

reasonable attorneys' fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the claimant. Such Notice of Assessment shall be signed and acknowledged by an officer of the Association, and said lien shall be prior and superior to all other liens except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any First Mortgage of record.

Section 3. Foreclosure Sale. Any such sale provided for above, subject to Article VII, Section 7, may be conducted by the Board of Directors, its attorneys or other persons authorized by the Board in accordance with the provisions of §§2924, 2924(a), 2924(b), 2924(c) and 2924(f) of the Civil Code of the State of California, or in accordance with any similar statute hereafter enacted applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover money judgment for unpaid assessments, interest and attorneys' fees may be maintainable without foreclosing or waiving the lien securing the same.

Section 4. Curing of Default. Upon the timely curing of any default for which a Notice of Assessment was filed by the Association, the officers thereof shall record an appropriate Release of Lien, upon payment by the defaulting Owner of a fee, to be determined by the Association, but not to exceed Fifty (\$50.00) Dollars, to cover the cost of preparing and recording such release. A certificate executed and acknowledged by any two (2) members of the Board stating the indebtedness secured by liens upon any Lot created hereunder has been paid shall be conclusive upon the Association and the Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request at a reasonable fee, to be determined by the Board.

Section 5. Cumulative Remedies. The assessment liens and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as provided above.

Section 6. Mortgage Protection. Notwithstanding all other provisions hereof, no lien created under this Article VII, nor any breach of this Declaration, nor the enforcement of any provision hereof shall defeat or render invalid the rights of the mortgagee or beneficiary under any recorded First Mortgage or First Deed of Trust (meaning any deed of trust with first priority over other deeds of trust) upon a Lot made in good faith and for value; provided that after such Mortgagee or Beneficiary or some other Person obtains title to such Lot by judicial foreclosure or by means of the powers set forth in such Deed of Trust, such Lot shall remain subject to the Declaration and the payment of all installments of Assessments accruing subsequent to the date such Mortgagee or Beneficiary or other Person obtains title.

Section 7. Monetary Penalty. A monetary penalty imposed by the Association as a disciplinary measure for failure of a member to comply with the governing instruments or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to the Common Area for which the member was allegedly responsible or in bringing the member and his subdivision interest into compliance with the governing instruments may not be characterized nor treated in the governing instruments as an assessment which may become a lien against the member's subdivision interest enforceable by a sale of the interest in accordance with the provisions of §§2924, 2924(a), 2924(b), 2924(c) and 2924(f) of the Civil Code.

The provisions of this Section 7 do not apply to charges imposed against an Owner consisting of reasonable late payment penalties for delinquent assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent assessments.

If there exists a conflict between the terms of this Article VII, Section 7 and any other provision of this Declaration, Article VII, Section 7 will prevail.

## ARTICLE VIII

### ARCHITECTURAL CONTROL

Section 1. Members of Committee. The Architectural Review Committee, sometimes referred to in this Declaration as the "ARC", shall consist of three (3) members. The initial members of the ARC shall be representatives of Grantor. Subject to the following provisions, Grantor shall have the right and power at all times to appoint and remove a majority of the members of the ARC or to fill any vacancy of such majority until the "turnover date" which shall be the date on which either (1) eighty (80%) percent of the Lots subject to this Declaration have been sold and the deeds recorded ("close of escrow"), or (2) five (5) years following the date of issuance of the Final Subdivision Public Report for the Properties, whichever occurs earlier. Commencing one (1) year from the date of close of escrow for the sale of the first Lot in the Properties to a purchaser (other than a developer) from Grantor, the Board shall have the power to appoint one (1) member to the ARC, until the turnover date. Thereafter, the Board shall have the power to appoint and remove all of the members of the ARC. Persons appointed to the ARC by the Board shall be from the membership of the Association, but Persons appointed to the ARC by Grantor need not be members of the Association. The ARC shall have the right to adopt and promulgate reasonable architectural standards ("Architectural Standards") against which to examine any request made pursuant to this Article. The ARC may designate and appoint a representative who is a licensed architect and a majority of the members of said ARC may, from time to time, remove or replace such representative. The designated representative of the ARC may be, but need not be, a member of the ARC. Such representative must be consulted prior to disapproval of any plans by the ARC, but the decision of the ARC with respect to the approval or disapproval thereof shall be final.

