

Disputes between an Owner and the Association regarding the assessments imposed by the Association may be submitted to alternative dispute resolution in accordance with Civil Code Section 1354 if such Owner pays in full (i) the amount of the assessment in dispute, (ii) any late charges, (iii) any interest, and (iv) all fees and costs associated with the preparation and filing of a Notice of Delinquent Assessment (including mailing costs and attorneys fees not to exceed four hundred twenty-five dollars (\$425), and states by written notice that such amount is paid under protest, and the written notice is mailed by certified mail not more than thirty (30) days from the Recording of a Notice of Delinquent Assessment. Upon receipt of such written notice, the Association shall inform the Owner in writing that the dispute may be resolved through alternative dispute resolution as set forth in Civil Code Section 1354.

The right of any Owner to utilize alternative dispute resolution under this Section may not be exercised more than two times in any single calendar year, and not more than three times within five calendar years. Nothing within this section shall preclude any Owner and the Association, upon mutual agreement, from entering into alternative dispute resolution in excess of the limits set forth herein. An Owner may request and be awarded through alternative dispute resolution reasonable interest to be paid by the Association in the total amount paid under items (i) through (iv) above, if it is determined that the assessment levied by the Association was not correctly levied.

## ARTICLE VIII

### 8. Architectural Control.

#### 8.1. Members of Committee.

The Architectural Review Committee, sometimes referred to herein as the "ARC," shall be comprised of three (3) members. The initial members of the ARC shall be representatives of Declarant until one (1) year after the original issuance of the Final Subdivision Public Report ("Public Report") for Phase I ("First Anniversary"). After the First Anniversary the Board may appoint and remove one (1) member of the ARC, and Declarant may appoint and remove a majority of the members of the ARC and fill any vacancy of such majority, until the earlier to occur of (a) Close of Escrow for the sale of ninety percent (90%) of all the Lots in the Properties and the Annexable Territory, or (b) the fifth anniversary of the original issuance of the Public Report for Phase I, after which the Board may appoint and remove all of the members of the ARC. ARC members appointed by the Board must be Members, but ARC members appointed by Declarant need not be Members. The ARC has the right and duty to promulgate reasonable standards against which to examine any request made pursuant to this Article in order to ensure that the proposed plans conform harmoniously to the exterior design and existing materials of the buildings in the Properties. Board members may also serve as ARC members.

#### 8.2. Review of Plans and Specifications.



The ARC shall consider and act upon all plans and specifications submitted for its approval under this Declaration and perform such other duties as the Board assigns to it, including inspection of construction in progress to assure conformance with plans approved by the ARC. No construction, installation or alteration of an Improvement, including landscaping, in the Properties may be commenced or maintained until the plans and specifications thereof have been submitted to and approved in writing by the ARC; provided, however, that any Improvement may be repainted without ARC approval so long as the Improvement is repainted the identical color which it was last painted. Without limiting the generality of the foregoing, the provisions of this Article VIII apply to the construction, installation and alteration of solar energy systems, as defined in Section 801.5 of the California Civil Code, subject to the provisions of California Civil Code Section 714, the County Building Code, applicable zoning regulations, and associated County ordinances. The Owner submitting the plans and specifications ("Applicant") shall obtain a written, dated receipt therefor from an authorized agent of the ARC. Until changed by the Board, the address for submission of such plans and specifications is the Association's principal office. The ARC shall approve plans and specifications submitted for its approval only if it determines that (a) the installation, construction or alterations contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area of the Properties as a whole, (b) the appearance of any structure affected thereby will be in harmony with the surrounding structures, (c) the installation, construction or alteration thereof will not detract from the beauty, wholesomeness and attractiveness of the Common Area and Association Maintenance Areas or the enjoyment thereof by the Members, and (d) the maintenance thereof will not become a burden on the Association. Declarant and any Person to whom Declarant may assign all or a portion of its exemption hereunder are not required to obtain ARC approval of any Improvements constructed on the Properties by Declarant or such Person.

