

ARTICLE 9

ARCHITECTURAL CONTROL

9.1 Exemptions From Architectural Control. Except as otherwise provided herein, all Improvements to Lots shall be subject to architectural approval by the Association in accordance with the provisions of this Declaration. Declarant and Merchant Builders shall be exempt from compliance with any provision of this Article or from any other provisions of the Association Management Documents, or any actions by the Board pertaining to architectural control; provided, however, if Declarant and Merchant Builders shall desire to construct any Improvements to the exterior of a Residence after such Residence has been completed and approved by the City and VA/FHA, Declarant shall obtain approval for such Improvements from the City and VA/FHA; and, provided further, if Declarant shall retain a Residence for personal use, any Improvements to the exterior of such Residence shall be subject to architectural approval pursuant to this Article.

9.2 Architectural Control. Except for the purposes of proper maintenance and repair, and except as otherwise permitted, no person shall install any Improvement or modify the exterior appearance of a Residence or appurtenant Improvement until any and all plans and specifications required pursuant to this Article shall have been submitted to and approved, in writing, by the Architectural Control Committee. For the purposes of this section, the term "exterior" shall mean any outside wall, outside surface, roof, outside door, patio, balcony, deck, garage or other outside structure of said Residence which is visible to others in the Project and/or to the public.

9.3 Architectural Control Committee. The Architectural Control Committee is hereby authorized with the rights and powers set forth in this Article. Said Committee shall consist of not less than three (3) members nor more than five (5) members, and each initial member shall serve until the first election of the Board. In the event of the failure or inability of any member of the Architectural Control Committee to act, the remaining members shall designate a successor who shall serve for the remainder of the term of the member he replaces. The Declarant shall appoint all of the original members of the Architectural Control Committee, and replacements thereto. Further, Declarant reserves the power to appoint a majority of the members of the Architectural Control Committee until such time as Declarant shall have annexed, or shall have approved annexations by Merchant Builders, to the Association the last Phase to be developed in the Project or until the fifth (5th) anniversary of the issuance of the Final Subdivision Public Report for Phase 1 of the Project, whichever first occurs. After one (1) year from the date of the first close of escrow within Phase 1, the Board shall have the power to appoint one (1) member to the Architectural Control Committee until ninety percent (90%) of the Lots in the Project have been sold or until the fifth (5th) anniversary date of the issuance of the Final Subdivision Public Report for Phase 1 of the Project, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the Architectural Control Committee. All members appointed to the Architectural Control Committee by the Board shall be from the membership of the Association. Members appointed to the Architectural Control Committee by the Declarant, however, need not be members of the Association. No member of the Architectural Control Committee shall be liable to any person

for his decisions or failure to act in making decisions as a member of the Architectural Control Committee. Declarant may, in its discretion and at any time, assign to the Association by written assignment its powers of removal and appointment with respect to the Architectural Control Committee, subject to such terms and conditions regarding the exercise thereof as Declarant may impose.

9.4 Meetings of the Architectural Control Committee. The Architectural Control Committee shall meet, from time to time, as necessary to perform its duties hereunder. The Architectural Control Committee may, by a majority vote of the members thereof, delegate any of its rights and responsibilities hereunder to one (1) or more duly licensed architects, who shall have full authority to act on behalf of the Architectural Control Committee on all matters so delegated.

9.5 Architectural Standards. The Board may, from time to time, adopt Architectural Standards to be administered through the Architectural Control Committee. The Architectural Standards may include, without limitation, those guidelines, procedures, limitations and restrictions upon Owners set forth below:

- a. The placement, reconstruction, addition, change or alteration to a Lot or the exterior of a Residence, including the nature, kind, shape, materials, exterior color and location of any Improvement, and the height of any Improvement, including landscaping;
- b. A description of the type of such construction, additions, changes or alterations which, if completed in conformity with the Architectural Standards, do not require approval of the Architectural Control Committee;
- c. Conformity of completed Improvements to plans and specifications approved by the Architectural Control Committee;
- d. Time limitations for the completion of the Improvements for which approval is required pursuant to the Architectural Standards;
- e. Procedures for submission of plans and specifications submitted for Architectural Control Committee review, including, without limitation, floor plans, site plans, drainage plans, elevation drawings, landscape plans and a description or samples of exterior colors and materials;
- f. Restrictions controlling the species and placement of any trees, plants, shrubbery, ground cover, etc., to be placed, planted, irrigated and maintained in the Project; and
- g. A reasonable schedule of fees for submission of plans and specifications, as set forth below.

