

## ARTICLE 9

### ARCHITECTURAL AND LANDSCAPING CONTROL

**9.1 Architectural Control of Construction Activities.** Except as provided in Section 9.2 below, and subject to Article 16 herein, no construction, development, grading, alteration, addition, installation, decoration, redecoration, reconstruction or landscaping of an Improvement in the Project (including a Residence, a Lot and the Common Property, or any other activity within the jurisdiction of the ACC pursuant to this Declaration, shall be commenced or maintained by an Owner, with the express exception of Declarant and Merchant Builders) until the plans and specifications for such construction activity showing the nature, location, kind, shape, height, width, color, materials and location of such Improvements have been submitted to and approved by the ACC and, when necessary, by the County.

**9.2 Declarant/Merchant Builder Exemptions.** Notwithstanding any other provision of this Declaration, Declarant and Merchant Builders need not seek ACC approval with respect to their construction or development activities including, without limitation, any activity which would be classified in Section 9.1 herein as construction activity. However, Merchant Builders must obtain Declarant's written approval of all construction and development activities so long as Declarant owns one (1) or more Lots in the Project or in the Annexation Property. Declarant's approval rights herein are in addition to, and shall not affect any other rights of Declarant under written agreements between Declarant and Merchant Builders.

**9.3 Architectural Control Committee.** The ACC 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. In the event of the failure or inability of any member of the ACC to act, the Board shall designate a successor who shall serve for the remainder of the term of the member he replaces. The Declarant shall be permitted to appoint all of the original members of the ACC, and replacements thereto, until the fifth (5th) anniversary of the Close of Escrow for the sale of the first (1st) Lot in the Project. Further, Declarant reserves the right and power to appoint a majority of the members of the ACC until the Close of Escrow for the sale of the last Lot in the Project and in the Annexation Property shall have occurred. Thereafter, the Board shall have the power to appoint all of the members of the ACC. All members appointed to the ACC by the Board shall be from the membership of the Association. Members appointed to the ACC by the Declarant, however, need not be members of the Association. No member of the ACC shall be liable to any person for such person's decisions or failure to act in making decisions as a member of the ACC. 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 ACC, subject to such terms and conditions regarding the exercise thereof as Declarant may impose.

**9.4 Meetings of the Architectural Control Committee.** The ACC shall meet, from time to time, as necessary to perform its duties hereunder. The ACC 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 ACC on all matters so delegated.

**9.5 Review of Plans and Specifications.** The ACC shall have 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 are in conformance with and are harmonious to the exterior design and existing materials of the Lots and Lots in the Project. The ACC 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 ACC. 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 ACC and approved in writing by the ACC. The initial address for submission of such plans and specifications, until changed by the ACC, shall be:

Architectural Control Committee  
Hasley Hills Homeowners Association  
c/o Kaufman and Broad of Southern California, Inc.  
801 Corporate Center Drive, Suite 201  
Pomona, California 91768-2641

The ACC 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 Common Property, or the enjoyment thereof by the Owners; and (d) the upkeep and maintenance thereof will not become a burden on the Association. The ACC 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 ACC 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 ACC 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.

**9.6 Regulations and Fees for Architectural Review.** The Board may establish and issue reasonable rules and regulations governing procedures for submission of plans and specifications, and may establish a reasonable schedule of architectural review fees to be charged by the ACC for the review of plans and specifications, as shall be set forth in the Architectural Standards. Such fees shall be reasonably related to the anticipated cost of providing the architectural review. The Owner of the Lot upon which the work of Improvement is to be constructed shall pay these fees prior to the ACC's review of the plans and specifications for the proposed work. Acceptance of the architectural review fee in no way guarantees the approval of the proposed Improvement. If the architectural review fee is not sufficient to permit the ACC to complete its review of the plans and specifications, the ACC reserves the right to request additional fees to cover the actual costs of providing the architectural review.

