

# **I BACKGROUND AND PRE-CONSTRUCTION SUBMITTLES**

## **A COVENANTS CONDITIONS & RESTRICTIONS**

### **ARTICLE V**

#### **Architectural Control**

##### **I. Approval of Improvements by Board.**

**A - Approval Generally.** Before commencing construction or installation of any Improvement within the Properties, the Owner planning such Improvement must submit a written request for approval to the Architectural Review Committee. The Owner's request shall include plans and specifications that comply with the requirements of Architectural Rules adopted by the ARC and approved by the Board. The ARC may hold hearings and otherwise review proposed improvement projects and make recommendations to the Board on the proposed improvement projects. The ARC's decision shall be deemed to be recommendations to the Board, which shall be placed on the agenda for confirmation, modification, or denial at the next regular or specially scheduled Board meeting. The Board shall maintain final authority to approve, deny, or require modifications to any proposed projects. Unless the Board's approval of the proposal is first obtained, no work on the Improvement shall be undertaken. The Board shall base its decision to approve, disapprove or conditionally approve the proposed Improvement on the criteria described in Section 5.05, below.

**B - ARC Jurisdiction, Definition of "Improvement".** In general, the Association has architectural review and control authority over remodeling or construction work that can be seen or heard from outside an Owner's Lot. More specifically, the term "Improvement" as used herein includes, without limitation, the construction, installation, alteration or remodeling of any buildings, walls, fences, landscaping, skylights, television satellite reception dishes, utility lines, elevators or other structures of any kind. However, changes to the interior of a Residence shall not be considered an Improvement, as defined herein, unless they involve any structural alteration of a load bearing wall or feature within a Residence, any portion of a Condominium Common Area, plumbing, electrical, gas or other utilities, or the penetration of an exterior wall or roof, including but not limited to venting of appliances or mechanical equipment through exterior walls, foundations, or roofs, whether or not an existing or new vent is utilized or installed.

##### **II. Composition of the Architectural Review Committee.**

**A -** The Committee shall be composed of not less than three (3) nor more than seven (7) Members appointed by the Board. In selecting Members for the Committee, the Board shall endeavor to select individuals whose occupations, experience, or education will provide technical knowledge and expertise relevant to matters within the Committee's jurisdiction. The Committee must include at least one (1) licensed architect who is either an Association member and volunteer, or a paid architect to act as a consultant for the Association at the expense of the applicant, if no volunteer

architect has been serving on the Committee. The Architectural Rules may exempt projects that are eligible for expedited review procedures from the requirements of an applicant paying for an architectural consultant for the Association. Committee members shall serve two-year terms subject to the Board's power to remove any Committee member and to appoint his or her successor. Neither the members of the Committee nor its designated representatives (except a paid architectural consultant) shall be entitled to any compensation for services performed pursuant hereto. The Committee shall have those powers which are specifically designated by the Board in the resolution establishing the Committee or the Architectural Rules.

### **III. Abatement of Unauthorized Work.**

**A** - If it comes to the knowledge and attention of the Board that a work of Improvement, or any modification thereof, is proceeding without proper approval, the Association shall be entitled to exercise the enforcement remedies specified in Section 5.06, below, including, without limitation, ordering an immediate cessation and abatement of all aspects of the work of Improvement until such time as proper architectural review and approval is obtained.

### **IV. Architectural Rules.**

**A** - The ARC may from time to time recommend, and the Board of Directors may adopt, amend and repeal rules and regulations to be known as "Architectural Rules." The Architectural Rules shall interpret and implement the provisions hereof and may address any subjects related to construction and modifications of improvements within the Development including, but not limited to: (a) the standards and procedures for architectural review, including, but not limited to, the required content of Improvement plans and specifications, neighbor notification requirements, timelines and hearing and appeal procedures; (b) guidelines for architectural design, placement of any work of Improvement or color schemes, exterior finishes and materials and similar features which are recommended or required for use in connection with particular Improvement projects within the Properties; and (c) the criteria and procedures for requesting variances from any property use restrictions that would otherwise apply to the proposed Improvement under the Governing Documents. Notwithstanding the foregoing, no Architectural Rule shall be in derogation of the minimum standards required by this Declaration. In the event of any conflict between the Architectural Rules and this Declaration, the provisions of the Declaration shall prevail. If the right to adopt Architectural Rules is delegated to the Committee, any such rule shall not become effective until it has been approved by the Board consistent with the Member notice and comment rights and other requirements of Civil Code section 1357.100-1357.150.

### **V. Basis for Approval of Improvements.**

**A** - When a proposed work of Improvement is submitted to the ARC and Board of Directors for review, the ARC shall recommend, and the Board shall grant, the requested approval only if, in its sole discretion, the Board finds that all of the following provisions have been satisfied:

**B** - The Owner's plans and specifications: (i) conform to this Declaration and to the Architectural Rules in effect at the time such plans are submitted to the Board; (ii) will result in the construction of an Improvement that is in harmony with the external design of other structures and/or

landscaping within the Properties; and (iii) will not interfere with the reasonable enjoyment of any other Owner of his or her property, including, without limitation, the other Owner's rights: 1) to enjoy scenic and solar access free of unreasonable obstructions; 2) to be free of unreasonable noise and/or vibration from appliances, mechanical equipment, audio and/or video equipment, and similar noise sources; and

**C** - The proposed Improvement(s), if approved, will otherwise be consistent with the architectural and aesthetic standards prevailing within the Properties and with the overall plan and scheme of development and the purposes of this Declaration.