The ARC may condition its approval of proposals or plans and specifications for any Improvement upon any of the following: (1) the Applicant's furnishing the Association with security acceptable to the Association against any mechanic's lien or other encumbrance which may be Recorded against the Properties as a result of such work, (2) such changes therein as it deems appropriate, (3) the Applicant's agreement to grant appropriate easements to the Association for the maintenance of the Improvements, (4) the Applicant's agreement to install (at its sole cost) water, gas electrical or other utility meters to measure any increases consumption, (5) the Applicant's agreement to reimburse the Association for the cost of such maintenance, or (6) the Applicant's agreement to complete the proposed work within a stated period of time, 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 to accompany each application for approval, or stating additional factors which it will consider in reviewing submissions. The ARC may provide that the amount of such fee be uniform, or that it be determined in any other reasonable manner, such as by the reasonable cost of the construction, alterations or installations contemplated. The ARC may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, landscape plans, floor plans, site plans, drainage plans, elevation drawings and descriptions or samples of exterior material and colors. Until receipt by the ARC of



any required plans and specifications, the ARC may postpone review of any plans submitted for approval. The ARC shall transmit its decision and the reasons therefor to the applicant at the address set forth in the application for approval within forty-five (45) days after the ARC receives all required materials. Any application submitted pursuant to this Section 8.2 shall be deemed approved unless the ARC transmits written disapproval or a request for additional information or materials to the Applicant within forty-five (45) days after the date the ARC receives all required materials. The Applicant shall meet any review or permit requirements of the County prior to making any construction, installation or alterations permitted hereunder.

**8.3. Meetings of the ARC.**

The ARC shall meet as necessary to perform its duties. The ARC may, by resolution unanimously adopted in writing, designate an ARC representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the ARC except the granting of variances pursuant to Section 8.8. In the absence of such designation, the vote of written consent of a majority of the ARC constitutes an act of the ARC.

**8.4. No Waiver of Future Approvals.**

The ARC's approval of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the ARC's approval does not waive any right to withhold approval of any similar proposals; plans and specifications; drawings or matters subsequently or additionally submitted for approval.

**8.5. Compensation of Members.**

The ARC's members shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in performing their duties.

**8.6. Inspection of Work.**

The ARC or its duly authorized representative may inspect any work for which approval of plans is required under this Article VIII ("Work"). The right to inspect includes the right to require any Owner to take such action as may be necessary to remedy any noncompliance with the ARC-approved plans for the Work or with the requirements of this Declaration ("Noncompliance").

1. **Time Limit.** The ARC's right to inspect the Work and notify the responsible Owner of any Noncompliance shall terminate sixty (60) days after the Work has been completed and the ARC has received written notice from the Owner that the Work has been completed. If the ARC fails to send a notice of Noncompliance to an Owner before this time limit expires, the Work shall be deemed to comply with the approved plans.
2. **Remedy.** If an Owner fails to remedy any Noncompliance within sixty (60) days from the date of notification from the ARC, the ARC shall notify the Board in writing of such failure. Upon 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 that notice of the Board ruling is given to the Owner. If the Owner does not comply with the Board ruling within that period, the Board may Record a Notice of Noncompliance and commence a lawsuit for damages or injunctive relief, as appropriate, to remedy the Noncompliance.

8.7. Scope of Review.

The ARC shall review and approve, conditionally approve or disapprove all plans submitted to it for any proposed construction, installation or alteration solely on the basis of aesthetic considerations, consistency with this Declaration, and the overall benefit or detriment which would result to the immediate vicinity and the Properties generally. The ARC shall consider the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features. The ARC's approval or disapproval shall be based solely on the considerations set forth in this Article VIII. The ARC is not responsible for reviewing, nor may its approval of any plans or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with buildings or other codes. The ARC may consider the impact of views from other Residences or Lots and reasonable privacy right claims as factors in reviewing, approving or disapproving any proposed landscaping, construction or other Improvements. However, Declarant does not warrant any protected views within the Properties and no Residence or Lot is guaranteed the existence or unobstructed continuation of any particular view.

