

ARTICLE
6
ARCHITECTURAL CONTROLS AND DESIGN REVIEW
COMMITTEE

Section 6.01. Architectural Control.

A. Requirement to Obtain Approval. An Owner **must obtain approval** from the Review Entity for the construction, reconstruction, or alteration of any Improvement located in the Community, including the installation of solar energy systems and the addition or placement of accessory buildings, or to alter the topography or natural or existing surface drainage of the Community, or to install, plant, alter, or maintain any landscaping exposed to streets or open areas, or to install any utility line (wire or conduit) on or over any Lot **prior to the commencement of such work**. The requirement applies to the construction, reconstruction, or alteration of any Improvements located within any Community Use Area. If such work does not constitute a material change in the design or color of original construction or Improvements already approved in accordance with this Declaration, it shall be sufficient for an Owner to notify the Review Entity in writing before commencing the work, and prior approval shall not be required unless the Review Entity determines that such work constitutes a material change. An Owner must also obtain approval from the Review Entity of the content of any Subordinate Restrictions that the Owner intends to record. Approval is not required for any work done or for any Subordinate Restrictions to be recorded by or for Declarant or by or for the MHCS D.

B. Review Entity.

1. Original Design Review Committee Control. The Design Review Committee shall have the power to review and approve or disapprove all original construction of Improvements or other work requiring approval pursuant to Subsection A of this Section, except as otherwise provided by this Subsection B.

2. Development Declarations. If in any area of the Community where a Development Declaration has been recorded, the review and approval or disapproval of Improvements or other work performed by a Builder requiring approval pursuant to Subsection A of this Section shall be done as provided by any Development Declaration if the Development Declaration provides a different method for such review.

3. MHCS D Control. The MHCS D shall have the power to review and approve or disapprove all work requiring approval pursuant to Subsection A of this Section in any of the following circumstances: (i) when (a) the Improvements consist of single-family residential homes, including Second Units, or a residential Project and (b) the work consists of the construction, reconstruction or alteration of Improvements following the completion of the original Improvements on the Lot; (ii) in all cases where the Design Review Committee's jurisdiction over an area of the Community has been terminated as provided in Section 6.15; and (iii) when the Design Review Committee has been dissolved or when the power to appoint the members of the Design Review Committee has been assigned to the MHCS D.

Section 6.02. **MHCSD Procedures for Architectural Control.** In exercising its powers to review and approve or disapprove Improvements when the MHCSD has such powers as provided by Section 6.01B.3, the MHCSD shall have the same authority and power as does the Design Review Committee pursuant to this Article 6, but applied to those matters over which the MHCSD has such powers under 6.01B.3. If Design Guidelines, or both, have been adopted for any area, the MHCSD shall use the Design Guidelines as applicable in exercising its power to review and approve or disapprove Improvements.

Section 6.03. **Design Review Committee: Organization; Power of Appointment; and Removal of Members.** There shall be a Mountain House Design Review Committee ("DRC") whose composition and operations are subject to this Section. The MHCSD has no powers or duties related to the DRC or the functions of the DRC.

A. Composition.

1. **Number of Members.** The Design Review Committee shall consist of three (3) members. The number of the members of the Design Review Committee may be expanded by the person or entity who has the power to appoint the member. Declarant shall appoint the initial members of the Design Review Committee and their successors, who need not be Owners.

2. **Address.** The address of the Design Review Committee is:

c/o Trimark Communities
3120 Tracy Boulevard, Suite
A Tracy, California 95376

The address of the DRC may be changed by procedure set out in Section 6.10.

B. **Terms of Members.** Each member of the DRC shall hold office until: (i) such member resigns upon giving a written notice delivered to the person or entity who has the power to appoint the members of the DRC; or (ii) such member is removed by the person or entity having the power to appoint the member.

C. **Resignation.** Any member of the DRC may at any time resign from the Committee upon a written notice delivered to the other member or members of the DRC.

D. **Organization as Corporation.** Declarant may organize the DRC as a non-profit mutual benefit corporation and have the members of the DRC serve as directors and officers of the corporation. In addition, non-members can be appointed as officers of the corporation to act for the DRC.

E. **Dissolution.** Declarant can dissolve the DRC at any time or may assign to the MHCSD the right to appoint the members of the DRC.