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Section 2. Review of Plans and Specifications. The ARC shall consider and act upon any and all plans and specifications submitted for its approval under this Declaration and perform such other duties as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with the plans approved by the ARC. No construction, alteration, addition, modification, decoration, redecoration or reconstruction of any building, fence, wall or other improvement in the Properties shall be commenced or maintained, until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted to the ARC and approved in writing by the ARC. The ARC shall approve plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area of the Properties as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, and that the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the Properties and that the upkeep and maintenance thereof will not become a burden on the Association.

Plans and specifications for the installation of a solar heating system by an Owner must be submitted to the ARC for approval prior to said installation. The ARC shall reasonably review and grant its approval of said installation unless the proposed work will harm the Project or conflict with the general plan of the development. Any solar heating system approved by the ARC will still be subject to the applicable zoning district regulations, the Uniform Building Code and associated ordinances. The upkeep and maintenance of any installed solar heating system will be the responsibility of the Lot Owner and not the Association.

The ARC may condition its approval of proposals or plans and specifications for any improvement (1) on such changes therein as it deems appropriate, (2) upon the agreement by the Person (referred to in this Section 2 as "applicant") submitting the same to grant appropriate easements to the Association for the maintenance of the improvement, or (3) upon the agreement of the applicant to reimburse the Association for the cost of such maintenance, or all three, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. The ARC may also issue rules or guidelines setting forth procedures for the submission of plans for approval, requiring a fee payable to the Association to accompany each application for approval, or additional factors which it will take into consideration in reviewing submissions. The ARC may provide that the amount of such fee shall be uniform, or that it be determined in any other reasonable manner, such as by the reasonable cost of the construction, alterations or additions contemplated. The ARC may require such detail in plans and specifications submitted for its review as it deems proper, including, but not limited to elevation drawings and description or samples of exterior material and colors. Decision of the ARC and the reasons therefor shall be transmitted by the ARC to the applicant at the address set forth in the application for approval, within thirty (30) days after receipt by the ARC of all materials required by the ARC. Any application submitted pursuant to this Section 2 shall be deemed approved, unless written disapproval or a request for additional information or materials by the ARC shall have been transmitted to the applicant within thirty (30) days after the date of receipt by the ARC of such application or additional information. Any improvement approved by the ARC will still be subject to the

applicable County and/or City regulations, ordinances and codes as well as the Uniform Building Code.

Section 3. Meetings of the ARC. The ARC shall meet from time to time as necessary to perform its duties hereunder. The ARC may from time to time, by resolution unanimously adopted in writing, designate an ARC Representative (who may, but need not, be one of its members) to take action or perform any duties for and on behalf of the ARC, except the granting of variances pursuant to Section 8 of this Article VIII. In the absence of such designation, the vote of any two (2) members of the ARC taken without a meeting, shall constitute an act of the ARC.

Section 4. No Waiver of Future Approvals. The approval of the ARC to any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the ARC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or any matter whatever subsequently or additionally submitted for approval or consent.

Section 5. Compensation of Members. The members of the ARC shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

Section 6. Inspection of Work. Inspection of work and correction of defects therein shall proceed as follows:

(a) Upon the completion of any work for which approved plans are required under this Article VIII, the Owner shall give written notice of completion to the ARC.

(b) Within sixty (60) days thereafter, the ARC or its duly authorized representative may inspect such improvement. If the ARC finds that such work was not done in substantial compliance with the approved plans it shall notify the Owner in writing of such noncompliance within such 60 day period, specifying the particulars of noncompliance, and shall require the Owner to remedy the same.

(c) If upon the expiration of thirty (30) days from the date of such notification the Owner shall have failed to remedy such noncompliance, the ARC shall notify the Board in writing of such failure. After affording such Owner Notice and Hearing, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of announcement of the Board ruling. If the Owner does not comply with the Board ruling within such period, the Board, at its option, may record a notice of noncompliance with the office of the County Recorder and may either peacefully remove the noncomplying improvement or otherwise remedy the noncompliance, and the Owner shall reimburse the Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a Special Assessment against such Owner for reimbursement. The right of the Association to remove a

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noncomplying improvement or otherwise remedy the noncompliance shall be in addition to all other rights and remedies which the Association may have at law, in equity or in this Declaration.

(d) If for any reason the ARC fails to notify the Owner of any noncompliance within sixty (60) days after receipt of said written notice of completion from the Owner, the improvement shall be deemed to be in accordance with said approved plans.

