

approving or disapproving any proposed Construction Activities. However, Declarant and the Merchant Builders do not warrant any protected views within the Properties and no Residence or Common Area is guaranteed the existence or unobstructed continuation of any particular view.

8.10. Variances.

The Architectural Committee may recommend variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration, including, without limitation, restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be approved by the Board, evidenced in writing, and signed by at least two (2) officers of the Maintenance Association certifying such Board approval, and are effective upon Recordation. No violation of the covenants, conditions and restrictions contained in this Declaration or any Supplemental Declaration shall exist with respect to any Construction Activity for which a variance is granted. The granting of such a variance does not waive any of the terms and provisions of this Declaration or of any Supplemental Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor does it affect the Owner's obligation to comply with all governmental laws and regulations.

8.11. Pre-Approvals.

Subject to Section 10.1.5, the Board may authorize the pre-approval of certain specified types or classes of Construction Activities in the Architectural Committee Rules if, in the exercise of the Board's judgment, pre-approval of such types or classes of Improvements is appropriate in carrying out the purposes of this Declaration.

8.12. Appeals.

For so long as Declarant has the right to appoint and remove a majority of the Architectural Committee members, the Architectural Committee's decisions are final, and there is no appeal to the Board. When Declarant is no longer entitled to appoint and remove a majority of the Architectural Committee's members, the Board may adopt policies and procedures for the appeal of Architectural Committee decisions to the Board. The Board has no obligation to adopt or implement any appeal procedures, and in the absence of Board adoption of appeal procedures, all Architectural Committee decisions are final.

ARTICLE IX

9. Destruction or Condemnation of Maintenance Property.

Damage to, destruction or condemnation of all or any portion of the Maintenance Property shall be handled in the following manner:

9.1. Damages by Owners or Project Associations.

To the extent permitted by law, each Owner and Project Association is liable to the Maintenance Association for any damage to the Maintenance Property not fully reimbursed to the Maintenance Association by insurance (including any insurance policy deductible amounts) if the damage is sustained because of the negligence, neglect, willful misconduct or unauthorized or improper installation or maintenance of any Improvement by the Project Association, its members, guests or invitees, or the Owner, his Family, guests, tenants or invitees, or any other Persons deriving their right and easement of use and enjoyment of the Maintenance Property from the Project Association, the Owner, or their respective Family and guests, both minor and adult. However, the Maintenance Association, acting through the Board, may determine whether any claim will be made upon the insurance maintained by the Maintenance Association, and after Notice and Hearing the Maintenance Association may levy a Special Assessment equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Owner or the Person for whom the Owner may be liable as described above. In the case of joint ownership of a Lot or Condominium, the liability of the Owners is joint and several, except to the extent that the Maintenance Association has previously contracted in writing with the joint Owners to the contrary. After Notice and Hearing, the cost of correcting the damage, to the extent not reimbursed to the Maintenance Association by insurance, shall be a Special Assessment.

9.2. Repair of Damages.

If Maintenance Property Improvements which are the maintenance responsibility of the Maintenance Association are damaged by fire or other casualty, any insurance proceeds payable by reason thereof shall be paid to the Maintenance Association, which thereupon shall contract for the repair or replacement of all the Maintenance Property Improvements so damaged. The Maintenance Association shall levy a Reconstruction Assessment on Owners to satisfy any deficiency between insurance proceeds and the actual cost of repair or replacement in the same manner and proportion that Common Assessments are levied against and collected from Owners (for example, Owners located in a Cost Center will pay their proportionate share of any Reconstruction Assessment attributable to their Cost Center Improvements, and Owners not located in such Cost Center are exempt from such Reconstruction Assessment). Any restoration or repair of the Maintenance Property Improvements after damage due to an insurable hazard will be performed substantially in accordance with the original plans and specifications unless other action is approved by holders of fifty-one percent (51%) of the first Mortgages on Lots and Condominiums subject to Common Assessments for the maintenance of such Maintenance Property.

9.3. Condemnation.

If all or any portion of the Maintenance Property, or any interest therein, is taken by right of eminent domain or by private purchase in lieu of eminent domain, the award in condemnation shall be paid to the Maintenance Association and deposited in the appropriate Operating Fund. No Member (other than a Person on whose Lot a Maintenance Property easement affected by a condemnation may be located) may participate as a party, or otherwise, in any proceedings

relating to such condemnation. The Maintenance Association has the exclusive right to participate in such proceedings and shall, in its name alone, represent the interests of all Members. The Board of Directors immediately upon learning of any taking by eminent domain of any Maintenance Property, or any threat thereof, shall promptly notify all Owners whose Lots and Condominiums are subject to Common Assessments for the maintenance of such Maintenance Property, and all Record holders of first Mortgages on such Owners' Lots and Condominiums.

9.4. Notice to Owners and Listed Mortgagees.

The Board, immediately upon learning of any damage or destruction affecting a material portion of the Maintenance Property, shall promptly notify all Owners whose Lots and Condominiums are subject to Common Assessments for the maintenance of such Maintenance Property, and all holders, insurers, and guarantors of first Mortgages on Lots or Condominiums who have filed a written request for such notice. The Board, immediately upon learning of any damage or destruction affecting a Lot or Condominium, shall promptly notify the holder and insurer or guarantor of the first Mortgage on such Lot or Condominium who has filed a written request for such Notice with the Board.

ARTICLE X

10. Declarant and Merchant Builder Exemption.

10.1. Interest of Declarant.

The First Subdivision is a portion of a larger parcel of land which Declarant is developing into a master planned community. Declarant in cooperation with the County, has created a comprehensive plan for the development of the Properties which includes modern master-planning objectives which have been formulated for the common good and preservation of property values within the community. 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 compliance with and enforcement of, the covenants, conditions, restrictions and reservations contained in this Declaration and any amendments thereto and any Supplemental Declarations Recorded pursuant to this Declaration. Notwithstanding any other provisions of the Restrictions, until (i) Declarant is no longer entitled to add Annexable Area to the Properties without the vote of the Delegates pursuant to Article II, or (ii) the fifteenth (15th) anniversary of the first Close of Escrow in the Properties, whichever occurs later, the following actions, before being undertaken by the Delegates, the Members or the Maintenance Association, must first be approved in writing by Declarant:

10.1.1. Specified Approvals. Any amendment or action requiring the approval of Declarant pursuant to this Declaration, including without limitation all amendments and actions specified in Section 12.2.2, and any amendment or action requiring the approval of first Mortgagees pursuant to this Declaration, including without limitation all amendments and