

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.

10.2. Amendments.

10.2.1. By Declarant. Prior to the first Close of Escrow for the sale of a Lot or Condominium to a member of the public pursuant to a transaction requiring the issuance of a Public Report, this Declaration may be amended or terminated by Recording a written instrument signed by Declarant setting forth such amendment or termination. Notwithstanding any other provisions of this Declaration, for so long as Declarant owns any portion of the Properties or the Annexable Area, Declarant may unilaterally amend this Declaration to conform this Declaration to the requirements of VA, FHA, DRE, FNMA, GNMA or FHLMC then in effect, by Recording a written instrument signed solely by Declarant.

10.2.2. By Delegates. The provisions of this Declaration, other than Articles I, II, IV, VI, and VIII and Sections 3.1.8, 5.1, 5.4, 10.2 and 10.15 (all of which may not be amended without the written consent of Declarant until the later to occur of (i) the expiration of Declarant's right to add Annexable Area to the Properties without the vote of the Delegates pursuant to Article II or (ii) the twelfth (12th) anniversary of the first Close of Escrow in the Properties), may be amended by Recording an instrument, signed and acknowledged by Declarant (for those amendments which must be approved by Declarant) and two (2) officers of the Association, setting forth the amendment and certifying that such amendment has been approved by Delegates representing sixty-seven percent (67%) of the voting power of the Association and the requisite percentage of holders and insurers of first Mortgages, in the case of those amendments which this Declaration requires to be approved by first Mortgagees. Amendments shall be effective upon Recordation.

10.2.3. Approval of First Mortgagees. Notwithstanding the foregoing, any of the following amendments, to be effective, must be approved by fifty-one percent (51%) of the first Mortgagees who have requested the Association to notify them of proposed action requiring the consent of a specified percentage of first Mortgagees, based upon one (1) vote for each Lot or Condominium pledged as security for the respective first Mortgage:

(i) Rights of Lenders. Any amendment which affects or purports to affect the validity or priority of encumbrances or the rights or protections granted to Beneficiaries, insurers and guarantors of first Mortgages as provided in Articles II, VI, VII, VIII, IX and X hereof.

(ii) Lien Priority. Any amendment which would necessitate a Mortgagee after it has acquired a Lot or Condominium through foreclosure to pay more than its proportionate share of any unpaid assessment or assessments accruing after such foreclosure.

(iii) Forfeitures and Taxes. Any amendment which would or could result in (a) an encumbrance being cancelled by forfeiture, or (b) an individual Lot or Condominium not being separately assessed for tax purposes.

(iv) Insurance and Condemnation. Any amendment relating to the insurance provisions as set out in Article IX hereof, or to the application of insurance proceeds as set out in Article IX hereof, or to the disposition of any money received in any taking under condemnation proceedings.

(v) Termination and Subdivision. Any amendment which would or could result in termination or abandonment of the Properties or partition or subdivision of a Lot or Condominium, in any manner inconsistent with the provisions of this Declaration; provided that termination of the legal status of the Properties as a common interest development for reasons other than substantial destruction or condemnation of the Properties must be approved by the institutional Record holders of sixty-seven percent (67%) of the first Mortgages at the time of such amendment.

(vi) Miscellaneous. Any amendment concerning:

- (A) Voting rights;
- (B) Rights to use the Association Property;
- (C) Reserves and responsibility for maintenance, repair, and replacement of the Association Property;
- (D) Annexation or deannexation of real property to or from the Properties;
- (E) Boundaries of any Lot or Condominium;
- (F) Leasing of Lots or Condominiums;
- (G) Establishment of self-management by the Association if professional management has previously been required by the Beneficiary, insurer or guarantor of a first Mortgage on any Lot or Condominium;
- (H) Assessments, assessment liens, or the priority of assessment liens; and
- (I) Any material amendment as defined in Section 601.02 of the FNMA Selling Guide, as amended.

Any approval by a holder, insurer or guarantor of a first Mortgage required under this Section 10.2.3, or required pursuant to any other provisions of the Restrictions, must either be given in writing, or is deemed given if, within thirty (30) days after receipt of written

notice of the proposed action sent via registered or certified mail, return receipt requested, the holder, insurer or guarantor does not submit a written response to the notice.