8.8. 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 placement of structures, 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 a majority of the ARC, and become effective upon Recordation. After Declarant has lost the right to appoint a majority of the ARC's members, the Board must approve any variance recommended by the ARC before any such variance becomes effective. 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 variance does not 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 does it affect the Owner's obligation to comply with all applicable governmental ordinances affecting the use of his Lot and Residence.

8.9. Appeals.

For so long as Declarant has the right to appoint and remove a majority of the ARC's members, the ARC's final 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 ARC's members, the Board may adopt policies and



procedures for the appeal of ARC 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 ARC decisions are final.

## ARTICLE IX

### 9. Maintenance and Repair Obligations.

#### 9.1. Maintenance Obligations of Owners.

Each Owner shall, at the Owner's sole expense, subject to the provisions of this Declaration requiring ARC approval, maintain, repair, replace and restore all Improvements located on the Owner's Lot and the Lot itself, except for those portions of the Lot which constitute Association Maintenance Areas, in a neat, sanitary and attractive condition. Such maintenance responsibilities include, but are not limited to, the maintenance of the entire Residence on the Lot, as well as any fence or wall constructed on the Lot along the Lot Line abutting any Common Area or public property. In addition, each Owner whose Lot utilizes a private drainage system installed by Declarant is responsible for its maintenance and repair. Each Owner whose Lot utilizes a sewer system lateral is responsible for the maintenance and repair of that portion of the lateral which exclusively serves such Owner's Lot. If any Owner permits any Improvement which such Owner is responsible for maintaining, to fall into disrepair or to become unsafe, unsightly or unattractive, or to otherwise violate this Declaration, the Board may seek any remedies at law or in equity which it may have. In addition, the Board may, after Notice and Hearing, enter upon such Owner's Lot to make such repairs or to perform such maintenance and charge the cost thereof to the Owner. Said cost shall be a Special Assessment enforceable as set forth herein.

#### 9.2. Maintenance Obligations of Association.

After the completion of the construction or installation of the Improvements on the Common Area and Association Maintenance Areas by Declarant, no improvement, excavation or work which in any way alters the Common Area or the Association Maintenance Areas may be made or done by any person other than the Association or its authorized agents. Unless otherwise expressly provided in this Declaration, upon commencement of Annual Assessments on the Lots in a Phase the Association shall maintain, paint, repair and replace all completed Improvements within the Common Area and Association Maintenance Areas, including but not limited to, all landscaping and slope plantings not within the jurisdiction of a landscape maintenance district, private irrigation systems, sewers, storm drains, roads, streets, driveways, gates, parking areas and recreational facilities, in a safe, sanitary and attractive condition and in good order and repair, and shall likewise provide for the commonly metered utilities serving the Common Area and Association Maintenance Areas. The Board shall determine, in its sole discretion, the level and frequency of maintenance of the Common Area and Association Maintenance Areas. The Association may add or remove any landscaping Improvements to or from the Common Area and Association Maintenance Areas and shall ensure that the landscaping thereon is maintained free of weeds and disease.



