

(b) in the case of Affected Common Facilities, to the Board for retention in the general funds of the Association subject to the prior rights of all mortgagees holding mortgages encumbering the particular Affected Common Facility for which such insurance proceeds have been allocated.

Allocable proceeds paid to mortgagees shall be paid in the order of their recorded priority on the Affected Condominium or such Affected Common Facility as the case may be.

Section 11.12. Payment of Mortgagees: Any insurance proceeds paid to a mortgagee pursuant to this Article shall be paid in the amount required by such mortgagee, but not to exceed (i) the outstanding indebtedness secured by said mortgage, or (ii) the insurance proceeds allocated to such Affected Condominium or Affected Common Facility as hereinabove provided in this Article, whichever of (i) or (ii) is the lesser.

Section 11.13. Requirements of Federal Agencies: In addition to the foregoing, the Board must also comply with the requirements of the Article entitled "Mortgagee Protection" of the Declaration as to notice which must be provided to Requesting Mortgagees, Insurers and Guarantors. Notwithstanding the foregoing Sections of this Article, any partially or totally destroyed Improvements will be repaired, replaced, reconstructed or restored substantially to their condition prior to the destruction unless there has also been compliance with the requirements of the said Article entitled "Mortgagee Protection." The vote or consent of Eligible Mortgage Holders required under said Article may be solicited concurrently or subsequent to the vote of the Insured Owners required under this Article.

## ARTICLE 12 EMINENT DOMAIN

Section 12.1. Definition of Taking: The term "taking" as used in this Article shall mean condemnation by eminent domain, or by sale under threat thereof, of all or part of the Property.

Section 12.2. Representation by Board: 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 Owners in an action to recover all awards. No Owner shall challenge the good faith exercise or the discretion of the Board in fulfilling its duties under this Article. The Board is further empowered, subject to the limitations herein, as the sole representative of the Owners in all aspects of condemnation proceedings not specifically covered herein. The award or proceeds

shall be payable to the Association for the use and benefit of the Owners and their Mortgagees as their interest may appear.

Section 12.3. Award for Certain Common Property: Any awards received on account of the taking of Common Property other than Structural Common Area and Exclusive Use Common Area such as and without limitation, recreational facilities, shall be paid to the Association and shall be retained in the general funds of the Association subject to the prior rights of any mortgagee holding an encumbrance upon any such Common Property for which such award has been paid.

Section 12.4. Award for Condominium: In the event of a taking of property other than that described in the Section entitled "Award for Certain Common Property" of this Article, the Board shall distribute the award forthcoming from the taking authority according to the provisions of this Section 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 the condemnation award is not apportioned among the affected Owners by court judgment or by agreement between the condemning authority and each of the affected Owners, the Board shall distribute the award among the affected Owners and their respective Mortgagees according to the relative decrease in values of the Residences affected by the condemnation as determined by an M.A.I. appraiser selected by the Board. 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.

Section 12.5. 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.

Section 12.6. Revival of Right to Partition: Upon a taking which renders more than fifty percent (50%) of the Residences in any Condominium 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 right of any Owner within such Condominium Project to partition through legal action as described in the Article entitled "Limitations Upon the Right to Partition and Severance" of this Declaration shall forthwith

revive. The determination as to whether Residences partially taken are capable of being so restored shall be made by the Board, and this decision shall be final and binding on all Owners and Mortgagees.

Section 12.7. Personal Property and Relocation Allowances: Where all or part of the Property is taken, each Owner 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 Owner in an action to recover all awards with respect to such portion, if any, of Owners' personal property which is taken with all or part of the Property as is at the time of any taking, as a matter of law, part of the real estate comprising the Condominium, and shall allocate to such Owner so much of any awards as is attributable in the taking proceedings, or failing such attribution, attributable by the Board to such portion of Owners' personal property.

Section 12.8. Change of Condominium Interest: In the event of a taking, and notwithstanding the Article entitled "Amendment Provisions" of this Declaration, in the event it is necessary to record an amendment to a Condominium Plan, such instrument must be executed by all persons or entities whose signatures would be required to record that Condominium Plan pursuant to Section 1351(e) of the California Civil Code or any similar statute then in effect and such other documents as required to make such amendment effective.

Section 12.9. Requirements of Federal Agencies: In addition to the requirements of this Article, the Board and the Owners must also comply with the requirements of the Article entitled "Mortgagee Protection" of this Declaration in the event of any taking.

### ARTICLE 13

#### LIMITATIONS UPON THE RIGHT TO PARTITION AND SEVERANCE

Section 13.1. No Partition: The right of partition is hereby suspended, except that the right to partition shall revive and a Condominium Project may be sold as a whole when the conditions for such action set forth in the Articles of this Declaration entitled "Destruction of Improvements" and "Eminent Domain" have been met; provided, however, notwithstanding the foregoing, any Owner may bring an action for partition by sale of the Condominium Project in which his Condominium is located as provided in Section 1359 of the California Civil Code upon the occurrence of any of the events therein provided. Provided, further, that if any Condominium shall be owned by two (2) or more co-ten-