10.2.4. Veto by County. Notwithstanding anything contained herein to the contrary, so long as any of the Properties subject to this Declaration lies within unincorporated area of the County, the County shall have the power to veto any purported amendment or termination of this Declaration, based on whether, after such termination or amendment, the Association Property will continue to enjoy adequate provision for preservation and maintenance. No amendment or written agreement purporting to terminate or modify the maintenance provisions of this Declaration shall take effect until thirty (30) calendar days following delivery by mail, return receipt requested, of written notice thereof, to the Director of the County Environmental Management Agency ("EMA"), with a copy thereof to the County Counsel. If no veto has been exercised by the Director of EMA within thirty (30) calendar days of the receipt of such notice, such amendment or termination shall thereafter become effective.

10.2.5. Veto by City. Notwithstanding anything contained herein to the contrary, if any of the Properties subject to this Declaration is annexed into the boundaries of the City, then (i) the City shall have the power to veto any purported amendment or termination of this Declaration, based on whether, after such termination or amendment, the Association Property will continue to enjoy adequate provision for preservation and maintenance, and (ii) no amendment or written agreement purporting to terminate or modify the maintenance provisions of this Declaration shall take effect until thirty (30) calendar days following delivery by mail, return receipt requested, of written notice thereof, to the City Director of Planning and Community Development, with a copy thereof to the City Attorney, and (iii) if no veto is exercised by the City Planning Director within thirty (30) calendar days after the receipt of such notice, such amendment or termination shall thereafter become effective.

10.2.6. Lender and Regulatory Amendments. Notwithstanding any other provisions of this Section 10.2, but subject to the veto rights of the County and City pursuant to Subsections 10.2.4 and 10.2.5 above, for so long as Declarant owns any portion of the Properties or may add the Annexable Area to the Properties without the approval of the Delegates, Declarant may unilaterally amend this Declaration by Recording a written instrument signed by Declarant for the limited purposes of conforming this Declaration to the then applicable requirements of VA, FHA, DRE, FNMA, GNMA or FHLMC.

10.2.7. Certification. A certificate, signed and sworn to by two (2) officers of the Association that Delegates representing sixty-seven percent (67%) of the Lots and Condominiums have voted for any amendment adopted as provided above, when Recorded, shall be conclusive evidence of that fact. The certificate reflecting any termination or amendment which is subject to County or City veto, or which requires the consent of any of the record holders, guarantors or insurers of first Mortgages shall include a certification that the requisite approval of the County, the City, and such holders, guarantors or insurers of first Mortgages has been obtained or waived. The certificate reflecting any termination or amendment requiring

Declarant's consent shall be signed and acknowledged by Declarant. The Association shall maintain in its files the record of all such votes and Mortgagee consent solicitations and disapprovals for a period of at least four (4) years.

10.3. Mortgagee Protection-General.

Notwithstanding any other provision of this Declaration, no amendment or violation of this Declaration will defeat or render invalid the rights of the Beneficiary under any Deed of Trust made in good faith and for value, and Recorded prior to the Recordation of such amendment (or a Notice of Lien Recorded pursuant to Section 6.11). After the foreclosure of any such Deed of Trust such Lot or Condominium remains subject to this Declaration, as amended.

Notwithstanding any and all provisions of this Declaration to the contrary, in order to induce FHLMC, GNMA, FNMA, VA and FHA to participate in the financing of Lots and Condominiums within the Properties, the following provisions are added hereto (and to the extent these added provisions, pertaining to the rights of Mortgagees, FHLMC, FNMA, GNMA, VA and FHA, conflict with any other provisions of this Declaration or any other of the Restrictions, these added restrictions shall control):

10.3.1. Notice of Default. Each Beneficiary, insurer and guarantor of a first Mortgage encumbering any Lot or Condominium, upon filing a written request for notification with the Board, is entitled to written notification from the Association of (i) any condemnation or casualty loss which affects either a material portion of the Properties or the Lot or Condominium securing the respective first Mortgage; (ii) any delinquency of sixty (60) days or more in the performance by the Owner of such Lot or Condominium of any obligation arising pursuant to this Declaration, including without limitation the payment of assessments or charges owed by the Owner of the Lot or Condominium securing the respective first Mortgage, which notice each Owner hereby consents to and authorizes; (iii) a lapse, cancellation, or material modification of any policy of insurance or fidelity bond maintained by the Association; and (iv) any proposed action of the Association which requires consent by a specified percentage of first Mortgagees.

