07 Creation of Easements. Each of the easements provided for in this Declaration shall be deemed to be established upon the recordation of this Declaration, and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the Unit and Property superior to all other encumbrances applied against or in favor of any portion of the Property. In furtherance of the easements provided for in this Declaration the individual grant deeds to Units may, but shall not be required to, set forth said easements.

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ARTICLE XIII

UTILITIES

13.01 Owner's Rights and Duties. The rights and duties of the Owners of Condominiums within the Property with respect to sanitary sewer, water, electricity, gas, cable television, telephone, and other utility lines and facilities, and heating and air-conditioning facilities, if any, shall be as follows :

(a) Whenever sanitary sewer, water, electricity, gas, television receiving, telephone and other utility lines or connections, heating or air-conditioning conduits, ducts, or flues are installed within the Property, which connections, or any portion thereof, lie in or upon Condominiums owned by other than the Owner of a Condominium served by said connections, the Owner of any Condominium served by said connection shall have the rights, and is hereby granted an easement to the full extent necessary therefor, to enter upon the Condominiums or to have the utility companies enter upon the Condominiums in and upon which said connections or any portion thereof lie, to repair, replace and generally maintain said connections as and when necessary.

(b) Whenever sanitary sewer, water, electricity, gas, television receiving, telephone or other utility lines or connections, heating or air-conditioning conduits, ducts or flues are installed within the Property, which connections serve more than one Condominium, the Owner of each Condominium served by said connection shall be entitled to the full use and enjoyment of such portions of said connections as service his Condominium.

13.02 Easements for Utilities and Maintenance. Easements over and under the Property for the installation, repair, and maintenance of electric, telephone, water, gas, sanitary sewer and other utility lines and facilities, air conditioning and heating facilities, cable or master television antennae and lines, drainage facilities, walkways and landscaping as may be required or needed to service the Property are hereby reserved by Declarant, its successors and assigns, including the Association, together with the right to grant and transfer same; provided, however, that such easements shall not unreasonably interfere with the use and enjoyment of the Units and Common Areas by the Owners of Condominiums within the Property.

13.03 Association's Duties. The Association shall maintain all utility installations located in the Common Areas, except for those installations maintained by utility companies, public, private or municipal. The Association shall pay all charges for utilities supplied to the Property except those metered or charged separately to the Units, and such charges paid by the Association shall be a part of the Common Expenses.

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ARTICLE XIV

SPECIAL PROVISIONS RELATING TO ENFORCEMENT OF
DECLARANT'S OBLIGATION TO COMPLETE COMMON AREA

IMPROVEMENTS

Where a particular condominium project located within the Property includes Common Area improvements which have not been completed prior to the close of escrow for the sale of the first Condominium within such project, and where the Association is obligee under a bond or other arrangement to secure performance of the commitment of Declarant to complete said improvements, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the bond with respect to any improvement for which a notice of completion has not been filed within sixty (60) days after the completion date specified for that improvement in the planned construction statement appended to the bond. If the Association has given an extension in writing for the completion of any Common Area improvement, the Board shall consider and vote on the question of enforcement if a Notice of Completion has not been filed within thirty (30) days after expiration of the extension. A special meeting of the Members of the Association for the purpose of voting to override a decision of the Board not to initiate action to enforce the obligations under the bond or on the failure to the Board to consider and vote on the question of enforcement shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) or more of the total voting power of the Association. At such special meeting a vote of a majority of the Members of the Association other than Declarant shall be required to take action to enforce the obligations under the bond and a vote of a majority of the voting power of the Association, excluding Declarant, shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

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