The Architectural Standards may be periodically updated or revised by the Board, as the Board, in its reasonable discretion, may deem appropriate. The Architectural Control Committee shall maintain a copy of the then current Architectural Standards on file at all times, and shall provide each Owner with a copy of the Architectural Standards upon written request. The Board shall establish a reasonable fee for copies of the Architectural Standards, and other related materials, to cover costs of reproduction, administration and handling.

9.6 Architectural Approval - Review of Plans and Specifications. The Architectural Control Committee 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 and progress to ensure its conformance with the plans approved by the Architectural Control Committee. No construction, alteration, grading, addition, excavation, modification, decoration, redecoration or reconstruction of an Improvement shall be commenced or maintained by any Owner 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 Architectural Control Committee and approved in writing by the Architectural Control Committee. The Architectural Control Committee shall approve the plans and specifications submitted for its approval only if it deems that: (a) the construction, alterations or additions contemplated thereby and the locations indicated will not be detrimental to the appearance of the surrounding area of the Project as a whole; (b) the appearance of any structure affected thereby will be in harmony with surrounding structures; (c) the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the Association Property, or the enjoyment thereof by the Owners; and (d) the upkeep and maintenance thereof will not become a burden on the Association. The Architectural Control Committee may condition its approval of proposals or plans and specifications for any Improvement: (a) on such changes therein as it deems appropriate, (b) upon the agreement by the person submitting the same to grant appropriate easements to the Association for the maintenance of the Improvement, or (c) upon the agreement of the person submitting the same to reimburse the Association for the cost of such maintenance, or all of the above, and may require submission of additional plans and specifications or other information prior to approving or disapproving the submission.

The Architectural Control Committee may also issue rules or guidelines setting forth procedures for submission of plans for approval, requiring a payment of a fee to the Association to accompany each submission of plans and specifications, or additional factors which it will take into consideration in reviewing submissions.

The Architectural Control Committee may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings, landscape plans and description or samples of exterior material and colors.

The Architectural Control Committee shall require that any replacement or repair of roofs of Residences shall be accomplished with fire retardant materials.

9.7 Decisions of the Architectural Control Committee. Until receipt by the Architectural Control Committee of any required plans and specifications, and such other information as may be required in Section 9.6 above, the Architectural Control Committee may postpone review of any plans submitted for approval. Decisions of the Architectural Control Committee and the reasons therefor should be transmitted by the Architectural Control Committee to the applicant, at the address set forth in the application for approval, within forty-five (45) days after receipt by the Architectural Control Committee of all plans, specifications and materials required. Any application submitted pursuant to the provisions of Section 9.6 above shall be deemed approved, unless written disapproval or a request for additional information or materials by the Architectural Control Committee shall have been transmitted to the applicant within forty-five (45) days after the receipt by the Architectural Control Committee of all required materials.

9.8 Submittal to Public Agencies - Right of Architectural Control Committee to Review. Upon obtaining the written approval of the Architectural Control Committee, the Owner shall thereafter submit plans and specifications to the City, provided that the proposed Improvements require the issuance of a building or other permit or certification by the City. In the event that all approvals of the City necessary for the issuance of a building permit are not obtained within six (6) months from the date of approval by the Architectural Control Committee, the Architectural Control Committee shall have the right, but not the obligation, to review all previously approved plans and specifications. In addition, in the event that the City requires modifications to the plans and specifications previously approved by the Architectural Control Committee, the Owner shall submit to the Architectural Control Committee all modifications to the plans and specifications previously approved by the Architectural Control Committee, which shall have the right to review and to impose further conditions on any such modifications.

9.9 Approval of City. Approval of any proposed or existing Improvement, or completion of an Improvement, by the Architectural Control Committee or the Board shall not be construed to warrant or represent in any way that the Improvement was approved by or complies with the minimum standards of the City. Similarly, approval of any proposed or existing Improvement by the City shall not be construed to constitute approval of such Improvement by the Architectural Control Committee or the Board.

9.10 Conflicts Between City and Architectural Control Committee. In the event of any conflict in the conditions of approval of any proposed Improvements imposed by the City and the Architectural Control Committee, the more restrictive of such conditions shall be controlling. Further, nothing herein shall limit the Architectural Control Committee from imposing conditions of approval of any proposed Improvements which are more restrictive than conditions as may be imposed by the City.