In approving a request for construction of an Improvement, the ARC may recommend, and the Board may condition, approval upon the adoption of modifications in the plans and specifications or observance of restrictions as to location, noise abatement or similar mitigating conditions.

## **VI. Enforcement of Architectural Compliance Matters.**

**A** - In addition to other enforcement remedies set forth in this Declaration, the Board shall have enforcement rights with respect to any matters required to be submitted to and approved by it, and may enforce such architectural control by any proceeding at law or in equity. In addition, the Board may, in its sole discretion, and subject to the notice and hearing requirements of the Governing Documents, order an abatement of any construction, alteration or other matter for which approval is required, to the extent that it has not been approved by the Board or if it does not conform to the plans and specifications submitted to and approved by the Board. No Improvement Project for which approval is required pursuant to this Article V shall be deemed to be approved simply because it has been completed without a complaint, notice of violation, or commencement of a suit to enjoin such work. If any legal proceeding is initiated to enforce any of the provisions hereof, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to the costs of such proceeding.

**B** - The approval by the Board of any plans, drawings or specifications for any work of Improvement done or proposed, or for any other matter requiring the Board's approval under this Article, or any waiver thereof, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval by the same or some other Owner. The Board shall be entitled to determine that a proposed Improvement or component thereof is unacceptable when proposed on a particular Lot, even if the same or a similar Improvement/component has previously been approved for use at another location within the Properties, if factors such as drainage, topography, unreasonable noise or vibration, or visibility from roads, Common Areas or other Lots, or prior adverse experience with the product or components used in construction of the Improvement, design of the Improvement or its use at other locations within the Properties, militate against erection of the Improvement or use of a particular component thereof on the Lot involved in the Owner's submittal.

## **VII. Variances.**

**A** - The ARC may recommend, and the Board may, in its sole discretion, allow reasonable variances in any procedures specified in this Article, or in any land use restrictions specified in

Article VII to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardship to any Owner-applicant, as more particularly provided in the ARC Rules.

### **VIII. Limitation on Liability.**

**A** - Neither the Association nor the Board or the ARC or any member thereof, shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of any mistakes in judgment, negligence or nonfeasance arising out of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings or specifications; provided, however, that such member has acted in good faith on the basis of such information as he or she possessed.

### **IX. Procedures for Expansion of Exclusive Use Areas.**

**A** - The Board may grant an Owner, without a Member vote, the right to expand the Owner's deck or patio that is appurtenant to the Owner's Residence Lot into the Project Common Area and use such area as Exclusive Use Common Area, so long as the proposed deck expansion complies with all of the following terms and conditions: (a) the proposed expansion shall be subject to the ARC approval process specified in this Article; (b) any proposed expansion must conform to design guidelines specified in the Architectural Rules; (c) no deck expansion shall exceed twelve (12) feet in depth from the exterior wall of the subject building; (d) any proposed expansion must include permissible building materials, required permits, and the design of the decks including railings and railing heights must be in accordance with the specifications and requirements of the Architectural Rules; (e) if the Residence Lot for which the expansion is sought shares a party wall with another Residence Lot, then the Owner of such contiguous Residence Lot (or Lots if party walls exist on both sides of the subject Residence Lot) shall have agreed to the proposed expansion; (f) all costs of the expansion including any costs incurred by the ARC or the Association in approving or inspecting the deck expansion and in the enforcement of provisions of this Section shall be borne by the Owner of the Unit undertaking such expansion; (g) although the Owner must pay the cost of construction of the expanded deck, no monetary consideration from the Owner to the Association will be required for the grant of the right to use of the Exclusive Use Common Area; and (h) for insurance purposes, the expanded deck will be treated as a Project Common Area Improvement, and covered by the Association's master policies.

**B** - Any other proposed expansion of an existing Exclusive Use Area, or other grant of new exclusive use of any portion of the any Common Area, is subject to the requirements of Civil Code section 1363.07, except that the required Member vote percentage shall be a majority of the voting power of the Members, rather than sixty-seven percent (67%) of the Members. The Architectural Rules developed by the Board may further clarify the requirements for expansion of existing or the grant of new Exclusive Use Areas, including specifying a different or lower member vote requirement for such new or expanded EUAs, subject to the Member notice and comment rights and other requirements of Civil Code section 1357.100-1357.150.

## X. Compliance With Governmental Regulations.

A - Review and approval by the Board of any proposals, plans or other submittals pertaining to Improvements shall in no way be deemed to constitute satisfaction of, or compliance with, any building permit process or any other governmental requirements, the responsibility for which shall lie solely with the Owner who desires to construct, install or modify the Improvement.