

# *Avalon*

AT EAGLES CROSSING

## **Lien Policy**

The following excerpts are taken from the CC&Rs and constitute Avalon at Eagles Crossing HOA's Lien Policy.

The payment of actual expenses incurred by a Board member or officer in the execution of such person's Association duties shall not affect such person's status as a volunteer Board member or officer for the purposes of this section. The provisions of this subparagraph (b) are intended to reflect the protections accorded to volunteer directors and officers of community associations under Civil Code §5800 and should not be construed to expand or limit the fiduciary duties owed by a Board member or officer. If Civil Code §5800 is amended or superseded by another, similar provision of the California statutes, this subparagraph (b) shall be deemed amended, without the need for further Member approval, to correspond to the amended or successor Civil Code provision.

## ARTICLE IV

### ASSESSMENTS

#### **Section 4.1. Assessments Generally.**

- a) **Covenant to Pay Assessments.** Each Owner of one or more Condominiums, by acceptance of a deed or other conveyance therefor (whether or not it shall be so expressed in such deed or conveyance), covenants and agrees to pay to the Association (i) Regular Assessments; (ii) Special Assessments and (iii) Emergency Assessments duly levied by the Association in accordance with this Article IV.
  
- b) **Extent of Owner's Personal Obligation for Assessments.** All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorney fees) for the collection thereof, shall be a debt and a personal obligation of the person who is the Owner of the Condominium at the time the Assessment is levied. Each Owner who acquires title to a Condominium (whether by conventional conveyance, judicial sale, trustee sale, or otherwise) shall be personally liable only for Assessments attributable to the Unit that become due and payable after the date that the person acquires title. Accordingly, when a person acquires title to a Condominium, the new Owner shall not be personally liable for delinquent Assessments of prior Owners of the same Condominium, unless the new Owner expressly assumes the personal liability of a prior Owner. However, if the acquired Unit is conveyed subject to a valid lien for delinquent Assessments (and related costs of collection (i.e., the lien is not removed from record before close of escrow in the sale of the Condominium)), the Association may continue to exercise its foreclosure remedies against the Condominium.

regardless of the change of ownership, and/or the Association may pursue its collection remedies against the prior Owner, individually.

- c) **Creation of Assessment Lien.** All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorney fees) for the collection thereof, shall be a charge on the Condominium of a delinquent Owner and may become a lien on the Condominium against which such Assessment is made when a Notice of Delinquent Assessment is Recorded in the chain of title to the delinquent Owner's Unit in accordance with the California Civil Code. Recordation of that Notice creates a lien on the Owner's Unit in favor of the Association. Any lien for unpaid Assessments created under the provisions of this Article may be subject to foreclosure.
- d) **No Avoidance of Assessment Obligations.** No Owner may exempt himself or herself from personal liability for Assessments duly levied by the Association, nor release the Unit from the liens and charges hereof, by waiver of the use and enjoyment of the Common Areas or any facilities thereon or by abandonment or nonuse of his or her Unit or any other portion of the Development.
- e) **Limitation on Amount of Assessments.** The Association shall not impose or collect an Assessment or fee that exceeds the amount necessary to defray the costs for which the Assessment or fee is levied.

#### **Section 4.2. Regular Assessments.**

- a) **Preparation of Annual Budget; Establishment of Regular Assessments.** Not less than 30 days nor more than 90 days before the beginning of the Association's fiscal year, the Board shall estimate the total amount required to fund the Association's anticipated Common Expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement, or additions to the Common Facilities) by preparing and distributing to all Members a budget satisfying the requirements of Section 11.5 of the Bylaws.
- b) **Establishment of Regular Assessment by Board; Membership Approval Requirements.** The total annual expenses estimated in the Association's budget (less projected income from sources other than Assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year, provided, however, that except as provided in Section 4.4 (relating to Emergency Assessments), the Board of Directors may not impose a Regular Assessment

that is more than 20 percent greater than the Regular Assessment for the Association's immediately preceding fiscal year without the Members' prior approval.

- c) **Payments.** Unless otherwise stated in the Association's policy with respect to collection of Assessment, Assessments shall be considered delinquent if not received by the fifteenth (15<sup>th</sup>) day of the month in which they are due. Assessments shall be paid in such manner and on such dates as may be fixed by the Board; unless otherwise provided, the Regular Assessments shall be paid in monthly installments due on the first day of each calendar month.

#### **Section 4.3. Special Assessments.**

- a) **Purposes for Which Special Assessments May Be Levied.** Subject to the membership approval requirements set forth in subparagraph (b), the Board of Directors shall have the authority to levy Special Assessments against the Owners and their Condominiums for the following purposes:
- i. **Regular Assessment Insufficient in Amount.** If, at any time, the Regular Assessment for any fiscal year is insufficient in amount due to extraordinary expenses not contemplated in the budget prepared for that fiscal year, then, except as prohibited by Section 4.3(a), the Board of Directors shall levy and collect a Special Assessment, applicable to the remainder of such year only, for the purpose of defraying, in whole or in part, any deficit that the Association may incur in the performance of its duties and the discharge of its obligations hereunder.
  - ii. **Capital Improvements.** The Board may also levy Special Assessments for additional capital improvements within the Common Areas (i.e., improvements not in existence on the date of this Declaration that are unrelated to repairs for damage to, or destruction of, the existing Common Facilities) or to defray the costs of any other extraordinary, nonrecurring actions or undertakings that the Board, in its discretion, determines to be to the advantage and in the best interests of the Members as a whole. The Special Assessment power conferred hereunder is not intended to diminish the Board's obligation to plan and budget for normal maintenance and replacement repair of the Common Areas or the existing Common Facilities through Regular Assessments (including the funding of reasonable capital repair and replacement reserves) and to maintain

adequate insurance on the Common Area and existing Common Facilities in accordance with Article VII.

