

ARTICLE 11  
DESTRUCTION OF IMPROVEMENTS

Section 11.1. Definitions: The following terms used in this Article are defined to mean as follows:

(a) "Insured Improvements" shall mean the Improvements on the Property insured under the fire and casualty insurance policy maintained by the Association and shall consist of Structural Common Area, Residence Improvements and Common Facilities.

(b) "Affected Condominium" shall mean and refer to a Condominium the Unit of which is situated within partially or totally destroyed insured Structural Common Area or contains partially or totally destroyed insured Residence Improvements.

(c) "Affected Common Facility" shall mean the partially or totally destroyed insured Common Facility.

(d) "Acceptable Range of Reconstruction Cost" shall mean that the amount of the insurance proceeds paid for partially or totally destroyed Insured Improvements together with the amount of any deductible amount designated in the fire and casualty insurance policy maintained by the Association totals at least ninety percent (90%) of the estimated cost to repair, replace or reconstruct such partially or totally destroyed Insured Improvements.

(e) "Substantial Destruction" shall mean a destruction of Insured Improvements representing at least seventy-five percent (75%) of the current replacement cost value of all Insured Improvements upon the Property.

Section 11.2. Board Action: In the event any Insured Improvements are damaged, the Board shall take the following action:

(a) Acceptable Range of Reconstruction Cost: The Board shall ascertain the cost of repair, replacement or reconstruction by obtaining fixed price bids from at least two (2) reputable contractors, which bids shall include the obligation of the contractor to obtain a performance bond, if the Board deems that such bids are necessary or appropriate. The Board shall further have full authority to negotiate with representatives of the insurer and to make settlement with the insurer for less than full insurance coverage on the damage. Any settlement made by the Board in good faith shall be binding upon all Owners with the

exception of the Administrator of Veterans Affairs, an Officer of the United States of America. After the settlement has been approved by the Board, any two (2) directors of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim.

(b) Notice of Reconstruction Assessments: The Board shall promptly cause notice to be delivered to all affected Insured Owners if, during the process of determining the Acceptable Range of Reconstruction Cost, it appears likely that the repair, replacement or reconstruction of a partially or totally destroyed Insured Improvement will result in the levying of Reconstruction Assessments against such Owners. Such notice shall specify the estimated amount of any such Reconstruction Assessment.

(c) Vote of Members: The Board shall call a special meeting or shall distribute written ballots to the Insured Owners for action to be taken without a meeting to determine whether not to proceed with the repair, replacement or reconstruction of partially or totally destroyed Insured Improvements upon the happening of any one of the following events:

(i) a Substantial Destruction;

(ii) a determination that the requirements of the Acceptable Range of Reconstruction Cost have not been met;

(iii) receipt of a written request of Insured Owners representing at least five percent (5%) of the total voting power of the Insured Owners requesting such action; or

(iv) failure or inability to make a determination as to the Acceptable Range of Reconstruction Cost within sixty (60) days of the date of the destruction.

Section 11.3. Reconstruction: The repair, replacement or reconstruction shall commence as soon as practicable following any one of the following events:

(a) a determination that the requirements of the Acceptable Range of Reconstruction Cost have been met, except that if Reconstruction Assessments must be levied, such work shall not commence until ten (10) days have elapsed following the delivery of the notice of the Reconstruction Assessment to all Insured Owners required to pay Reconstruction Assessments. The notice of estimated Reconstruction Assessment required

to be delivered to each such Insured Owner as hereinabove provided in this Article shall satisfy this condition if the actual amount of the Reconstruction Assessment does not exceed the estimated amount set forth in the said notice;

(b) approval of such action by not less than thirty-four percent (34%) of the voting power of the Insured Owners other than Declarant; or

(c) failure to receive written approval not to proceed with the repair, replacement or reconstruction of the required percentage of Eligible Mortgage Holders and Owners required under the Article entitled "Mortgagee Protection" of the Declaration within one hundred twenty (120) days of the date of the destruction.

Notwithstanding the foregoing, the Board may delegate its responsibility to repair, replace or reconstruct any damage to Residence Improvements to the Owner of such Residence Improvements if the Board deems that such damage is less than the amount that would require notice to Requesting Mortgagees pursuant to the Article entitled "Mortgagee Protection" of this Declaration. Any such repair, replacement or reconstruction shall be commenced and completed as soon as practicable following such damage.