Section 6.04. **Design Review Approval.** The procedure and criteria for DRC approval

of work being done by Owners are as follows unless a different procedure is provided by the Development Declaration for the area, in which case the procedure provided by the Development Declaration will be used for the Improvements regulated by the Development Declarations. No work can be commenced within any Community Use Area until the DRC has approved the work as provided in Section 6.01A.

A. Procedure.

1. **Application.** Any Owner proposing to do any work for which approval of the DRC is required under Section 6.01 to apply to the DRC by submitting, in duplicate, such plans and specifications for the proposed work as the DRC may from time to time request including, but not limited to the following, when deemed appropriate by the DRC: (i) floor plans; (ii) colors of exterior materials and colors, with samples if required by the DRC; (iii) specifications; (iv) building plan or plans; (v) wall sections; (vi) exterior elevations; (vii) roof plan; (viii) landscaping plans; (ix) graphics and exterior furnishings; (x) the Owner's proposed construction schedule; and (xi) reports by a soils engineer, civil engineer, structural engineer, or any combination thereof. A Builder building production houses shall obtain approval from the DRC for standard house models and elevations and shall obtain approval for the exterior materials and colors and basic landscaping and hardscaping of such houses. Thereafter, the Builder need only obtain approval for the model and elevation to be placed on each Lot as long as there has been no material changes to the model, elevations, materials, colors, and other items previously approved.

2. **Churches and Private Schools.** Unless land has been designated for the construction and maintenance of churches or other religious meeting and worship facilities, the DRC shall have the sole and absolute discretion as to whether such a facility may be constructed on any Lot or parcel. Unless land has been designated for the construction and maintenance of schools (other than public schools) or other educational institution, the DRC shall have the sole and absolute discretion as to whether such a facility may be constructed on any Lot or parcel.

3. **Review Fee.** The DRC may require that the submission of plans and specifications be accompanied by a fee to defray the actual cost of the review of plans and specifications, the amount of which shall be set by the DRC as part of the Design Guidelines from time to time, but shall not exceed one-tenth of one percent (1/10 of 1%) of the estimated cost of the work.

4. **Form of Approval.** The approval shall be in writing, and may be conditioned upon the submission by the Owner of such additional plans and specifications as the DRC in its absolute discretion deems appropriate.

5. **Inaction.** Applications made in accordance with this Section that are not acted upon within sixty (60) days from the date of submission thereof shall be deemed approved.

6. **Return of Plans.** If the application is approved, the DRC shall return to the Owner one (1) set of plans and specifications as finally approved and bearing

the endorsement of the DRC. If the Owner originally furnished only one (1) set of plans and specifications to the DRC and the DRC waived the requirement of such plans and specifications in duplicate, the DRC may retain such plans and deliver to the Owner written Notice of the approval of such plans.

7. Two-Stage Plan Review. An applicant for either preliminary or final approval of construction plans under this provision shall not submit any application for a construction permit from the governmental agency having jurisdiction until the DRC has provided approval of its final plans. If the DRC so requests, applicants shall submit plans for preliminary approval only, which approval shall be given to the applicant provided all items required by this Subsection A have been submitted. Upon receipt of preliminary approval and prior to beginning construction, the applicant shall submit, if requested by the DRC, at least two (2) sets of plans, including, but not limited to, the following: (i) final plans and specifications, including dimensioned floor plans, dimensioned elevations of buildings, roof plans with overhang and information; (ii) final plot plan with all setbacks and drainage information; (iii) final landscape architectural plans at a minimum scale of 1" = 20'- 0", including layout, planting and irrigation plans and construction details; (iv) mechanical, civil, electrical, and structural engineering plans which correspond to the architectural plans; (v) exterior materials and color palette; and (vi) copies of all governmental approvals. Upon receipt of these materials, the DRC shall consider them and give written approval, conditional approval, or disapproval as provided in this Subsection. The DRC may waive the requirements of this two-stage approval procedure for any individual or class of application, and require final approval only.

B. Criteria. The DRC shall approve the work only in accordance with the criteria set forth in this Subsection. DRC APPROVAL DOES NOT ALLOW THE APPLICANT TO VIOLATE ANY PROVISION OF THIS DECLARATION NOR DOES IT IN ANY WAY EXEMPT THE APPLICANT FROM COMPLYING WITH BUILDING AND FIRE CODES, BUILDING PERMIT REQUIREMENTS AND OTHER GOVERNMENTAL REQUIREMENTS.

1. General. The DRC shall not consent to any Improvements described in this Article unless the Owner has submitted the materials required by the DRC.

