

**4.2 Assignment of Rents.** As security for the payment of all such liens, each Owner hereby gives to and confers upon the Association the right, power and authority, during the continuance of such ownership, to collect the rents, issues and profits of the Owner's Lot, reserving unto the Owner the right, prior to any default by such Owner in performance of such Owner's obligation under this Declaration, or the Bylaws or the Articles, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, the Association may, at any time, upon ten (10) days written notice to such Owner, then either in person, by agent or by a receiver to be appointed by a court of competent jurisdiction, and without regard to the adequacy of any security for such indebtedness, enter upon and take possession of such Owner's Lot or any part thereof, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, in payment of any indebtedness to the Association or in performance of any agreement hereunder, and in such order as the Association may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure nor waive any default hereunder or invalidate any act done pursuant to this Declaration.

The assignment of rents and powers described in the foregoing paragraph shall not affect, and shall in all respects be subordinate to, the rights and powers of the holder or beneficiary of any First Mortgage or deed of trust on any Lot or second Mortgage or deed of trust on any Lot if the holder or beneficiary of such second Mortgage or deed of trust is Declarant, to do the same or similar acts.

## **ARTICLE V** **ARCHITECTURAL CONTROL**

**5.1 Architectural Design Guidelines.** In addition to, and not in limitation of, the architectural guidelines for the Covered Property set forth in the Specific Plan "Design Element," Declarant has adopted, or may adopt, guidelines setting forth general standards for the design and appearance of the Development (the "Design Guidelines"). The Design Guidelines may be different for each Phase of Development to accommodate the unique nature of, or revised development plans for, such Phase of Development. The Design Guidelines are intended to provide design professionals with standardized design vocabularies and materials intended to preserve the quality and overall appearance of the Development. However, in the event of any conflict between the Design Guidelines and this Declaration, this Declaration shall control. Notwithstanding any other provision herein, the Design Guidelines and the provisions of this Article V shall not apply to Declarant. The Design Guidelines shall not be amended, modified, changed, or waived in any manner, without the prior written approval of Declarant; *provided, however*, Declarant shall have the right at any time to relinquish to the Board its rights concerning the Design Guidelines in which case the Board shall have the right to unilaterally exercise same. Notwithstanding any other provision herein, no amendment to the Design Guidelines shall act to make any previously constructed or installed improvement or landscaping out of compliance with such amended Design Guidelines, provided that such improvement and/or landscaping was in compliance with the applicable Design Guidelines prior to such amendment to the Design Guidelines. Each prospective Owner should become familiar with the Design Guidelines applicable to the Lot such person intends to purchase before executing any agreement for the purchase of such Lot. The Architectural Committee shall maintain a copy of the Design Guidelines on file at all times, and the Architectural Committee shall provide each Owner with a copy of the Guidelines upon written request. The

Architectural Committee shall not approve the construction of any Improvement which is not designed and constructed substantially in accordance with the Design Guidelines. The Design Guidelines may include among other things those restrictions and limitations upon the Owners set forth below:

(a) time limitations for the completion of the architectural improvements for which approval is required pursuant to the Design Guidelines;

(b) conformity of completed architectural improvements to plans and specifications approved by the Architectural Committee; *provided, however*, as to purchasers and encumbrancers in good faith and for value, unless notice of non-completion or non-conformance identifying the violating Lot and its Owner and specifying the reason for the notice, executed by the Architectural Committee, shall be Recorded, and given to such Owner within one (1) year of the expiration of the time limitation described in subsection (a) above, or unless legal proceedings shall have been instituted to enforce compliance or completion within said one (1) year period, the completed architectural improvements shall be deemed to be in compliance with plans and specifications approved by the Architectural Committee and in compliance with the Design Guidelines, but only with respect to purchasers and encumbrancers in good faith and for value;

(c) such other limitations and restrictions as the Declarant, in its reasonable discretion, shall adopt, including, without limitation, the regulation of the following: construction, reconstruction, exterior addition, change or alteration to or maintenance of any building, structure, wall or fence, including, without limitation, the nature, kind, shape, height, materials, exterior color and surface and location of such dwelling structure; and

(d) a description of the types of such construction, reconstruction, additions, alterations or maintenance which, if completed in conformity with the Design Guidelines, do not require the approval of the Architectural Committee.