**9.7 Review of Plans and Specifications.** The ACC shall review any plans and specifications submitted by an Owner, pursuant to Section 9.4 hereinabove, in accordance with the following provisions:

a. **Review by Licensed Professionals.** In the event the ACC shall deem it reasonably necessary or appropriate to retain the services of an engineer or architect to review or assist in the review of any such plans and specifications for any proposed Improvement, the ACC shall so advise the Owner, in writing. The Owner shall pay all reasonable fees and all additional costs and expenses incurred by the ACC in obtaining such review, including, without limitation, any fees incurred by the ACC in retaining an architect, engineer or other professional.

b. **Review Criteria.** Approval by the ACC of the plans and specifications shall be based, among other things, on conformity with special restrictions on development and other Covenants set forth in this Declaration; the Architectural Standards, if any; conformity and harmony of external design with neighboring Residences and other Improvements; effect of location and use of Improvements (including landscaping) on neighboring property; relation of topography, grade, setbacks and finished ground elevation of the Lot being improved to that of neighboring property; proper facing of all elevations with respect to nearby streets; consideration of view and aesthetic beauty; and conformity of the plans and specifications with the Protective Covenants provided in this Declaration. The ACC may withhold approval of the plans and specifications for any proposed Improvement because of noncompliance with any of the specific terms and provisions set forth in this Declaration; because of the dissatisfaction of the ACC with the proposed nature, kind, plan, design, shape, height, dimensions, proportions, architectural style, color, finish or materials to be used therein, the pitch or type of any proposed roof, or the size, type or location of any proposed trees or other landscaping to be planted on the Lot; upon determination that the Improvements cannot be approved because of its effect

on existing drainage, utility or other easements or condition its approval of the plans and specifications for any Improvement on such changes therein as it deems appropriate such as the approval of such improvements by the holder of an easement which may be impaired thereby or upon approval of such improvement by the County; or because of the dissatisfaction of the ACC with any aspect of the proposed Improvement which would cause the proposed Improvement to be inappropriate, inharmonious or out-of-keeping with the general plan of improvement for the Project, or with the Improvements on or topography of the surrounding Lot.

The ACC may condition its approval of plans and specifications on such changes therein as it deems appropriate, upon the agreement by the Owner submitting the same to grant appropriate easements to the Association for purpose of maintenance, and may require submission of additional plans and specifications or other information prior to approving or disapproving the materials submitted. Any approval granted by the ACC which is conditioned upon the approval of the Public Agencies shall not imply that the Association is enforcing any government codes, statutes, regulations or provisions of the Public Agencies, nor shall the failure to make such conditional approval imply that any such approval by the Public Agencies is not required.

c. Action by the Architectural Control Committee. Until receipt by the ACC of all required plans and specifications, and such other information as may be required herein or in the Architectural Standards, the ACC may postpone review of any such plans and specifications submitted for approval. The ACC shall transmit its decision and the reasons therefor within forty-five (45) days after the ACC receives all required plans and specifications and related materials. Any action by the ACC on said plans and specifications, including approval, conditional approval or disapproval, shall be evidenced by a Certificate, signed by at least a majority of the ACC members who concur in the action taken by the ACC. Once issued, the Certificate may be relied upon by all parties affected thereby. The ACC shall retain the original of said Certificate and one (1) copy of the plans and specifications in the records of the Association, and shall promptly mail an executed copy of the Certificate to the Owner and return to the Owner the other set of plans and specifications, marked to show the date of certification.

d. Appeals. For so long as Declarant has the right to appoint and remove a majority of the members of the ACC, the ACC's 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 members of the ACC, the Board may adopt policies and procedures for the appeal of ACC 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 decisions of the ACC are final and binding upon the applicant.

**9.8 Submittal to County - Right of Architectural Control Committee to Review.** Upon obtaining the written approval of the ACC, the Owner shall, if required, submit plans and specifications to the County, in accordance with the requirements of the County. In the event that all approvals of the County necessary for the issuance of a building permit are not

obtained within six (6) months from the date of approval by the ACC, the ACC shall have the right, but not the obligation, to review all previously approved plans and specifications. In addition, in the event that the County requires modifications to the plans and specifications previously approved by the ACC, the Owner shall submit to the ACC all modifications to the plans and specifications previously approved by the ACC, which shall have the right to review and to impose further conditions on any such modifications.

