

Section 9. Required Waiver. All policies of physical damage insurance shall provide, if reasonably possible, for waiver of the following rights, to the extent that the respective insurers would have the rights without such waivers:

(a) subrogation of claims against the tenants of the Unit Owners;

(b) any defense based on co-insurance;

(c) any right of set-off, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Association;

(d) any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any Unit Owner or any tenant of any Unit Owner, or arising from any act, neglect, or omission of any named insured or the respective agents, contractors and employees of any insured;

(e) any right of the insurer to repair, rebuild or replace, and, in the event the building is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured or the fair market value thereof;

(f) notice of the assignment of any Unit Owner of his interest in the insurance by virtue of a conveyance of any Condominium; and

(g) any right to require any assignment of any mortgage to the insurer.

ARTICLE XI

DESTRUCTION OF IMPROVEMENTS

Section 1. Restoration of Project. Except as otherwise provided in this Declaration, in the event of any destruction of any portion of the Project or the Association Properties, 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 pursuant to Article X hereof 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 Project shall be reconstructed or rebuilt substantially in accordance with the Condominium Plans and the original construction plans if they are available, unless changes recommended by the Architectural Committee shall have been approved in writing by seventy-five percent (75%) of the Unit Owners and by all of the holders of record of first Mortgages upon the Condominiums of the approving Unit Owners. In the event that the amount available from the proceeds of such insurance policies for such restoration and repair shall be at least eighty-five percent (85%) of the estimated cost of restoration and repair, a Reconstruction Assessment of the Unit

Owners, with each Unit Owner contributing in the same proportion that Annual Assessments are levied among the Unit Owners, 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. In the event that the amount available from the proceeds of such insurance policies for such restoration and repair shall be less than eighty-five percent (85%) of the estimated cost of restoration and repair, the Unit Owners by the vote of not less than seventy-five percent (75%) of the Unit Owners present and entitled to vote, in person or by proxy, at a duly constituted meeting of the Members of the Association, together with the approval of at least seventy-five percent (75%) of the first Mortgagees of record of the Condominiums in the Project, shall determine whether the Association shall be authorized to levy a Reconstruction Assessment and proceed with such restoration and repair. In the event of a determination by the Unit Owners and their Mortgagees as provided above that the cost of such restoration and repair would be substantial and that it would not be in their best interests to proceed with the same, the Unit Owners may, at their discretion, proceed as provided in Section 2 below.

Section 2. Sale of Project. In the event that the amount available from the proceeds of the insurance policies maintained by the Association shall be less than eighty-five percent (85%) of the cost of reconstruction, a certificate of the resolution authorizing such reconstruction shall be filed with the Orange County Recorder within six (6) months from the date of such destruction and in the event of a failure to record such certificate within said period, it shall be conclusively presumed that the Unit Owners have determined not to rebuild said Improvements. In the event of a determination not to rebuild, the Association, acting through the Board of Directors as provided in Section 1355(b) of the California Civil Code, shall be authorized to have prepared and to file, as promptly as practical, a corrected subdivision map, converting the Property into an unimproved parcel of land, which shall be offered for sale at the highest and best price obtainable, either in its damaged condition, or after damaged structures have been razed. The net proceeds of such sale and the proceeds of any insurance carried by the Association shall be divided proportionately among Unit Owners, such proportions to be based upon the relative initial base sales prices of the Units if such information is available or upon the relative square footage floor area of the respective Units as shown in the Condominium Plans, if the initial base sales prices are not available; provided that 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 a Unit Owner whose Condominium is so encumbered.

Section 3. Right to Partition. No Unit Owner shall have the right to partition of his interest in the Condominium and there shall be no judicial partition of the Project, or any part thereof; except that in the event that a certificate of a resolution to rebuild or restore 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, then conditions for partition as set forth in Subdivision (4) of Section 1354(b) of the California Civil Code shall be deemed to have been satisfied. Nothing herein shall be deemed to prevent

partition of a cotenancy in any Condominium. Except as provided above, each Unit Owner and the successors of each Unit 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 Unit 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 the Association Properties and do further covenant that no action for such judicial partition shall be instituted, prosecuted or reduced to judgment.

Section 4. Interior Damage. Restoration and repair of any damage to the interior of any individual Residence, 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 by and at the individual expense of the Unit Owner of the Residence so damaged. In the event of a determination to rebuild the Project after partial or total destruction, as provided in this Article XI, 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.

Section 5. Notice to Unit Owners and Listed Mortgagees. The Board, immediately upon having knowledge of any damage or destruction (1) to the Common Areas, or the Association Properties, or any portion thereof, which damage or destruction is substantial or may be restored only at a cost exceeding Ten Thousand Dollars (\$10,000), or (2) to any individual Unit which damage or destruction may only be restored at a cost exceeding One Thousand Dollars (\$1,000.00), shall promptly notify all Unit Owners, all institutional holders of first Mortgages on Condominiums in the Project, and all other Mortgagees who have filed a written request for such notice with the Board.

ARTICLE XII

EMINENT DOMAIN

Section 1. Definitions; Total Taking, Partial Taking, Special Partial Taking. The term "taking" as used in this Article shall mean condemnation by exercise of the power of eminent domain or by sale under threat of the exercise of the power of eminent domain. A "Total Taking" shall occur if there is a permanent taking by eminent domain of an interest in all or part of the Common Areas or of all or part of one or more Units, such that the ownership, operation and use of the Project in accordance with the provisions of this Declaration is substantially and adversely affected, and within one hundred twenty (120) days after the effective date of the taking the Unit Owners of any Units (i) not taken, or (ii) only partially taken and capable of being restored to at least ninety-five percent (95%) of their floor area and to substantially their condition prior to the taking (collectively the "Remaining Units") do not by affirmative vote of a majority of their entire voting interest (without adjustment among such Units for relative voting rights because of such partial taking) approve the continuation of the Project and the repair, restoration and replacement to the extent feasible of the Common Areas and the Remaining Units. A "Partial Taking" shall occur if there is any other permanent taking