**5.2 Appointment of Architectural Committee.** The Architectural Committee shall consist of not less than three (3) nor more than five (5) persons as fixed from time to time by resolution of the Board. The Declarant shall initially appoint the Architectural Committee. The Declarant shall retain the right to appoint, augment or replace all members of the Architectural Committee until one (1) year after the Initial Sale Date. Thereafter, the Declarant shall retain the right to appoint, augment or replace a majority of the members of the Architectural Committee until five (5) years after the Initial Sale Date, or until ninety percent (90%) of the Lots within the Development have been conveyed to Retail Purchasers, whichever shall last occur. Notwithstanding the foregoing, commencing one (1) year following the Initial Sale Date, the Board shall have the right but not the obligation to appoint the remaining members of the Architectural Committee. Five (5) years after the Initial Sale Date, or when ninety percent (90%) of the Lots within the Development have been conveyed to Retail Purchasers, whichever shall last occur, the right to appoint, augment or replace all members of the Architectural Committee shall automatically be transferred to the Board.

### **5.3 General Provisions.**

(a) The Architectural Committee may establish reasonable procedural rules and may assess a reasonable fee in connection with review of plans and specifications including, without limitation, the number of sets of plans to be submitted; *provided, however*, the Architectural

Committee may delegate its plan review responsibilities to one or more members of such Architectural Committee. Upon such delegation, the approval or disapproval of plans and specifications by such persons shall be equivalent to approval or disapproval by the entire Architectural Committee. Unless any such rules are complied with, such plans and specifications shall be deemed not submitted. Plans required to be submitted may include, without limitation, site plans, floor plans, drainage plans, elevations, color and/or material samples, and such other plans and/or samples reasonably required by the Architectural Committee.

(b) The address of the Architectural Committee shall be the address established for giving notice to the Association. Such address shall be the place for the submittal of plans and specifications and the place where the Design Guidelines shall be kept.

(c) The establishment of the Architectural Committee and the systems herein for architectural approval shall not be construed as changing any rights or restrictions upon Owners to maintain, repair, alter or modify or otherwise have control over the Lots as may otherwise be specified in this Declaration, in the Bylaws or in any Association Rules.

(d) In the event the Architectural Committee fails to approve or disapprove such plans and specifications within sixty (60) days after the same have been duly submitted in accordance with any rules regarding such submission adopted by the Architectural Committee, such plans and specifications will be deemed approved.

#### 5.4 Approval and Conformity of Plans and Improvements.

(a) No building, fence, wall, structure, landscaping improvements (including such landscaping improvements that consist of predominantly hardscape material(s) (including but not limited to cement, rock and gravel)), shall be commenced, erected, maintained upon, or removed from the Covered Property, nor shall there be any addition to or change in the exterior of any Lot, building, fence, wall, structure, the painting (other than painting with the same color of paint as previously existed) of exterior walls, patio covers and solar and other energy saving devices, except in compliance with the Design Guidelines, this Declaration, the Association Rules, and the plans and specifications (showing the nature, kind, shape, height, width, color, materials and location) which have been submitted to and approved by the Architectural Committee as to their structural integrity and harmony of external design and location in relation to surrounding structures and topography.

(b) Each Owner, by acceptance of a deed to his or her Lot recognizes that the unique characteristics of such Lot, including its size, location, configuration, grade, soil composition and geologic setting, as well as governmental and private regulations, limit what modifications and/or additions, if any, such Owner can make to such Lot. As such, each Owner understands that any physical modification and/or addition to any Lot or the improvements thereon after acquisition thereof by such Owner (collectively, "Future Work"), including, without limitation, the construction of any dwelling, installation of infrastructure improvements, and/or installation or modification of swimming pools, concrete flat work, walls (including, without limitation, retaining walls), fencing, landscaping and the like, and any structural foundations related thereto (collectively, "Future Improvements"), will require specific and additional design and engineering considerations to accommodate the unique characteristics and limitations of such Lot and neighboring Lots and Common Areas. Each Owner, by accepting a deed to his or her Lot recognizes and agrees that there is no guarantee that such Owner will be able to construct any

particular improvement on such Lot. It is therefore required that the following actions and/or conditions be undertaken and/or satisfied by each Owner, to assure that any Future Work is planned and performed to the highest possible design, engineering, and construction standards:

(i) Before performing any Future Work, the Owner is required to consult with appropriate, qualified, experienced, and financially sound civil, structural, geotechnical and/or soils engineers, architects, landscape architects, and/or other consultants (collectively, the "Design Professionals") to prepare all plans, specifications and guidelines to be implemented in performing the Future Work. All Design Professionals must be licensed and in good standing with their respective licensing bodies, and must maintain adequate commercial general liability, errors and omissions, automotive, and workers' compensation insurance. Each Owner is strongly advised, prior to retaining any Design Professional, to have an attorney review any written contract(s) for the proposed services to assure that (i) such Owner's rights are protected, (ii) the Design Professional provides adequate and appropriate warranties and indemnification for defects in design of Future Improvements and/or failure to properly perform the tasks and/or duties for which such Design Professional was hired, and (iii) such contract is consistent with the requirements of this Article V.

(ii) In all events, and prior to any plan preparation, appropriate review of all soils, building sites, geological conditions, retaining walls, drainage patterns and the like must be performed by the appropriate Design Professionals to assure that any and all planned Future Improvements can, in fact, be safely and adequately constructed on or about the Owner's Lot in light of the physical constraints presented by such Lot. If any Design Professional determines that any Future Work, no matter how designed, can not appropriately be constructed on or upon a particular Lot, such Future Improvement shall not be constructed.

(iii) The recommendations of an Owner's Design Professionals shall be included with all plans and specifications submitted by such Owner to the Architectural Committee. The Architectural Committee shall have the right to base any decision to approve or disapprove any Future Work on (i) the recommendations and/or information supplied by such Design Professionals, and/or (ii) any Owner's failure to retain adequate Design Professionals as required hereby. The Architectural Committee shall also have the right, without obligation of any kind, to consult with its own panel of Design Professionals to determine whether or not the recommendations and/or findings of the Owner's Design Professionals are satisfactory. The Architectural Committee does not assume any liability or responsibility for any improvements, including, without limitation, any Future Improvements, constructed by any Owner.

(iv) With respect to landscape improvements and/or any other Future Improvements which will introduce, or redirect the flow of, water into, on, or about the Property, each Owner is also obligated to provide a drainage and watering plan and impact study prepared by appropriate Design Professionals indicating, in the opinion of such Design Professionals, the impacts such landscape improvements will have on such Owner's Lot and neighboring properties, and the mitigation measures necessary or appropriate to avoid over-saturation of the Lot, and to avoid excessive run off or seepage which could deteriorate or harm the improvements, soils, or landscaping on neighboring properties.

(v) Any Future Work involving construction of a concrete slab or foundation must take into account, in addition to and not in limitation of any other

recommendation of an Owner's Design Professionals, moisture-protection measures and possible adverse reaction to sulfate content in any soil, if applicable.

(vi) Upon approval by the Architectural Committee of any proposed Future Work, all such Future Work shall be undertaken by experienced contractors and subcontractors who are licensed in the State of California and in good standing with their respective licensing bodies, and who maintain broad-form commercial general liability (including completed products liability), errors and omissions, automotive, and workers' compensation insurance. Such approval by the Architectural Committee shall not constitute an endorsement or assumption of any responsibility or liability regarding such contractors or subcontractors or any work performed thereby. All Future Work must be performed in compliance with all applicable laws and regulations, including, without limitation, applicable building codes and zoning laws.

(vii) Any Future Work requiring excavation or modification of soils must be monitored by appropriate Design Professionals to (i) identify field conditions that differ from those anticipated by such Design Professionals' preliminary investigation, and (ii) to determine that any such Future Work is otherwise performed in accordance with such Design Professionals' recommendations. Owners should recognize that such observation/monitoring requirements may be required by such Owner's Design Professionals as a condition to such Design Professionals' warranty and indemnity obligations to such Owner. Declarant shall not be responsible for an Owner's failure to require its Design Professionals to monitor such Future Work. Owners are strongly advised, prior to retaining any contractor, to have an attorney review any written contract for the proposed services to assure that (a) such Owner's rights are protected, (b) the contractor provides adequate and appropriate warranties and indemnification for defects in construction of Future Improvements; and (c) such contract is consistent with the requirements of this Article V.