**9.9 Approval of County.** Approval of any proposed or existing Improvement, or completion of an Improvement, by the ACC 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 County. Similarly, approval of any proposed or existing Improvement by the County having jurisdiction over the Improvement shall not be construed to constitute approval of such Improvement by the ACC or the Board.

**9.10 Performance of Work.** The performance of any work of Improvement approved pursuant to Section 9.9 above shall be performed in accordance with the following provisions:

a. **Bonds or Security Deposits.** The ACC may require that an Owner post a bond, cash security deposit or irrevocable letter of credit, in a form satisfactory to the ACC in favor of the Association as a condition to approving any proposed Improvement. No person shall commence any work of Improvement until any and all such bonds, security deposits and letters of credit have been properly posted with the ACC. The proceeds of such bonds, security deposits and letters of credit shall be used by the Board as deemed reasonably necessary by the Board to remedy any breach or default by an Owner of any Covenant contained in this Article, including, without limitation, any failure by such Owner to:

- (1) Repair any damage to any real or personal property within the Project caused by the work of Improvement;
- (2) Remove any lumber, materials or debris within a reasonable period following completion of the work of Improvement;
- (3) Construct or install the work of Improvement in accordance with the plans and specifications approved by the ACC; or
- (4) Complete the work of Improvement in a timely manner.

In no way shall the above-referenced security limit an Owner's liability in the event that damage or destruction by such Owner exceeds the amount of the security. The security required in this Section shall be returned to the Owner following the final walk-through of the Residence by one or more members of the ACC.

b. Performance of Work. Except in the case of a bona fide emergency, all work shall be performed during reasonable daylight hours, in accordance with the Architectural Standards. Any variances shall require the prior approval of the ACC and the County. All persons performing such work shall use their best efforts to minimize the duration of the work and the inconvenience to other Owners in the Project. All work shall be performed in a neat and orderly manner, and all reasonable safety precautions shall be taken during the performance of such work.

c. Indemnification. Notwithstanding the security required in Section 9.10(a) above, the Owner of any Lot upon which any work of Improvement is being performed shall indemnify, defend and hold harmless the Declarant, the Association, the Board, the ACC and every other Owner in the Project from and against any and all liability arising out of or otherwise resulting from any negligent or intentional act or omission relating to the performance of such work.

**9.11** Inspection of Work. The inspection of any work of Improvement performed pursuant to this Article shall be performed in accordance with the following provisions:

a. Notice and Inspection. The ACC shall have the right, upon reasonable notice and during reasonable daylight hours, to make periodic inspections of any work in progress. Upon the completion of any Improvement, the Owner shall give written notice thereof to the ACC. Within sixty (60) days after receipt of such notice, the ACC, or its duly authorized representative, may inspect the completed Improvement to determine whether it was constructed, erected or installed in substantial compliance with the approved plans. In the event the ACC fails to respond to the notice within a sixty (60) day period following receipt of such notice, then the completed Improvement shall be deemed approved. If, however, the ACC shall inspect the completed Improvement and determine that such Improvement was not constructed, erected or installed in compliance with the approved plans, it shall notify the Owner, in writing, of such noncompliance within ten (10) days after the date of the inspection, specifying the particulars of noncompliance.

b. Effect of Noncompliance. In the event the Owner has failed to remedy any alleged noncompliance within thirty (30) days from the date the Owner is notified of such noncompliance, the ACC shall notify the Board, who shall then set a date on which a hearing shall be held regarding the matter. Said date shall not be less than twenty (20) days nor more than sixty (60) days after said notice of noncompliance was given to the Owner. Written notice of the hearing date shall be given by the Board to the Owner at least ten (10) days prior to the hearing. At the hearing, the Owner, the ACC and the Board, and any other interested persons, may present information relevant to the question of the alleged noncompliance. After considering all such information, if the Board shall determine that there is in fact a noncompliance, the Board shall specify the exact nature of the noncompliance, the estimated cost of correcting or removing same and shall specify a reasonable period of time the Owner shall have to remedy or remove the same after the date of the Board's ruling. If the Owner does not comply with the Board's ruling