2. Findings Required. The DRC shall not do or consent to any Improvements unless the DRC finds that: (i) the proposed work conforms to this Declaration and the Design Guidelines, and that the applicant has obtained or shall obtain the necessary approvals and permits from the MHCSO, the County, or other governmental entities, including a building permit if necessary; (ii) that general architectural considerations, including the character, scale, and quality of the design, its architectural relationship with the design of Improvements in the area of the Community, and the building materials, colors, screening, exterior lighting and similar elements are incorporated into the design in order to ensure the compatibility of the proposed Improvement with the character of adjacent dwellings and Improvements for the area of the Community in which it is located; (iii) general site

considerations, including site layout, open space and topography, orientation and location, vehicular access, circulation and parking, setbacks, height, walls, fences and similar elements have been designed to provide a desirable environment; and (iv) general landscape consideration, including the location, type, size, color, texture, and coverage of plant materials

provision for irrigation, maintenance, and protection of landscaped areas and similar elements have been incorporated to ensure visual relief, to complement homes and structures, and to provide an attractive environment for the use of residents and for the enhancement of property values in the Community. IF THE PLANS ARE DISAPPROVED, THE DRC SHALL MAKE WRITTEN FINDINGS AS TO THE REASONS FOR THE DISAPPROVAL.

Section 6.05. Governmental Permits. Upon receipt of the approval from the DRC, Owner shall obtain such other approvals, including a building permit for the work, that are required by the MHCSO, the County, and any other governmental entity. Owner shall not alter the plans that have been approved by the Committee to obtain such approvals without the written approval of the DRC. Upon obtaining the necessary permits, the Owner shall provide to the DRC a copy of each of the governmental permits prior to commencing the work.

Section 6.06. Completion and Inspection.

A. Completion of Improvements; Extension. Upon receipt of the approval from the DRC the Owner shall, as soon as practicable, satisfy any conditions of such approval, obtain all required governmental approvals and permits, and diligently proceed with the commencement and completion of all work on a Lot within one (1) year of the date of the start of construction on such Lot. The DRC may extend the one (1) year period if: (i) the Owner makes a written application to the DRC setting forth the reason for the requested extension; and (ii) the DRC finds that the Owner has pursued the work diligently and in good faith. If the DRC approves the extension, the DRC shall, in writing, notify the Owner of the length of the extension. If the Owner fails to complete the work within one (1) year and any applicable extension period, the approval shall be deemed revoked and the work may be treated as having been constructed in violation of this Article. Nothing in this Subsection imposes a requirement upon the DRC to extend the one (1) year period.

B. Inspection of Improvements. The DRC has the right to inspect the work at any reasonable time during the construction of the work. Upon completion of the work, the Owner shall give a notice of the completion of the Improvement, in writing, to the DRC. The DRC, directly or through its authorized representative, may inspect the work for compliance with the approved plans. The DRC shall notify the Owner of any noncompliance, in writing, and require the remedy thereof, within sixty (60) days from receipt of Owner's Notice of completion. If the DRC fails to give a noncompliance Notice, the Improvement shall be deemed to have been completed in accordance with this Article. If notice of noncompliance is

given within such sixty (60) days period, and the Owner fails to remedy such noncompliance within sixty (60) days after receipt of such Notice, the Committee may act in accordance with the provisions of the Section entitled "Noncompliance."

Section 6.07. **Noncompliance.** If Improvements are installed that are not in compliance with this Declaration, the DRC may either remove the Improvement or remedy the noncompliance or require the Owner to do so. In any such case, such Owner shall reimburse the DRC for all expenses incurred in connection therewith, including reasonable attorney fees and costs whether or not an action is instituted. No Improvement shall be removed from, or a noncompliance remedied on, a Lot without either the consent of the Owner of the Lot or an order obtained from a court of competent jurisdiction. The DRC is authorized to enforce the provisions of this Article by use of judicial action, including actions for injunctive relief. If the DRC obtains an injunction or other equitable relief to enforce the provisions of this Article, no bond shall be required of the DRC.

Section 6.08. **Period for Action to be Filed.** Any work completed without compliance with this Article shall be deemed to have been done in compliance with this Article if, within two (2) years after completion of such work no legal action is commenced to enforce the provisions of this Article against such work.