Section 11.4. Proceeds of Insurance: All insurance proceeds shall be paid to the Trustee unless the proceeds from a single claim do not exceed Ten Thousand Dollars (\$10,000) in which event such insurance proceeds shall be paid directly to the Association to be used as provided in this Article. The Trustee shall hold, distribute and expend such proceeds for the benefit of Owners, Mortgagees and others as their respective interests shall appear. In the event any portion of the insurance proceeds were paid to a Mortgagee of a Mortgage encumbering an Affected Condominium, such amount shall be paid to the Board by the Owner of such Affected Condominium. In the case of payment of such proceeds to a mortgagee of a mortgage encumbering an Affected Common Facility, such amount shall be paid in equal amounts by all Insured Owners. In the event any Insured Owner or Owner of an Affected Condominium fails to pay such amount within thirty (30) days of a written demand therefor by the Association, the Board may levy a Special Assessment against any such Owner and his Condominium for such amount.

Section 11.5. Reconstruction Assessments: If necessary, the Board shall levy a Reconstruction Assessment against any Insured Owner of Residence Improvements to cover the cost of the repair, replacement or reconstruction of any damage to such Residence Improvements in excess of the insurance proceeds available for such purpose and shall levy

Reconstruction Assessments against all Insured Owners at such time and in such amount determined necessary to cover the costs of repair, replacement or reconstruction in excess of insurance proceeds of all other Insured Improvements.

Section 11.6. Compliance with Plans:

(a) Condominiums: Any reconstruction of a Condominium Building undertaken pursuant to this Article shall substantially conform to the Condominium Plan, as amended pursuant to this Section, or other provisions of this Declaration, and the original plans and specifications. In determining whether the plans for a reconstructed Condominium Building are in substantial conformance with its Condominium Plan, the Board may take into consideration the availability and expense of the labor and materials in the original construction of such Condominium Building. If such labor or material is not available or is prohibitively expensive at the time of reconstruction, the Board may permit the substitution of other labor or material as it deems proper. In the event the Condominium Plan is amended, 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. Said persons or entities shall also execute such other document or take such other actions as required to make such amendment effective.

(b) Nonexclusive Use Common Area: Any reconstruction of Nonexclusive Use Common Area undertaken pursuant to this Article shall substantially conform to the original plans and specifications unless other action is approved by a majority of the voting power of the Association.

Section 11.7. Abatement of Regular Assessments: If the Board determines that any Residence has become uninhabitable by reason of its total or partial destruction, it may exempt such Owner from the payment of that portion of the Regular Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and the use of the uninhabitable Residence. The exemption may include, but shall not be limited to, the portion of such Regular Assessment attributable to refuse disposal and domestic water supplied to the Residence.

Section 11.8. Certificate of Intention Not to Reconstruct: In the event there has been a decision not to reconstruct pursuant to this Article, the Board shall execute, acknowledge and record in the Official Records not later than one hundred twenty-five (125) days from the date of destruction, a certificate declaring the intention of the

Association not to rebuild. If no such certificate is so filed within said time limitation, it shall be conclusively presumed that the Association has determined to undertake reconstruction pursuant to this Article.

Section 11.9. Partition: In the event that a certificate described in the Section entitled "Certificate of Intention Not to Reconstruct" of this Article is recorded within the time period provided therein, the right of any Owner to partition through legal action as described in the Article hereof entitled "Limitations Upon the Right to Partition and Severance" shall forthwith revive.

Section 11.10. Determination of Allocable Proceeds: The amount of insurance proceeds "allocated" or "allocable" to an Affected Condominium or to an Affected Common Facility shall be determined pursuant to this Section as follows:

(a) In the event the insurance carrier allocates insurance proceeds among Affected Condominiums and Affected Common Facilities, and such allocation is approved by the Board, such allocation shall be final and binding upon the Owners and mortgagees.

(b) In the event the insurance carrier fails to allocate the insurance proceeds, such allocation shall be determined by multiplying the amount of insurance proceeds available for distribution by a fraction, the denominator of which is the total decrease of M.A.I. appraised fair market value of all of the partially or totally destroyed Insured Improvements for which insurance proceeds have been paid by reason of the casualty and the numerator of which is the decrease of M.A.I. appraised fair market value of each such Affected Condominium or Affected Common Facility. The appraised values shall be determined by an M.A.I. appraiser selected by the Trustee. Such allocation shall be final and binding on the Owners, the Mortgagees and the Association.

Section 11.11. Distribution of Insurance Proceeds: In the event there has been a decision not to repair, replace or reconstruct any partially or totally destroyed Insured Improvements, the Trustee shall distribute the insurance proceeds allocated to each Affected Condominium and to each Affected Common Facility as follows:

(a) in the case of proceeds allocated to an Affected Condominium, to the Owner of the Affected Condominium subject to the prior rights of all Mortgagees holding Mortgages encumbering such Affected Condominium; and

(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