within such reasonable period, or within any extension of such reasonable period as the Board may grant, in its discretion, the Board shall take such action against said Owner as it deems appropriate, including the filing of a suit declaring said noncomplying Improvement to be a nuisance, and for abatement thereof. Any noncompliance shall be deemed a nuisance. In furtherance thereof, all Owners hereby agree that the Board shall have legal standing to commence and prosecute legal proceedings against any Owner to enforce the Covenants set forth in this Declaration. Additionally, the Board, at its option, may cause the noncomplying Improvement to be removed or may otherwise cause the noncompliance to be remedied, and the Owner shall promptly reimburse the Association, upon demand, for all costs and expenses incurred therewith. If such costs and expenses are not promptly paid to the Association, the Board shall, after Notice and Hearing, cause such costs and expenses to be levied as a Compliance Assessment against the responsible Owner.

**9.12**     Variances. The ACC may recommend variances from compliance with any of the architectural provisions of this Declaration when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be approved by the Board, evidenced in writing, and signed by at least two (2) officers of the Association certifying such Board approval. No provision of the protective covenants set forth in this Declaration shall exist with respect to any construction activity for which a variance is granted. The granting of such a 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 statutes and ordinances of the Public Agencies.

**9.13**     Preapprovals. The Board may authorize the preapproval of certain specified types or classes of construction activities within the Architectural Standards if, in the exercise of the Board's judgment, preapproval of such types or classes of Improvements is appropriate.

**9.14**     Approval Not Waiver. The approval by the ACC of any plans and specifications for an Improvement to any given Lot shall not be deemed to constitute a waiver by the ACC of its right to object to any features or elements embodied in such plans and specifications in the event said features or elements are embodied in subsequent plans and specifications submitted to the ACC for approval for use on any other Lot.

**9.15**     No Liability. Neither the Association or any member of the Board, the Declarant or the ACC shall be liable in damages to any person submitting plans or specifications for approval, or to any Owner, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval, or failure to approve or disapprove, any such plans or specifications, or for any defect in any Improvement constructed from such plans and specifications. Plans and specifications shall be approved as to style, exterior design, appearance and location, and are not approved for engineering design, structural engineering and safety, or for compliance with zoning and building ordinances. Every person who submits plans to the ACC for approval agrees, by submission of such plans and specifications, and

every other Owner agrees by acquiring title to its Lot, that it will not bring any action or suit against the Association or any member of the Board or the ACC to recover any such damages.

## ARTICLE 10

### REPAIR AND MAINTENANCE

**10.1** Repair and Maintenance by the 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 Common 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. Manage, operate, control, maintain, repair, restore, replace and make necessary improvements to the Common Property, in such a manner as to avoid the reasonable determination of a duly authorized official of the County that a public nuisance has been created by the absence of adequate maintenance, such as to be detrimental to public health, safety or general welfare, or that such a condition of deterioration or disrepair causes harm or is materially detrimental to property values or improvements within the boundary of the Project, to surrounding property, or to property or improvements within three hundred (300) feet of the Project. The Association shall maintain the Common Property, including without limitation, the following:

- (1) all Project entry monuments, lighting and landscaping Improvements;
- (2) slopes, retaining walls, landscaping and irrigation improvements;
- (3) drainage improvements including drain inlets, outlets, diverters, V-ditches, brow ditches and similar drainage services;
- (4) all Project Walls (and fences) designated for maintenance by the Association in this Declaration and/or in Notices of Annexation; and
- (5) landscaped public parkways and street median areas designated for maintenance in this Declaration and/or in Notices of Annexation.

b. All other areas, facilities, equipment, services or aesthetic components of whatsoever nature as may come up from time to time, be requested by the vote or written consent of a majority of the voting power of the Association.