10.3.2. First Refusal Exemption. Every Owner, including every first Mortgagee of a Mortgage encumbering any Lot or Condominium, which obtains title to such Lot or Condominium pursuant to the remedies provided in such Mortgage, or pursuant to foreclosure of the Mortgage, or by deed (or assignment) in lieu of foreclosure, is exempt from any "right of first refusal."

10.3.3. Lien Priority. Each first Mortgagee of a Mortgage encumbering any Lot or Condominium and Recorded prior to a Notice of Lien which obtains title to such Lot or Condominium pursuant to judicial foreclosure or the powers provided in such Mortgage takes title to such Lot or Condominium free and clear of any claims for unpaid assessments or charges against such Lot or Condominium which accrued prior to the time such Mortgagee acquires title to such Lot or Condominium in accordance with Section 6.16.

10.3.4. Miscellaneous. Unless at least 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) or Delegates representing at least sixty-seven percent (67%) of the voting power of the Association (other than Declarant and Merchant Builders) have given their prior written approval, neither the Association, the Delegates nor the Owners shall:

(i) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Association Property or the Improvements thereon which are owned by the Association; provided that none of the following shall be deemed a transfer within the meaning of this clause: the granting of easements for public utilities or for other purposes consistent with the intended use of such property by the Association; the transfer of fee title to real property with a value of Ten Thousand Dollars (\$10,000.00) or less; and the relocation of certain Association Property easements as described in Section 8.3 hereof;

(ii) change the method of determining obligations, assessments, dues or other charges which may be levied against any Owner, or the method of allocating distributions of hazard insurance proceeds or condemnation awards;

(iii) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design of the exterior appearance of the Residences and other Improvements on the Lots or Condominiums, the exterior maintenance of the Residences, the maintenance of Association Property Walls, the maintenance of common fences and driveways, or the upkeep of lawns and plantings on the Association Property;

(iv) fail to maintain fire and extended coverage insurance on insurable Association Property on a current replacement cost basis in an amount as near as possible to one hundred percent (100%) of the insurable value (based on current replacement cost); or

(v) use hazard insurance proceeds for losses to any Association Property for other than the repair, replacement or reconstruction of such Improvements.

10.3.5. Books and Records. All Beneficiaries, insurers and guarantors of first Mortgages on Lots or Condominiums, upon written request to the Association, may examine current copies of the Association's books, records and financial statements and the Restrictions during normal business hours, and may require the Association to submit an annual audited financial statement for the preceding fiscal year without expense to the entity requesting the statement within one hundred twenty (120) days of the end of the fiscal year.

10.3.6. Mortgage Notices. All Beneficiaries, insurers and guarantors of first Mortgages of Lots or Condominiums who have filed a written request with the Association shall be given (i) thirty (30) days' written notice prior to the effective date of any proposed,

material amendment to this Declaration or the Articles or Bylaws, and prior to the effective date of any termination of an agreement for professional management of the Properties following a decision of the Owners to assume self-management of the Properties; (ii) written notice of all meetings of the Delegates and Delegate District Members and the right to designate in writing a representative who shall be authorized to attend all such meetings; and (iii) immediate written notice as soon as the Board receives notice or otherwise learns of any damage to the Association Property whenever the cost of reconstruction exceeds Ten Thousand Dollars (\$10,000), and as soon as the Board receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition, with respect to any portion of the Properties.

10.3.7. Association Property Taxes. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Association Property and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such property, and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

10.3.8. Reserves. The Reserve Funds described in Article VI of this Declaration must be funded by regularly scheduled monthly, quarterly, semiannual or annual payments rather than by large special (irregular) assessments.

10.3.9. Service Agreements. Except as approved by the DRE, any agreement between the Association and its professional Manager, or any agreement providing for services by Declarant to the Association, must provide that the contract may be terminated (i) for cause on not more than thirty (30) days' written notice, and (ii) without cause (or the payment of a penalty or termination fee) at any time upon not more than ninety (90) days' written notice, and the term of any such contract shall not exceed one (1) year.

10.3.10. Fidelity Bonds. The Board shall secure and cause to be maintained in force at all times a fidelity bond for any person or entity handling funds of the Association, including, but not limited to, employees of any Manager.

10.3.11. Leases of Residences. Any agreement for leasing or renting a Lot or Condominium is subject in all respects to the provisions of this Declaration, the Articles and the Bylaws. All such agreements shall be in writing and any failure by the lessee to comply with the terms of this Declaration, the Articles and the Bylaws shall be a default under the agreement.

