

annexed, at a future date, to the Covered Property in accordance with the provisions of this Declaration.

## **ARTICLE XV** **RIGHTS OF LENDERS**

**15.1 Filing Notice; Notices and Approvals.** A Mortgagee shall not be entitled to receive any notice which this Declaration requires the Association to deliver to Mortgagees unless and until such Mortgagee, or its mortgage servicing contractor, has delivered to the Board a written notice stating that such Mortgagee is the holder of a Mortgage encumbering a Lot within the Covered Property. Such notice need not state which Lot or Lots are encumbered by such Mortgage, but shall state whether such Mortgage is a First Mortgage. Wherever the approval of all or a specified percentage of Mortgagees is required pursuant to this Declaration, it shall be deemed to mean the vote or approval of all or a specified percentage only of those Mortgagees which have delivered such notice to the Board. Notwithstanding the foregoing, if any right of a Mortgagee under this Declaration is conditioned on a specific written request to the Association, in addition to having delivered the notice provided in this Section, a Mortgagee must also make such request, either in a separate writing delivered to the Association or in the notice provided above in this Section, in order to be entitled to such right. Except as provided in this Section, a Mortgagee's rights pursuant to this Declaration, including, without limitation, the priority of the lien of Mortgages over the lien of Assessments levied by the Association hereunder shall not be affected by the failure to deliver a notice to the Board. Any notice or request delivered to the Board by a Mortgagee shall remain effective without any further action by such Mortgagee for so long as the facts set forth in such notice or request remain unchanged.

**15.2 Priority of Mortgage Lien.** No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall affect, impair, defeat or render invalid the lien or charge of any First Mortgage made in good faith and for value encumbering any Lot, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Lot except as otherwise provided in this Article.

**15.3 Curing Defaults.** A Mortgagee or the immediate transferee of such Mortgagee, who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration which is non-curable or of a type which is not practical or feasible to cure. The determination of the Board made in good faith as to whether a breach is non-curable or not feasible to cure shall be final and binding on all Mortgagees.

**15.4 Resale.** It is intended that any loan to facilitate the resale of any Lot after judicial foreclosure, deed in lieu of foreclosure or trustee's sale is a loan made in good faith and for value and entitled to all of the rights and protections afforded to other Mortgagees.

**15.5 Relationship with Assessment Liens.**

(a) The lien provided for in the Article hereof entitled "*Nonpayment of Assessments*" for the payment of Assessments (excepting Remedial Assessments) shall be subordinate to the lien or any First Mortgage which was recorded prior to the date any such Assessment becomes due.

(b) If any Lot subject to a monetary lien created by any provision hereof shall be subject to the lien of a First Mortgage: (1) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such First Mortgage; and (2) the foreclosure of the lien of said First Mortgage or the acceptance of a deed in lieu thereof (such events being hereinafter referred to as "Events of Foreclosure") shall not operate to affect or impair the lien hereof, except that any persons who obtain an interest through any of the Events of Foreclosure, and their successors in interest, shall take title free of the lien hereof or any personal obligation for said charges as shall have accrued up to the time of any of the Events of Foreclosure, but subject to the lien hereof for all said charges that shall accrue subsequent to the Events of Foreclosure.

(c) Any Mortgagee who obtains title to a Lot by reason of any of the Events of Foreclosure, or any purchaser at a private or judicial foreclosure sale, shall take title to such Lot free of any lien or claim for unpaid Assessments against such Lot which accrue prior to the time such Mortgagee or purchaser takes title to such Lot, except for liens or claims for a share of such Assessments resulting from a pro-rata reallocation of such Assessments to all Lots within the Covered Property.

(d) Nothing in this Section shall be construed to release any Owner from his obligations to pay for any Assessment levied pursuant to this Declaration.

**15.6 Seventy-Five Percent (75%) Vote of Institutional Mortgagees.** Except upon the prior written approval of at least seventy-five percent (75%) of Institutional Mortgagees, based on one (1) vote for each First Mortgage held, neither the Association nor the Members shall be entitled to do any of the following:

(a) dissolve the Association or abandon or terminate the maintenance of the Common Areas by the Association;

(b) amend a material provision of this Declaration or of the Bylaws, provided "material amendment" shall mean amendments governing the following subjects:

(i) the fundamental purpose for which the Development was created (such as a change from residential use to a different use);

(ii) voting;

(iii) assessments, assessment liens, and subordination thereof;

(iv) the reserve for repair and replacement of the Common Areas;

(v) property maintenance obligations;

(vi) casualty, fidelity and liability insurance;

(vii) reconstruction in the event of damage or destruction;

(viii) rights to use the Common Areas;

(ix) annexation;

(x) any provision, which by its terms, is specifically for the benefit of First Mortgagees, or specifically confers rights of First Mortgagees; and

(xi) restrictions on the leasing of Lots;

(c) effectuate any decision to terminate professional management and assume self-management of the Covered Property; or

(d) abandon, partition, sell, alienate, subdivide, release, transfer, hypothecate or otherwise encumber the Common Areas; *provided, however*, the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Areas shall not require such approval.