(viii) In the event that there is any substantial delay between the date the Architectural Committee approves any proposed Future Work and the commencement of such Future Work, or, irrespective of any such delay, if any physical conditions of the Property or neighboring properties have sufficiently changed between the date the Architectural Committee approves any proposed Future Work and the commencement of such Future Work, the Owner desiring to perform such Future Work is required to have its Design Professionals review, assess, and update their previous analysis, reports and plans to assure that same remain valid and appropriate, and such Owner shall submit same to the Architectural Committee for its review. The Architectural Committee may thereafter disapprove such Future Work based on changes presented by such updated materials.

(ix) In performing any Future Work and/or constructing or installing any Future Improvement each Owner, by commencing such Future Work, agrees to release, indemnify, defend (with counsel reasonably acceptable to the indemnified party), and hold harmless Declarant and the Architectural Committee from and against claims, losses, liabilities, costs and expenses (including reasonable attorneys' fees and costs) arising out of, caused by, or related to such Future Work and/or Future Improvements.

**5.5 Non-liability for Approval of Plans.** Each Owner shall be solely responsible for any violation of this Declaration, any applicable Design Guidelines, or any applicable instrument, law or regulation, caused by any Future Work or Future Improvement made by such Owner, even though same is approved by the Architectural Committee. Plans and specifications shall be approved by the

Architectural Committee as to style, exterior design, appearance and location, and are not approved for engineering design or for compliance with zoning and building ordinances, this Declaration, easements, deed restrictions and other rights and obligations affecting the Covered Property, and by approving such plans and specifications neither the Architectural Committee, the members thereof, the Association, the Members, the Board, nor Declarant, assumes any liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. The Architectural Committee shall have the right to require, as a condition of approval, that an Owner provide separate, express release and indemnification from any such liability on terms and conditions satisfactory to the Architectural Committee. Notwithstanding any other provision herein, under no circumstances shall the approval by the Architectural Committee of any modification or improvement on any one occasion, or for the benefit of any particular Owner, constitute or be deemed to constitute approval of any other modification or improvement on any other occasion or for any other Owner.

**5.6 Appeal.** In the event plans and specifications submitted to the Architectural Committee are disapproved thereby, the party or parties making such submission may appeal in writing to the Board. The written request must be received by the Board not more than fifteen (15) days following the final decision of the Architectural Committee. The Board shall submit such request to the Architectural Committee for review, whose written recommendations will be submitted to the Board. Within forty-five (45) days following receipt of the request for appeal, the Board shall render its written decision. The failure of the Board to render a decision within said forty-five (45) day period shall be deemed a decision in favor of the appellant; *provided, however*, the submitted plans and specifications shall remain subject to the Design Guidelines.

**5.7 Inspection and Recording of Approval.** Any member of the Architectural Committee or any Director, officer, employee or agent of the Association may at any reasonable time enter, without being deemed guilty of trespass, upon any Lot after notice to the Owner in order to inspect improvements constructed or being constructed on such Lot to ascertain that such improvements have been or are being built in compliance with plans and specifications approved by the Architectural Committee and in accordance with the Design Guidelines. The Architectural Committee shall cause such an inspection to be undertaken within forty-five (45) days of a request therefor from any Owner as to his Lot, and if such inspection reveals that the improvements located on such Lot have been completed in compliance with this Article, the President and the Secretary of the Association shall provide to such Owner a notice of such approval in recordable form, which, when recorded, shall be conclusive evidence of compliance with the provisions of this Article as to the improvements described in such recorded notice, but as to such improvements only. In the event that the inspection reveals that the improvements or landscaping were not completed in accordance with the approved plans, the Owner shall promptly modify or replace any such improperly constructed or installed improvements or landscaping and thereafter notify the Architectural Committee upon completion of same (which modified improvements or landscaping shall thereafter be subject to inspection in accordance with this Section).

**5.8 Consultants to Board and Architectural Committee.** Notwithstanding any other provision herein, the Board and the Architectural Committee shall maintain relationships with a panel of geological, geotechnical, architectural, landscaping and legal consultants with whom the Board and Architectural Committee shall consult, as necessary or appropriate, to determine the physical appropriateness of any proposed Future Work, and the likely impacts of such Future Work on other portions of the Development; *provided, however*, the ultimate decision making authority shall lie with the Board and the Architectural Committee as set forth in this Article V.