

rights of Declarant or a Merchant Builder, as applicable, hereunder and elsewhere in these Restrictions may be assigned by Declarant or such Merchant Builder, as applicable, to any successor in interest to any portion of Declarant's or Merchant Builder's interest in any portion of the Properties or the Annexable Area (including, without limitation, to any Merchant Builder) by an express Recorded written assignment which specifies the rights of Declarant or such Merchant Builder so assigned. Notwithstanding any other provision of this Declaration, for so long as Declarant owns any portion of the Properties or the Annexable Area, Declarant's prior written approval is required before any amendment to this Article VIII is effective.

8.3. Easement Relocation.

Association Property comprising easements over real property the fee title to which has not been made subject to the Declaration ("Interim Easement Area") may be relocated, modified or terminated by Declarant to accommodate the final plan of development for the future Phase of Development in which the Interim Easement Area is located. Such relocation, modification or termination shall be set forth in the Recorded instrument annexing fee title to the Interim Easement Area to the Declaration. Notwithstanding the foregoing, no such relocation, modification or termination shall prevent access to any Lot or Condominium.

8.4. Entry Gate Operations.

Each Owner of a Lot or Condominium which is part of the Properties acknowledges by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other instrument, that Declarant has a substantial interest in assuring unrestricted access to the Properties to accommodate the construction and marketing of the Residences and development of the Properties. Therefore, notwithstanding any other provisions of the Restrictions, until (i) the Close of Escrow has occurred for the sale of all Residences in the Properties, and (ii) Declarant is no longer entitled to add Annexable Area to the Properties without the vote of the Delegates pursuant to Article II ("Marketing Period"), Declarant is entitled to control the operation of the entry gates which provide vehicular access to the Properties. During the Marketing Period Declarant may establish and change the hours of gate operation in its sole discretion without notice, and require that the entry gates be open to the general public to accommodate construction and marketing activities.

ARTICLE IX

9. Insurance.

9.1. Duty to Obtain Insurance: Types.

The Association shall obtain and maintain comprehensive public liability insurance (including medical payments), with such limits as it deems necessary (but in no event less than One Million Dollars (\$1,000,000.00) covering all claims for personal injury and property damage arising out of a single occurrence), insuring against liability for bodily injury, death and property damage arising from the activities of the Association and its Members, with respect to the Association Property and any other property under its jurisdiction. Liability policies shall include, if

obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. The Association shall also obtain and maintain fire and casualty insurance with extended coverage, without deduction for depreciation, in an amount as near as possible to the full replacement value of the Association Property Improvements. Such insurance shall be maintained for the benefit of the Association, the Owners, and the Mortgagees, as their interests may appear as named insured, subject, however, to loss payment requirements as set forth herein. The Association shall purchase such other insurance, as necessary, including, but not limited to, errors and omissions, directors, officers and agents' liability insurance, plate glass insurance, medical payments, malicious mischief, liquor liability and vandalism insurance, fidelity bonds and workers' compensation, and such other risks customarily insured against with respect to projects of similar size, construction, location, and use. Fidelity bond coverage naming the Association as obligee must be obtained, if reasonably available, by or on behalf of the Association for any Person handling Association funds, including, but not limited to Association officers, directors, trustees, employees and agents and Manager employees, whether or not such persons are compensated for their services, in an amount not less than the estimated maximum of funds, including Reserve Funds, in the Association's or Manager's custody during the term of such bond. The aggregate amount of such fidelity bonds may not be less than a sum equal to three (3) months' aggregate Common Assessments on all Lots and Condominiums in the Properties, plus the amount of the Reserve Funds. In addition, the Association shall continuously maintain in effect such casualty, flood, and liability insurance and fidelity bond coverage meeting the insurance and fidelity bond requirements established by FNMA, GNMA, FHLMC, VA and FHA, as applicable, so long as any of them is an Owner of a Lot or Condominium or Beneficiary, guarantor or insurer of a Mortgage on a Lot or Condominium in the Properties and has filed with the Board a written request that the Association conform with such insurance requirements, except to the extent such coverage is not available or has been waived in writing by FHLMC, FNMA, GNMA, VA and FHA, as applicable.