10.3.12. Self-Management. When professional management has been previously required by a Beneficiary, insurer or guarantor of a first Mortgage, any decision to establish self-management by the Association shall require the approval of Delegates representing sixty-seven percent (67%) of the voting power of the Association and the Beneficiaries of fifty-one percent (51%) of the first Mortgages of Lots and Condominiums in the

Properties (based upon one (1) vote for each Lot or Condominium pledged as security for the respective first Mortgage).

10.3.13. Secondary Lenders. In addition to the foregoing, the Board may enter into such contracts or agreements on behalf of the Association required in order to satisfy the guidelines of the FHA, VA, FHLMC, FNMA or GNMA or any similar entity, to allow for the purchase, guaranty or insurance, as the case may be, by such entities of first Mortgages encumbering Lots or Condominiums. Each Owner agrees that it will benefit the Association and its Members, as a class of potential Mortgage borrowers and potential sellers of their respective Lots or Condominiums, if such agencies approve the Properties as a qualifying community under their respective policies, rules and regulations, as adopted from time to time. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage encumbering a Lot or Condominium.

10.4. Notices.

Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered two (2) business days after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any Person at the address given by such Person to the Association for the purpose of service of such notice, or to the Residence (or principal place of business in the case of a Project Association) of such Person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

10.5. Enforcement and Non-Waiver.

10.5.1. Right of Enforcement. Subject to Section 1354 of the California Civil Code and Sections 10.5.9, 10.5.10 and 10.15 below, the Association, the successors-in-interest of the Association, any Owner, Project Association, Declarant and Merchant Builders (so long as Declarant or a Merchant Builder owns a Lot or Condominium in the Properties or is entitled to add Annexable Area to the Properties without the consent of the Delegates), and the Meadowood Association may enforce any of the provisions of the Restrictions against any portion of the Properties which is in noncompliance, and against each Owner, the Association, any Project Association, or any other Person responsible for the noncompliance. Such right shall include proceedings for damages, as well as proceedings to enjoin any violation of the Restrictions. If there is a conflict between the provisions of the Meadowood Declaration and this Declaration, the provisions of the Meadowood Declaration shall control.

10.5.2. Project Declaration Enforcement. Subject to Section 1354 of the California Civil Code and Sections 10.5.9, 10.5.10 and 10.15 below, the Association may commence and maintain actions and proceedings to restrain and enjoin any breach or threatened breach of the provisions of any applicable Project Declaration and to enforce, by mandatory

injunctions or otherwise, all of the provisions of any applicable Project Declaration. The prevailing party is entitled to recover costs and reasonable attorneys' fees in accordance with Section 10.5.7 below.

10.5.3. Violations are Nuisance. Every act or omission whereby any provision of the Restrictions is violated in whole or in part is declared a nuisance and every remedy allowed by law or equity against a nuisance, either public or private, is applicable against every such violation and may be exercised as provided in Section 10.5.1 above.

10.5.4. Violation of Law. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any of the Properties is a violation of the Restrictions and subject to all of the enforcement procedures set forth in the Restrictions.

10.5.5. Remedies Cumulative. Each remedy provided by the Restrictions is cumulative and not exclusive. The Association may, without waiving the right to enforce its lien against the Lot or Condominium, bring a suit at law to enforce each assessment obligation.

10.5.6. No Waiver. Failure to enforce any provision of the Restrictions does not waive the right to enforce that provision, or any other provision thereof.

10.5.7. Attorneys' Fees. Any decision or judgment rendered in any arbitration, action or proceeding hereunder shall include a sum for attorneys' fees in such amount as the Court or arbitrator may deem reasonable, in favor of the prevailing party, as well as the amount of delinquent payment (if applicable), interest thereon, late charges (if any) and arbitration and court costs.

10.5.8. Special Assessment. If any Owner, his Family, guests, licensees, tenants or invitees, or any Project Association violates the Restrictions, the Board may, after Notice and Hearing and in addition to the other remedies available, impose a reasonable Special Assessment upon such Owner or Project Association for each violation and may as further provided in the Bylaws, suspend or condition such Owner's right (and the right of his Family, guests, licensees, tenants and invitees) to use any portion of the Association Property (other than streets and driveways providing access to such Owner's Lot or Condominium). Any such suspension or conditional suspension shall be for a period of not more than thirty (30) days for any noncontinuing infraction, but in the case of a continuing infraction (including nonpayment of any delinquent assessment) may be imposed for so long as the violation continues. The Board may also adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, it may assess against an Owner or Project Association for failure of the Project Association or Owner, his Family or a resident of or visitor to his Lot or Condominium, to comply with any provision of the Restrictions, other than Article VI hereof. Such fines or penalties may only be assessed by the Board after Notice and Hearing.