Section 6.09. **Nonwaiver.** The approval by the Committee of any plans, drawings, or specifications for any work done or proposed, or in connection with any other matter requiring the approval of the Committee shall not be deemed to constitute a waiver of any right to withhold approval as to any similar plan, drawing, specification, or matter whenever subsequently or additionally submitted for approval.

Section 6.10. **Certificate of Identity.** Any two (2) members of the DRC may execute, acknowledge, and Record a certificate stating the names of all members of the then current DRC and the current address of the DRC and any representative of the DRC ("Certificate of Identity"). The most recently Recorded Certificate shall be conclusive evidence of the identity of the persons then comprising the DRC in favor of any person relying on the Certificate of Identity in good faith.

Section 6.11. **Estoppel Certificate.** Within thirty (30) days after written demand therefor is delivered to the DRC by an Owner, together with a reasonable fee fixed by the DRC, the DRC shall provide the Owner with an estoppel certificate executed by any one of its members, and acknowledged, certifying that as of the date thereof, either: (i) all work done upon or within the Lot by the Owner, or otherwise, complies with this Declaration; or (ii) such work does not so comply, in which event the certificate shall also identify the cause of causes for such noncompliance. Any purchaser, Mortgagee, or other encumbrance of the Lot may rely on the certificate with respect to the matters therein set forth, which shall be conclusive as between Declarant, all Owners, and such purchaser, Mortgagee, or other encumbrances.

Section 6.12. **Limitation of Design Review Committee Liability.** THE REVIEW OF IMPROVEMENTS PROVIDED BY THIS ARTICLE IS ONLY TO CONTROL THE AESTHETICS OF THE COMMUNITY AND FOR NO OTHER PURPOSE. NEITHER

THE DESIGN REVIEW COMMITTEE, THE DECLARANT, NOR ANY MEMBER OF THE DESIGN REVIEW COMMITTEE SHALL BE LIABLE TO ANY OWNER OR ANY OTHER PERSON FOR ANY DAMAGE, LOSS OR PREJUDICE SUFFERED OR CLAIMED ON ACCOUNT OF: (I) THE APPROVAL OF ANY PLANS, DRAWINGS, OR SPECIFICATIONS, WHETHER OR NOT DEFECTIVE; (II) THE CONSTRUCTION OR PERFORMANCE OF ANY WORK, WHETHER OR NOT PURSUANT TO APPROVED PLANS, DRAWINGS, AND SPECIFICATIONS; (III) THE DEVELOPMENT, OR MANNER OF DEVELOPMENT, OF ANY PROPERTY WITHIN THE COMMUNITY; OR (IV) THE FAILURE OF ANY PERSON CONSTRUCTING IMPROVEMENTS TO OBTAIN CORRECT PROPERTY ZONING, OBTAIN A BUILDING PERMIT, OR TO CONFORM TO BUILDING, SAFETY, OR HEALTH LAWS ORDINANCES OR REGULATIONS. IN ANY CASE, THE DESIGN REVIEW COMMITTEE OR ANY MEMBER OF THE DESIGN REVIEW COMMITTEE, MAY CONSULT WITH OR HEAR ANY OWNER WITH RESPECT TO ANY PLANS, DRAWINGS, OR SPECIFICATIONS, OR ANY OTHER PROPOSAL SUBMITTED TO THE DESIGN REVIEW COMMITTEE.

Section 6.13. **Owner's Liability.** Any Owner who physically alters any portion of the Community from the condition originally conveyed by Declarant or a Builder, shall be responsible and liable for any damage to other Lots resulting from such alteration, and shall be responsible and liable for any violation of any law or governmental regulation resulting from such alteration.

Section 6.14. **Design Review Committee Approval - Builders.** The procedures and criteria for DRC approval for work to be done by Builders may be set out in the Development Declaration for the applicable area of the Community and the provisions of the Development Declaration shall supercede the provisions of this Declaration to the extent such Development Declaration is inconsistent with this Declaration. The fees for DRC review and approval of work to be done by Builders will be set by the Design Guidelines.

Section 6.15. **Termination of Design Review Committee Jurisdiction.** Declarant may at any time by the recording of a Supplementary Declaration terminate the Committee's power to review and approve or disapprove Improvements within an area of the Community. The dissolution of the Committee shall act as a termination of the Committee's power to review and approve or disapprove Improvements within the entire Community. In any area where the power of the Committee has been terminated, the MHCS D shall have the power to review and approve or disapproved all Improvements and work which, except for the termination, would have been reviewed by the Design Review Committee.