9.2. Waiver of Claims.

As to all policies of insurance maintained by or for the benefit of the Association and the Owners, the Association and the Owners hereby waive and release all claims against one another, the Board, Declarant and the Merchant Builders to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by any of such persons.

9.3. Notice of Expiration Requirements.

If available, all of the policies of insurance maintained by the Association shall contain a provision that such policy or policies will not expire nor be cancelled, terminated, or materially modified without at least thirty (30) days' prior written notice to the Board, Declarant, and those Beneficiaries, guarantors or insurers of first Mortgages and Owners who have filed a written request with the carrier for such notice, and every other person in interest who requests such notice of the insurer.

9.4. Insurance Premiums.

Insurance premiums for any insurance coverage obtained by the Association shall be a Common Expense. That portion of the Common Assessments necessary for the required insurance premiums shall be separately accounted for by the Association in the Reserve Funds, to be used solely for the payment of premiums of required insurance as such premiums become due.

9.5. Trustee for Policies.

The Association, acting through the Board, is hereby appointed trustee of the interests of all named insureds under insurance policies purchased and maintained by the Association. All insurance proceeds under any such policies as provided for in Section 9.1 shall be paid to the Association as Trustee. The Board shall receive the proceeds and deal therewith as provided herein. Insurance proceeds must be used by the Association for the repair or replacement of the property for which the insurance was carried. The Board has the authority to negotiate loss settlements with the appropriate insurance carriers, with participation to the extent they desire, of first Mortgagees who have filed written requests within ten (10) days of receipt of notice of any damage or destruction. The Board may select and name as an insured a representative, including a trustee with whom the Association may enter into an insurance trust agreement or any successor to such trustee, who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance and to perform such other functions as are necessary to accomplish this purpose.

9.6. Actions as Trustee.

The Board has the exclusive right to bind the Association and the Owners as to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance, in a manner satisfactory to sixty-seven percent (67%) of the first Mortgagees (based upon one (1) vote for each Lot or Condominium pledged as security for the respective first Mortgage) who have filed requests under Section 9.3. 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, and such signatures are binding on all the named insureds. Duplicate originals or certificates of all policies of fire and casualty insurance maintained by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Mortgagees who request the same in writing.

9.7. Annual Insurance Review.

The Board shall review the insurance carried by or on behalf of the Association, at least annually, to determine the amount of the casualty and fire insurance referred to in Section 9.1 above. If economically feasible, the Board shall obtain a current independent evaluation of the full replacement value of the Improvements on the Association Property, except for foundations and footings, without deduction for depreciation, prior to each such annual review.

9.8. 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:

9.8.1. Subrogation. Subrogation of claims against the Owners, tenants of the Owners, and officers and directors of the Association.

9.8.2. Co-Insurance. Any defense based upon coinsurance.

9.8.3. Set-Off. Any right of setoff, counterclaim, apportionment, proration or contribution due to other insurance carried by the Association.

9.8.4. Neglect. Any invalidity, other adverse effect or defense due to any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act, or omission of any named insured or the respective agents, contractors and employees of any insured.

9.8.5. Right to Rebuild. Any right of the insurer to repair, rebuild, or replace, and, if the Improvement 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.

9.8.6. Notice of Owner Assignment. Notice of the assignment by any Owner of his interest in the insurance by virtue of a conveyance of any Lot or Condominium.

9.8.7. Assignment of Mortgage. Any right to require any assignment of any Mortgage to the insurer.

9.8.8. Association Acts. Any denial of an Owner's claim because of negligent acts by the Association or other Owners.

9.8.9. Acts of Owners. Prejudice of the insurance by any acts or omissions of Owners that are not under the Association's control.

ARTICLE X

10. Miscellaneous.

10.1. Term and Termination.

This Declaration continues in full force until a Declaration of Termination satisfying the requirements of an amendment to this Declaration as set forth in Section 10.2 of this Article is Recorded.