10.5.9. Alternative Dispute Resolution. If a dispute exists between or among (i) Declarant, the Merchant Builders, their contractors or brokers, or their agents or employees, and any Owner(s), Project Association(s) or the Association, or (ii) any Owner and another Owner, or (iii) the Association and any Owner or Project Association, including any claim based on contract, tort or statute, arising out of or relating to the rights or duties of the parties under the Restrictions or the design or construction of the Properties (excluding disputes relating to the payment of any type of Association assessments) if the disputing parties agree and subject to Section 1354 of the California Civil Code, the matter will be submitted to alternative dispute resolution.

10.5.10. Limitation on Expenditures. The Association may not incur litigation expenses, including without limitation attorneys' fees, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, unless the Association first (a) obtains the approval of Delegates representing a majority of the Association voting power (excluding the voting power of any Owner who would be a defendant in such proceedings), and (b) complies with the requirements of Section 1354 of the California Civil Code. Such approval is not necessary if the legal proceedings are initiated to collect any unpaid assessments levied pursuant to this Declaration.

#### 10.6. Interpretation.

10.6.1. Restrictions Construed Together. The Restrictions shall be liberally construed to effectuate the fundamental concepts of the Properties as set forth in the Preamble to this Declaration. The Restrictions shall be interpreted so as to be consistent with applicable laws and regulations, including ordinances and regulations of the County and other applicable governmental entities. The Restrictions shall be construed and governed by the laws of the State of California.

10.6.2. Restrictions Severable. Notwithstanding the provisions of Section 10.6.1, each of the provisions of the Restrictions is independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

10.6.3. Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

10.6.4. Captions. All captions and titles in this Declaration are solely for convenience of reference and do not affect that which is set forth in any of the provisions hereof.

10.6.5. Time Periods. Except as otherwise expressly provided herein, any reference in this Declaration to time for performance of obligations or to elapsed time means consecutive calendar days, months, or years, as applicable.

10.7. Reservation of Easements.

Declarant and the Merchant Builders hereby reserve for the benefit of all of the Properties reciprocal easements for access, ingress and egress for all Owners to and from their respective Lots and Condominiums; for installation and repair of utility services; for encroachments of Improvements constructed by Declarant and Merchant Builders or authorized by the Board over the Association Property; for drainage of water over, across and upon adjacent Lots, Common Areas and Association Property resulting from the normal use of adjoining Lots, Common Areas or Association Property; for necessary maintenance and repair of any Improvement constructed by Declarant or a Merchant Builder; easements as may be shown on any Recorded subdivision map or Recorded parcel map of any portion of the Properties; and for such other purposes specified in this Declaration. Such easements may be used by Declarant and the Merchant Builders, their successors and purchasers, the Association, and all Owners, their guests, tenants and invitees, residing on or temporarily visiting the Properties, for pedestrian walkways, vehicular access and such other purposes specified herein or reasonably necessary for the use, maintenance and enjoyment of a Lot, Condominium, Common Areas or the Association Property. Declarant hereby reserves easements for the installation and maintenance of master antenna or master cable television antenna service, as provided in Section 3.8. In addition to the foregoing, the Association shall have, and Declarant expressly reserves for the benefit of the Association (i) an easement over those portions of the Lots and Common Areas located within three feet (3') of the common property line separating the Association Property and Public Property from the Lots and Common Areas for the purpose of accommodating the footings and other structural components of any Association Property Wall located on or immediately adjacent to such common property line, including any encroachments thereof onto the Lots and Common Areas; and (ii) an easement of access, ingress and egress over the Lots and Common Areas reasonably necessary for the maintenance, repair and replacement of such Association Property Walls and Improvements, and (iii) an easement over those portions of the Lots in which Parkway Trees are planted for the purpose of accommodating Parkway Tree maintenance and replacement by the Association in accordance with this Declaration. No Owner or Project Association shall perform any excavation, construct any Improvements or permit any condition to exist on his Lot or the Common Areas (including, without limitation, excess irrigation) which adversely affects, damages or kills any Parkway Tree or which undermines the footings or otherwise adversely affects or impairs the structural integrity of the Association Property Walls or other Improvements.

