

encumber the Community Facilities; provided, however, the granting of easements for public utilities or other public purposes consistent with the intended use of the Community Facilities shall not require such approval.

Section 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 ninety (90) days following the end of the Association's fiscal year;
- (c) Receive written notice of all annual and special meetings of the Members or 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 Residence is encumbered by such Institutional Mortgagee's Mortgage, which default has not been cured within sixty (60) days of a request therefore by the Association; provided, however, the Association shall only be obligated to provide such notice to Institutional Mortgagees who have delivered a written request therefore to the Association specifying the Residence or Residences to which such request relates.

Section 8 - Mortgagees Furnishing Information. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage.

Section 9 - Conflicts. In the event of any conflict between any of the provisions of this Article and any of the other revisions of this Declaration, the provisions of this Article shall control.

Section 10 - 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 Community Facilities, 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 Community Facilities and Institutional Mortgagees making such payments shall be owed immediate reimbursement therefore 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 PARTY WALLS

Section 1 - Definition of Party Wall. Each wall which is built as a part of the original construction of the Lots and Dwellings upon the Covered Property and placed on the dividing line between the Lots shall constitute a party wall, and, to that extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. A party wall shall be considered to adjoin and abut against the property line dividing the Lots from the bottom of the foundation over the full length and height of any structure or wall.

Section 2 - Use of Party Wall. Owners whose Lots are separated by a party wall shall equally have the right to use such party wall, except that each shall have the right to the exclusive use of the surface of the wall on his side. Neither such Owner shall use any portion of such party wall so as to interfere with the use and enjoyment of the other Owner.

Section 3 – Modification or Alteration of the Party Wall. No Owner shall alter the shape, size or construction of a party wall, or repair or replace a party wall using materials different than those used in the original construction of the party wall, without the written consent of the Architectural Committee, and the written consent of the Owner of the adjoining Lot who is jointly responsible for the maintenance and repair of the party wall. All written consents required by this Section shall be obtained in compliance with the terms and conditions contained within the Architectural Standards concerning party wall consents.

Section 4 - Sharing of Repair and Maintenance. Except as the Association is obligated to maintain a party wall, the cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 5 - Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 6 - Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 7 - Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 8 - Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, all owners of the Party Wall agree to submit the dispute to binding arbitration at Judicial Mediation and Arbitration Service (JAMS, Inc.) or other mutually agreeable alternative dispute resolution service, to have the matter arbitrated before a mutually agreeable arbitrator. If an arbitrator cannot be agreed upon, JAMS, Inc. or another mutually agreeable alternative dispute resolution service shall select an arbitrator upon the request of any of the parties. The Association shall only be a party to such binding arbitration if an Owner is challenging the Association's denial of such Owner's application to modify a party wall, or if an Owner is challenging the Association's approval of an adjoining Owner's application to modify a party wall.

ARTICLE XVII GENERAL PROVISIONS

Section 1 – Enforcement. The Association, or any Owner, shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants and reservations, now or hereafter imposed by the provisions of this Declaration or any amendment thereto, including the right to prevent the violation of any such restrictions, conditions, covenants, or reservations and the right to recover damages or other dues for such violation. The Association or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Articles or Bylaws and any amendments thereto. With respect to architectural control, Assessment liens or any other liens or charges and Association Rules, the Association shall have the exclusive right to the enforcement thereof.

Section 2 - No Waiver. Failure by the Association or by any Member to enforce any covenant, condition, or restriction herein contained, or the Articles, Bylaws or Association Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any such future breach of the same or any other covenant, condition or restriction.

Section 3 - Cumulative Remedies. All rights, options and remedies of the Association, the Owners or Mortgagees under this Declaration are cumulative, and not one of them shall be exclusive of any other, and the Association, the Owners and the Mortgagees shall have the right to pursue any one or