Pursuant to an Agreement with the County, the Association is required to maintain all Common Areas and Association Maintenance Areas within the Properties (Covered Property) in accordance with specified standards of repair, maintenance and cleanliness. If, in the opinion of the County Manager of the County (or his authorized representative), the Association at any time fails to maintain the Common Areas, Association Maintenance Areas, or improvements located thereon, in accordance with the terms of the above-referenced Agreement, the County shall give written notice to the Association, specifying the exact nature of such deficiency. Such written notice of deficiency from the County shall be addressed to the Association and shall require that the Association take appropriate corrective action within thirty (30) days of receipt of such written notice unless there exists a hazardous condition creating an immediate possibility of serious injury to persons or property, in which case the time for correction may be reduce to a minimum of five (5) days. The Association shall have the right, within ten (10) days of receipt of such written notice of deficiency, to file an appeal with the County Council of the County for public hearing before the County Council to consider the reasonableness of the County's requirements as set forth in the written notice of deficiency. The decision of the County Council on such appeal shall be binding upon all parties but may be appealed by the Association through an appropriate action in any court having jurisdiction. The written notice of deficiency from the County shall state the anticipated costs that the County would assess against the Association for the corrective work to be accomplished, which costs shall be no more than those charged by competitive private industry for similar work. If the Association, within the time set forth in the notice of deficiency (subject to extension for such time as may be required to appeal the notice of deficiency to the County Council) does not undertake and complete the corrective work required in the notice of deficiency, the County may (but will not be obligated to) undertake and complete such corrective measures as are set forth in the notice and assess the costs thereof against the Association. In such event, the Association hereby grants to the County such rights to access, ingress and egress upon and across the Properties as may be necessary to complete such work. The County may elect to enforce payment of such costs through the procedures set forth in the Declaration for the establishment of assessment liens or through an action at law (which action may be brought without foreclosing or waiving any lien securing such amount). In any such action, the prevailing party will be entitled to receive this attorney's fees and costs, in addition to such other relief as may be granted.

The Association is not responsible for the maintenance of any portions of the Common Area which have been dedicated to and accepted for maintenance by a state, local or municipal governmental agency or entity. All of the foregoing Association obligations shall be discharged when and in such manner as the Board shall determine in its judgment to be appropriate. The Association shall indemnify, defend and hold harmless the Owner of any Lot against whom liability for personal injury or for damage or destruction of property is sought to be imposed as a result of improper or negligent Association acts or omissions in connection with maintenance of Association Maintenance Areas located on such Owner's Lot.

9.3. Party Walls.

Each wall or fence which is placed on the dividing line between the Lots (the "Party Wall") is a party wall, and, to the extent not inconsistent with the provisions of this Section, the general rules of law



regarding party walls and liability for property damage due to negligence or willful acts or omissions apply thereto.

- (a) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Owners of the Lots connected by such Party Wall. However, each Owner shall be solely responsible for repainting the side of any Party Wall facing his Lot.
- (b) Destruction by Fire or Other Casualty. Unless covered by a blanket insurance policy maintained by the Association under Section 12.1 hereof, if a Party Wall is destroyed or damaged by fire or other casualty, any Owner whose Lot is affected thereby may restore it, and the Owner of the other Lot which is affected thereby shall contribute equally to the cost of restoration thereof without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.
- (c) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article is appurtenant to the land and passes to such Owner's successors in title.

9.4. Damage to Common Area by Owners.

The Board may levy the cost of any maintenance, repairs or replacements by the Association within the Common Area or Association Maintenance Areas arising out of or caused by the willful or negligent act of an Owner, his tenants, or their families, guests or invitees as a Special Assessment against such Owner after Notice and Hearing.

9.5. Damage to Residences-Reconstruction.

If all or any portion of any Lot or Residence is damaged or destroyed by fire or other casualty, the Owner of such Lot shall rebuild, repair or reconstruct the Lot and the Residence thereon in a manner which will restore them substantially to their appearance and condition immediately prior to the casualty or as otherwise approved by the ARC. The Owner of any damaged Lot or Residence and the ARC shall proceed with all due diligence, and the Owner shall cause reconstruction to commence within six (6) months after the damage occurs and to be completed within twelve (12) months after damage occurs, unless prevented by causes beyond such Owner's reasonable control. A transferee of the Lot which is damaged or upon which is located a damaged Residence shall commence and complete reconstruction in the respective periods which would have remained for the performance of such obligations if the Owner of the Lot at the time of the damage still held title to the Lot. However, no such transferee may be required to commence or complete such reconstruction in less than thirty (30) days from the date such transferee acquired title to the Lot. However, no such transferee may be required to commence or complete such reconstruction in less than thirty (30) days from the date such transferee acquired title to the Lot.