10.8. No Public Right of Dedication.

Nothing in this Declaration is a gift or dedication of all or any part of the Properties to the public or for any public use.

10.9. Constructive Notice and Acceptance.

Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or Condominium or other portion of the Properties agrees to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to this

Declaration is contained in the instrument by which such person acquired an interest in the Properties. Each Owner, by acceptance of a deed or other conveyance of a Lot or Condominium, whether or not it shall be so expressed in any such deed or other instrument, acknowledges and understands the following:

10.9.1. Entry Gates. As presently proposed, vehicular access into the Properties will be controlled by electronically operated entry gates located at the two private street entrances into the Properties. These entry facilities will each have controlled access pedestrian gates and there may be additional controlled access pedestrian gates at other locations within the Properties. As the final Phase of Development is added to the Properties it is anticipated that one (1) of the vehicular access gates will be staffed. The schedule for commencing gate staffing operations and the hours of staffing are subject to change as development progresses and will be affected by the construction and marketing access requirements of Declarant and the Merchant Builders and the commencement of Common Assessments in future Phases of Development. Interim staffing may be provided by Declarant or the Merchant Builders at their sole cost and discretion as a part of development operations at the Properties. Interim gate staffing may be modified or eliminated at any time without notice.

10.9.2. Gate Operations During Marketing Period. Declarant has reserved the right to limit the operation of the vehicular entry gates during the Marketing Period when Declarant or Merchant Builders are offering Residences for sale. During the Marketing Period the entry gates will be open to the general public from approximately 7:00 a.m. to 7:00 p.m. seven days a week. Declarant may change the hours of gate operation in its sole discretion and without notice to accommodate construction and marketing activities.

10.9.3. Security and Privacy Disclaimer. The entry gates and any entry gate staffing services are not intended to provide security for persons, personal property or Residences within the Properties. Declarant, the Merchant Builders and the Association do not undertake to provide security for the Properties nor do they make any representations or warranties whatsoever concerning the effect the gates or gate staffing may have on vehicular and pedestrian access through the Properties or the privacy and safety of the Properties.

10.10. No Representations or Warranties. No representations or warranties of any kind, express or implied, have been given or made by Declarant or its agents or employees in connection with the Properties or any portion of the Properties, or any Improvement thereon, its physical conditions, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, except as specifically and expressly set forth in this Declaration and except as may be filed from time to time with the DRE or with any other governmental authority.

10.11. Nonliability and Indemnification.

10.11.1. General Limitation. Except as specifically provided in the Restrictions or required by law, no right, power, or responsibility conferred on the Board, a Delegate or any other Association officer, employee or agent by the Restrictions may be construed as a duty, obligation or disability charged upon the Board, the Delegate, any individual member of the Board or any other Association officer, employee or agent. No such Person is liable to any party (other than the Association or a party claiming in the name of the Association) for injuries or damage resulting from such Person's acts or omissions within what such Person reasonably believed to be the scope of such Person's Association duties ("Official Acts"), except to the extent that such injuries or damage result from such Person's willful or malicious misconduct. No such Person is liable to the Association (or to any party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from such Person's negligence or willful or malicious misconduct. The Association is not liable for damage to property in the Properties unless caused by the negligence of the Association, the Board, the Association's officers, the Manager or the Manager's employees and agents.

10.11.2. Damages Limitation. A volunteer Board member or volunteer Association Delegate or officer is not personally liable in excess of the coverage of insurance specified below to any person who suffers injury, including without limitation bodily injury, emotional distress, wrongful death or property damage or loss, as a result of the tortious act or omission of the volunteer officer, Delegate, or Board member, if all of the following conditions are satisfied:

- (i) Ownership. The Board member, Delegate or officer is a tenant or an Owner of no more than two (2) Lots or Condominiums;
- (ii) Scope of Duties. The act or omission was performed within the scope of the Board member's, Delegate's or officer's Association duties;
- (iii) Good Faith. The act or omission was performed in good faith;
- (iv) Standard of Care. The act or omission was not willful, wanton or grossly negligent; and
- (v) Insurance. The Association maintained and had in effect at the time the act or omission occurred and at the time a claim was made one (1) or more policies of insurance which include coverage for (a) general liability of the Association and (b) individual liability of officers, Delegates and Board members for negligent acts or omissions in that capacity; provided that both types of coverage are in the amount of at least five hundred thousand dollars (\$500,000.00) if the Properties then consisted of one hundred (100) or fewer Lots and

Condominiums, and at least one million dollars (\$1,000,000.00) if the Properties then consisted of more than one hundred (100) Lots and Condominiums.