9.11 No Waiver of Future Approvals. The approval of the Architectural Control Committee to any submissions for any work done, or proposed to be done, or in connection with any other matter requiring the approval or consent of the Architectural Control Committee, shall not be deemed to constitute a waiver of any right to withhold approval or

consent of any similar proposals, plans and specifications, drawings or other matters subsequently or additionally submitted for approval.

9.12 Compensation of Members. The members of the Architectural Control Committee shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred in the performance of such members' duties hereunder.

9.13 Variances. Where circumstances such as topography, location of buildings, location of landscaping or other matters require, the Architectural Control Committee, by the vote or written assent of a majority of the members thereof, may allow reasonable variances as to any of the Protective Covenants contained in this Declaration or provisions under the Architectural Standards promulgated by the Architectural Control Committee, on such terms and conditions as it shall require. 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 Lot 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 the Owner's use of his Lot, including, but not limited to, zoning ordinances, Lot setback lines or requirements imposed by the City or other governmental authority.

9.14 Inspection of Work. Upon consent of the Owner, which consent shall not be unreasonably withheld, any member or authorized representative of the Architectural Control Committee may, at any reasonable hour and upon reasonable notice, enter and inspect any Lot which has been the subject matter of an approval of a submission for an Improvement to his Lot. Such entry shall be made with as little inconvenience to the Owner as reasonably possible, and any damage caused thereby shall be repaired by the Association. If the Architectural Control Committee finds that such work was not done in substantial compliance with the approved plans and specifications, it shall notify the Owner in writing of such noncompliance, specifying the particulars of noncompliance and shall require the Owner to remedy the same within thirty (30) days from the date of notification of such noncompliance. If any evidencing noncompliance exists, the Board, after Notice and Hearing, may levy a Compliance Assessment against such Owner for the costs of removing or remedying such noncompliance.

9.15 Appeal. In the event plans and specifications submitted to the Architectural Control Committee are disapproved, the party making such submission may appeal in writing to the Board. The written request must be received by the Board not more than thirty (30) days following the final decision of the Architectural Control Committee. The Board shall submit such request to the Architectural Control Committee for review, and the written recommendations of the Architectural Control Committee 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 by the Board to render a decision within said forty-five (45) day period shall be deemed a decision in favor of the party making such submission.

9.16 Non-Liability of Architectural Control Committee Members. Neither Declarant, Merchant Builders, the Association, the Board or the Architectural Control Committee, or the members or designated representatives thereof, shall be liable for damages to any Owner submitting plans or specifications to them for approval, or to any Owner in the

Project affected by this Declaration by reason of mistake in judgment, negligence or non-feasance, unless due to willful misconduct or bad faith of the Architectural Control Committee. The Architectural Control Committee's approval or disapproval of a submission shall be based solely on the considerations set forth in this Article, and in such Architectural Standards as may be promulgated by the Architectural Control Committee, and the Architectural Control Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plans or design from the standpoint of structural safety and conformance with building or other codes.

ARTICLE 10

REPAIR AND MAINTENANCE

10.1 Repair and Maintenance by Association. Without limiting the generality of the Article herein entitled "Powers and Duties of the Association," the Association shall have the duty to maintain, landscape, repair, improve, restore and replace all Improvements upon the Association Property, as designated in this Declaration or in any subsequent Notice of Annexation which may be recorded, from time to time, in a neat, clean, safe, attractive and orderly condition at all times, including, without limitation, the following:

- a. All drainage and irrigation facilities and easements within the Association Property;
- b. The water system which services the Association Property with water for landscaping and irrigation purposes;
- c. Entry area monumentation located within the Association Property;
- d. The exterior surfaces and structural integrity of those Project perimeter walls and fences shown on Exhibit "C" attached hereto, and additional walls and fences designated in Notices of Annexation;
- e. All other areas, facilities, furniture, equipment, services or aesthetic components of whatsoever nature as may, from time to time, be requested by the vote or written consent of a majority of the voting power of the Association.

Any Exhibits depicting or delineating maintenance areas or obligations of the Association are for illustrative purposes only. The "as-built" condition of all such maintenance areas and obligations as installed and constructed by Declarant, or by Merchant Builders with Declarant's consent, shall be controlling.

The cost of any maintenance and repair by the Association which is a result of neglect, negligence or willful misconduct by an Owner, or such Owner's tenants, guests, agents and invitees, shall, after Notice and Hearing, be levied by the Board as a Compliance