9.6. Inspection.

(a) Initial Inspection of Common Area Improvements.

- (i) Declarant may notify the Board when the Common Area Improvements (including landscaping) for a particular Phase or some portion thereof have been completed. Within thirty (30) days after giving such notice, Declarant and the Board (collectively referred to as "Parties") shall jointly request that a qualified engineer or architect (which term shall include "landscape architect," if the nature of the improvements warrants) employed by the County inspect the Common Area Improvements as to which such notice has been given. If the County is unwilling or unable to provide an engineer or architect to make such inspection, the Parties shall jointly select an independent and qualified engineer or architect to perform the inspection. If the Parties are unable or fail to agree on the selection within thirty (30) days after the joint selection is requested, then each Party, within the next thirty (30) days, shall select a licensed engineer or architect and the persons so selected, within fifteen (15) days after both are selected, shall jointly select a third engineer or architect. If either of the Parties fails to select an engineer or architect within the time provided, then the failing Party shall be deemed to have irrevocably waived its right to select, and the inspection shall be performed by the engineer or architect selected by the other Party. If the engineers or architect selected by the Parties fail to select a third person within the time provided, then either Party may petition any court of competent jurisdiction for appointment of such a third person. The person(s) selection or appointed pursuant to this paragraph is referred to in this Section as the "Expert." Declarant shall pay the reasonable compensation of the Expert.
- (ii) Promptly upon the selection of the Expert as provided above in subsection (a), the Expert shall inspect the Common Area Improvements as to which notice has been given. The Parties may accompany the Expert during the inspection. The inspection shall be limited to a visual inspection, and Improvements shall not be uncovered. The Expert shall not be responsible for identifying latent defects. Promptly after the inspection is completed, the Expert shall submit a written report ("Report") to the Parties specifying the respects, if any, in which the Improvements do not conform to the plans and specifications therefor and are defective, and if there are no such defects, the Report shall state that the Improvements conform to the plans and specifications therefor. The Report shall constitute



conclusive and binding evidence that, except as otherwise proved therein and except for latent defects, if any, the Improvements have been constructed in accordance with the plans and specifications therefor, and thereafter Declarant shall have no further liability, duty or obligation with respect to such Improvements, except to remedy any defects specified in the Report and except with respect to latent defects, if any, and the separate repair obligations of Declarant under express written warranty, if any.

- (iii) Declarant shall correct any defects specified in the Report, and the Expert shall reinspect such Improvements within thirty (30) days after request. Such reinspection shall be performed in the same manner as provided for the first inspection. Promptly after the reinspection is completed, the Expert shall submit another written report ("Reinspection Report") to the Parties specifying the defects specified in the Report which have not been corrected, if any, and if all such defect have been corrected the Reinspection Report shall state that the Improvements conform to the plans and specifications therefor. The Reinspection Report shall constitute conclusive and binding evidence that, except as otherwise provided therein and except for latent defects, if any, the Improvements have been constructed in accordance with the plans and specifications therefor, and thereafter Declarant shall have no further liability, duty or obligation with respect to such Improvements, except to remedy any defects specified in the Reinspection Report, and except with respect to latent defects, if any, and the separate repair obligations of Declarant under express written warranty, if any.
- (iv) Additional inspections and Reinspection Reports shall be made, if necessary, all in accordance with and with the same effect as provided above.
- (v) If the Improvements to be inspected are landscaping Improvements, then notwithstanding anything to the contrary contained herein, the Expert shall be a horticulturist or landscape architect. In all other respects, the provisions of this section shall apply to the inspection of landscaping Improvements.
- (vi) Within ten (10) days after all defects have been corrected, as evidenced by a Report or Reinspection Report, the Board shall accept the Improvements in writing and, if Declarant has posted a bond or other security ("Bond") to secure the faithful performance to complete any of the Common Area Improvements, and if the