A Board member, Delegate or Association officer who at the time of the act or omission was the Declarant or a Merchant Builder, or received direct or indirect compensation as an employee from Declarant, a Merchant Builder or from a financial institution that purchased a Lot or Condominium at a judicial or nonjudicial foreclosure of a Mortgage is not a volunteer for purposes of this Section 10.11.2. The payment of actual expenses incurred by a Board member, Delegate or Association officer does not affect such Person's status as a volunteer for purposes of this Section 10.11.2.

10.11.3. Indemnification. The Association shall pay all expenses incurred by, and satisfy any judgment or fine levied against, any Person as a result of any action or threatened action against such Person to impose liability on such Person for his or her Official Acts, provided that:

(i) Good Faith. The Board determines that such Person acted in good faith and in a manner such Person reasonably believed to be in the Association's best interests;

(ii) Criminal Proceedings. In the case of a criminal proceeding, the Board determines that such Person had no reasonable cause to believe his conduct was unlawful; and

(iii) Derivative Actions. In the case of an action or threatened action by or in the right of the Association, the Board determines that such Person acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

10.11.4. Determination. Any Board determination required under this Section 10.11 must be approved by a majority vote of a quorum consisting of Directors who are not parties to the action or threatened action giving rise to the indemnification. If the Board fails or refuses to make any such determination, such determination may be made by the vote or written ballot of a majority of a quorum of the Delegates, provided that the Person to be indemnified may not vote. Payments made hereunder include amounts paid and expenses incurred in settling any such action or threatened action. This Section 10.11.4 is intended to authorize payments and indemnification to the fullest extent permitted by applicable law. The entitlement to indemnification hereunder inures to the benefit of the estate, executor, administrator, heirs, legatees, or devisees of any person entitled to such indemnification.

10.11.5. Payments. Payments made hereunder shall include amounts paid and expenses incurred in settling any such action or threatened action. This Section 10.11 shall be construed to authorize payments and indemnification to the fullest extent now or hereafter

permitted by applicable law. The entitlement to indemnification hereunder shall inure to the benefit of the estate, executor, administrator, heirs, legatees, or devisees of any Person entitled to such indemnification.

10.12. Enforcement of Certain Bonded Obligations.

If (i) the Association Property Improvements located on any Phase of Development of the Properties are not completed by the developer (Merchant Builder or Declarant, as the case may be) of such Phase of Development of the Properties (herein the "Developer"), prior to the issuance of a Final Subdivision Public Report for that Phase of Development by the DRE, and (ii) the Association is obligee under a bond, letter of credit or other arrangement ("Bond") required by the DRE to secure performance of the Developer's commitment to complete the Improvements, the following provisions of this Section will be applicable:

10.12.1. Board Action. The Board shall consider and vote on the question of Association action to enforce the obligations under the Bond, with respect to any such Improvement for which a Notice of Completion has not been filed, within sixty (60) days after the completion date specified for that Improvement in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any Association Property Improvement, the Board shall consider and vote on the aforesaid question if a Notice of Completion has not been filed, within thirty (30) days after the expiration of the extension.

10.12.2. Delegate Action. A special meeting of Delegates, for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond or on the Board's failure to consider and vote on the question, shall be held no fewer than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by not less than two (2) Delegates representing in the aggregate not less than five percent (5%) of the Association total voting power. A vote of Delegates representing a majority of the Association voting power, disregarding any votes attributable to Lots or Condominiums owned by the Developer, to take action to enforce the obligations under the Bond shall be deemed the Association's decision, and the Board must thereafter implement this decision by initiating and pursuing appropriate action in the Association's name.