**15.7 Other Rights of Institutional Mortgagees.** Any Institutional Mortgagee or its mortgage servicing contractor, shall, upon written request to the Association, be entitled to:

(a) inspect the books and records of the Association during normal business hours;

(b) receive the annual audited financial statement of the Association one hundred and twenty (120) days following the end of the Association's fiscal year;

(c) receive written notice of all annual and special meetings of the Members of the Board, and Institutional Mortgagees shall further be entitled to designate a representative to attend all such meetings in order to, among other things, draw attention to violations of this Declaration which have not been corrected or made the subject of remedial action by the Association; *provided, however*, nothing contained in this Section shall give an Institutional Mortgagee the right to call a meeting of the Board or of the Members for any purpose or to vote at any such meeting; and

(d) receive written notification from the Association of any default in the performance of the obligations imposed by this Declaration by the Owner whose Lot is encumbered by such Institutional Mortgagee's Mortgage, which default has not been cured within sixty (60) days of a request therefor by the Association; *provided, however*, the Association shall only be obligated to provide such notice to Institutional Mortgagees who have delivered a written request therefor to the Association specifying the Lot or Lots to which such request relates.

**15.8 Mortgagees Furnishing Information.** Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage.

**15.9 Right of First Refusal.** In the event this Declaration is amended to provide for any right of first refusal to purchase or lease a Lot in the Association, a Mortgagee who comes into possession of a Lot pursuant to a judicial foreclosure, a deed in lieu of foreclosure or a trustee's sale shall be exempt therefrom. In addition, conveyances to and from third party foreclosure purchasers and mortgage insurers and guarantors shall also be exempt.

**15.10 Conflicts.** In the event of any conflict between any of the provisions of this Article and any of the other provisions of this Declaration, the provisions of this Article shall control.

**15.11 Voting Rights of Institutional Mortgagees.** In the event of a default by an Owner in any payment due under the terms of any Institutional Mortgage held by an Institutional Mortgagee or the promissory note secured thereby, the Institutional Mortgagee or its representative shall have the right, upon giving written notice to such defaulting Owner and the Association and placing of record a notice of default, to exercise the voting rights of such defaulting Owner attributable to such Lot at any regular or special meeting of the Members held during such time as such default may continue. Any such Owner's voting rights shall be restored to him at such time as such default is cured.

**15.12 Notice of Destruction or Taking.** In the event that any Common Areas, or any portion thereof, is substantially damaged or is made the subject of any condemnation proceeding in eminent domain or is otherwise sought to be acquired by a condemning authority, the Board shall promptly notify any Institutional Mortgagee affected by such destruction, taking or threatened taking. As used herein, "substantially damaged" or "taking" shall mean damage or taking exceeding Ten Thousand Dollars (\$10,000). If requested in writing by an Institutional Mortgagee, the Association shall evidence its obligations under this Section in a written agreement in favor of such Institutional Mortgagee.

**15.13 Payment of Taxes or Premiums by Institutional Mortgagees.** Institutional Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Areas, unless such taxes or charges are separately assessed against the Owners, in which case the rights of Institutional Mortgagees shall be governed by the provisions of their Mortgages. Institutional Mortgagees may, jointly or singly, also pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Areas and Institutional Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any Institutional Mortgagee which requests the same to be executed by the Association.

## **ARTICLE XVI** **DEVELOPMENT DISCLOSURES**

Each Owner, by acceptance of a deed to a Lot, acknowledges and understands each of the following disclosures:

**16.1 Mold.** There is, and will always be, the presence of certain biological organisms within the Lot (and the Improvements therein). Most typically, this will include the common occurrence of mold and/or mildew. It is important to note that mold and mildew tend to proliferate in warm, wet areas. As such, it is each Owner's responsibility to maintain his or her Lot so as to avoid the accumulation of moisture and/or mold and mildew. Such mitigation matters should include, without limitation, the frequent ventilation of the residence, removal of standing water on balcony, patio or deck areas, prompt repair of any leaks which permit water intrusion into the residence, and prompt repair of plumbing leaks within the residence (irrespective of who may have caused any such leaks). Each Owner also understands that the presence of indoor plants may also increase moisture and/or mold and mildew levels. Also, the propping of large pieces of furniture against wall surfaces may lead to mold or mildew accumulation. It is the responsibility of each Owner to monitor and maintain his or her Lot so as to mitigate and avoid the conditions which are likely to lead to the existence and/or growth of mold and/or mildew. In the event that mold does appear and/or grow within the residence, it is also the Owner's responsibility to promptly and