Section 7. Nonliability of ARC Members. Neither Grantor, the ARC nor any member of the ARC, the Board nor their duly authorized representative shall be liable to the Association, or to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the ARC's duties hereunder, unless due to willful misconduct or bad faith of the ARC. The ARC shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of aesthetic considerations, the overall benefit or detriment which would result to the immediate vicinity and the Properties generally and the ultimate burden on the Association for upkeep and maintenance. The ARC shall take into consideration the aesthetic aspects of the architectural designs, color schemes, exterior finishes and materials and similar features. The ARC's approval or disapproval shall be based solely on the consideration set forth in this Article VIII, and the ARC shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes.

Section 8. Variance. The ARC may authorize variances from compliance with any of the architectural provisions of this Declaration, including without limitation, restrictions upon height, size, floor area or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in writing, must be signed by at least two (2) members of the ARC, and shall become effective upon recordation in the Office of the County Recorder. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting his use of the premises, including but not limited to zoning ordinances and lot set-back lines or requirements imposed by the applicable County and/or City, or any other governmental authority.

Section 9. Initial Construction. The provisions of this Article VIII shall not apply to the initial construction, performed or to be performed, by Grantor of any building structures or other improvements on the Properties, and said annexations thereto, and neither ARC, the Board nor any committee appointed by the Board shall have any authority or right to approve or disapprove thereof. Grantor is undertaking the work of construction of residential lots, common area lot(s) and incidental improvements thereon under a multiphase development plan. The completion of that work and the sale, rental or other disposal of said residential lots is essential to the establishment and welfare of the Planned Unit Development as a residential community. No owner nor the Association shall do anything to interfere with Grantor's undertaking as stated more fully in Article XIV of this Declaration.

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## ARTICLE IX

### MAINTENANCE AND REPAIR OBLIGATIONS

Section 1. Maintenance Obligations of Owners. Subject to the duty of the Association to provide for maintenance as provided in Article IX, §52, of this Declaration, it shall be the duty of each Owner, at his sole cost and expense, subject to the provisions of this Declaration regarding Architectural Review Committee approval, to maintain, repair, replace and restore areas subject to his exclusive control, in a neat, sanitary and attractive condition. Areas subject to the exclusive control of an Owner shall be deemed to include, without limitation, the Owner's Dwelling Unit, landscaping, yard areas, improvements on such Owner's Lot and the driveway giving vehicular access to the Owner's Dwelling Unit. Each Owner hereby grants easements to other Owners to enter onto each Lot or to have utility companies enter onto Lots to repair utilities, lines and systems located thereon after reasonable notice to the Owner and with entrance to be made at reasonable hours. In the event that any Owner shall permit any improvement or area, which is the responsibility of such Owner to maintain, to fall into disrepair or not to be so maintained so as to create a dangerous, obstructed, unsafe, unsightly or unattractive condition, or to create a nuisance or to cause an increase in the cost for insurance carried by the Association, the Board shall have either the right to seek any remedies at law or in equity which it may have, and the right, but not the duty, after Notice and Hearing, to enter upon such Owner's Lot to make such repairs or to perform such maintenance, and the cost thereof shall be charged to the Owner.

Section 2. Maintenance Obligations of the Association. No improvement, excavation or work which in any way alters the Common Area from its existing state on the date any such area is conveyed by Declarant to the Association shall be made or done by any person other than the Association or its authorized agents. Subject to the provisions of Section 1 of this Article and Article VI, Section 2, the Association shall maintain, or provide for the maintenance of all of the Common Area and all improvements thereon, including recreational facilities and private streets in good order and repair, and shall likewise provide for all commonly metered utilities and the painting, maintenance and minor repair and replacement as necessary for Common Area facilities and buildings, if any. The Association shall also be responsible for the maintenance and replacement of trees, shrubs, vegetation, walls, irrigation systems and other landscaping improvements located within the Common Area. All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board of Directors of the Association shall determine in their judgment to be appropriate.

Section 3. Damage and Destruction Affecting Dwelling Units - Duty to Rebuild. If all or any portion of any Dwelling Unit or the improvements on any Lot are damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of said Lot or Dwelling Unit to rebuild, repair or reconstruct said Dwelling Unit or improvement in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty. The Owner or Owners of any damaged Dwelling Unit or improvement shall be obligated to proceed with all due diligence hereunder, and the responsible party shall commence reconstruction within six (6) months after the damage occurs and complete reconstruction within twelve (12) months after damage occurs, unless prevented by causes beyond their reasonable control.