10.13. FHA/VA Approval.

So long as Declarant and any Merchant Builders have effective control of the Association, and so long as and provided that VA or FHA has issued a "project approval" (as defined in Section 2.2.6(i) hereof), for the Properties the following actions will require the prior approval of the FHA, VA or both, as applicable: (a) dedication, conveyance or mortgage of the Association Property; (b) any amendment of the Declaration; and (c) mergers, consolidations or dissolution of the Association. Prior to the Close of Escrow for the sale of a Lot or Condominium in any Phase of Development in the Annexable Area for which Declarant or a Merchant Builder are seeking or have obtained FHA or VA "project approvals," the FHA, VA or both as applicable,

must be advised of the annexation or deannexation of such Phase of Development; determine that the annexation or deannexation is in accordance with the development plan submitted to and approved by FHA or VA; and advise Declarant or Merchant Builders of such approval.

10.14. Priorities and Inconsistencies.

If there are conflicts or inconsistencies between this Declaration and either the Articles of Incorporation or the Bylaws of the Association, the terms and provisions of this Declaration shall prevail.

10.15. Developer's Right to Cure Alleged Defects.

Declarant and the Merchant Builders, as applicable (each a "Developer" with respect to the Improvements constructed by them) intend the Association Property, Common Area, Residences and Improvements thereon be built in compliance with all applicable building codes and ordinances and that they be of a quality that is consistent with good construction practices for production housing of this type. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect in construction exists and the Developer's responsibility therefor. Developer intends to resolve all disputes and claims regarding "Alleged Defects" (as defined below) in any portion of the Properties amicably, and without the necessity of time consuming and costly litigation. Accordingly, the Association and all Owners must comply with the following claim resolution procedures:

10.15.1. Developer's Right to Cure. If the Association, a Project Association, or any Owner or Owners (individually and collectively "Claimant") claims or alleges that any portion of the Properties or Improvements thereon are defective or that the Developer or its agents, consultants, contractors or subcontractors were negligent in the planning, design, engineering, grading or construction thereof (collectively, an "Alleged Defect"), Developer may inspect, repair and/or replace such Alleged Defect as set forth herein.

10.15.2. Notice to Developer. If a Claimant discovers an Alleged Defect, Claimant shall, within a reasonable time after discovery, notify Developer, in writing, at Developer's principal place of business, of the specific nature of such Alleged Defect ("Notice of Alleged Defect").

10.15.3. Right to Enter, Inspect and Repair/Replace. After Developer receives a Notice of Alleged Defect or Developer's independent discovery of any Alleged Defect, Developer may, upon reasonable notice to Claimant and during normal business hours, enter onto or into, as applicable, the Association Property, Common Area, any Residence or other Improvements to inspect and, if Developer deems necessary, repair and/or replace such Alleged Defect. In conducting such inspection, repairs and/or replacements Developer may take any actions it deems reasonable and necessary under the circumstances.

10.15.4. Actions. No Claimant may initiate any legal action, cause of action, proceeding or arbitration ("Action") against Developer alleging damages (i) for the cost of repairing or replacing any Alleged Defect of (ii) for the diminution in value resulting from such Alleged Defect, unless and until Claimant has (aa) delivered to Developer a Notice of Alleged Defect and (bb) Developer has failed to repair or replace the Alleged Defect within ninety (90) days after receipt of such Notice of Alleged Defect. If the Alleged Defect is not repaired or replaced within such ninety (90) day period, then regardless of the filing of a legal or other Action by the Claimant, Developer shall be entitled to complete such repair or replacement. If at any time Claimant's Action would be barred by a statute of limitation if not filed within sixty (60) days, then Claimant may nevertheless file the Action notwithstanding any other provision of this Section.

10.15.5. No Additional Obligations. Nothing in this Section 10.15 imposes any obligation on Developer to inspect, repair or replace any items or Alleged Defect for which Developer is not otherwise obligated under applicable state and federal law or any limited warranty provided by Developer in connection with the sale of the Lots and Condominiums. Notwithstanding any other provision of this Declaration, this Section 10.15 may not be amended without the prior written approval of Declarant.

10.16. Additional Provisions.  
Notwithstanding the provisions contained in the Restrictions, the Association and the Owners should be aware that there may be provisions of various laws, including without limitation the Davis-Stirling Common Interest Development Act codified at Sections 1350 *et seq.* of the California Civil Code, which may supplement or override the Restrictions.

Declarant has executed this Declaration as of the date set forth below.

Dated: June 12, 1995

"DECLARANT"

THE IRVINE COMPANY,  
a Michigan corporation

By: C. Keith Greer  
C. Keith Greer, President

Its: Irvine Community Builders, a  
division of The Irvine Company

By: James R. Cavanaugh  
James R. Cavanaugh  
Its: Assistant Secretary