- iii. **Requirements for Special Assessments Levied to Fund Multiyear Projects.** Typically, Special Assessments shall be imposed only to fund a specific capital improvement project during a particular fiscal year. However, if the Board determines that a Special Assessment should be levied to fund a portion of a capital project that will, or is likely to, entail work and/or funding in more than 1 fiscal year, this fact and a detailed disclosure of the intended scope and estimated costs of the project shall also be included in the Association's annual budget disclosures for the year in which the Special Assessment is imposed or, if the Special Assessment requires Member approval, in the solicitation materials distributed to the Members to vote on the proposal.
  - iv. **Major Capital Repair and Reconstruction Projects.** As more particularly provided in Section 11.3, the Board shall be entitled to levy a Special Assessment to fund uninsured major repairs or reconstruction of Common Areas, subject to the membership approval requirements of Section 11.3.
- b) **Special Assessments Requiring Membership Approval.** The following Special Assessments require prior membership approval: (i) any Special Assessments that, in the aggregate, exceed 5 percent of the Association's budgeted gross expenses for the fiscal year in which the Special Assessment(s) is/are levied and (ii) any Special Assessments imposed under subparagraph (a)(i) of this Section when the Board has failed to distribute a budget to the Members within the time specified in Section 4.2(a). The foregoing Member approval requirements shall not apply, however, to any Special Assessment imposed to address any emergency situation.
  - c) **Payment of Special Assessments.** The Board of Directors of the Association shall provide notice to each Owner of the imposition of a Special Assessment not less than 30 nor more than 60 days before the Special Assessment becomes due.

Special Assessments for purposes described in subparagraph (a)(i) of this Section shall be due as a separate debt of the Owner and a lien against his or her Condominium and shall be payable to the Association in the same manner as the payment of Regular Assessments during the remainder of the then-current fiscal year. Special Assessments for purposes described in subparagraph (a)(ii)

shall be due as a separate debt of the Owner and a lien against his or her Unit and shall be payable in full to the Association within 30 days after the mailing of such notice or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to the Special Assessment. Special Assessments levied under subparagraph (a)(iii) shall be payable in such reasonable installments as shall be established at the time the Special Assessment is levied. Special Assessments levied under subparagraph (a)(iv) and Section 11.3 shall be due as a separate debt of each Owner and a lien against the Owners' Units at such time as required by the repair or reconstruction project, but in no event sooner than 60 days after receipt of the Association's notice of levy of the Assessment.

#### **Section 4.4. Assessments to Address Emergency Situations.**

- a) **Authority of Board to Impose Emergency Assessments.** The requirement of a membership vote to approve both (i) Regular Assessment increases in excess of 20 percent of the previous year's Regular Assessment and (ii) Special Assessments that, in the aggregate, exceed 5 percent of the Association's budgeted gross expenses for the fiscal year in which the Special Assessment(s) is/are levied shall not apply to Assessments necessary to address emergency situations (Emergency Assessments). For purposes of this section, an emergency situation includes, and is limited to, any of the following:
- i. An extraordinary expense required by an order of a court.
  - ii. An extraordinary expense necessary to repair or maintain the Common Areas or Common Facilities when a threat to personal safety is discovered.
  - iii. An extraordinary expense necessary to repair or maintain the Common Areas or Common Facilities that could not have been reasonably foreseen by the Board in preparing and distributing the budget, provided, however, that before the imposition or collection of an Assessment under this subparagraph (iii), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The Board's resolution shall be distributed to the Members together with the notice of Assessment.

- b) **Payment of Emergency Assessments.** An Emergency Assessment shall be due as a separate debt of the Owner and shall be payable in full to the Association within 30 days after the mailing of the notice of the Emergency Assessment or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to the Emergency Assessment.

**Section 4.5. Purpose and Reasonableness of Assessments.** Each Assessment made in accordance with the provisions of this Declaration is hereby declared and agreed to be for use exclusively (a) to promote the recreation, health, safety, and welfare of individuals residing within the Development; (b) to promote the enjoyment and use of the Development by the Owners and their tenants, guests, and invitees; and (c) to provide for the repair, maintenance, replacement and protection of the Common Areas and Common Facilities and those portions of the Condominiums that the Association is obligated to maintain. Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment and to constitute a separate, distinct, and personal obligation of the Owner of the Unit against which the Assessment is imposed that shall be binding on the Owner's heirs, successors, and assigns, provided, however, that the personal obligation of each Owner for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

**Section 4.6. Notice and Procedure for Member Approval Under Sections 4.2 and 4.3.** If Member approval is required in connection with any increase or imposition of Assessments under Sections 4.2 and 4.3, the affirmative vote required to approve the increase shall be a Majority of a Quorum of the Members. The quorum required for such membership action shall be a majority of the Members. Any vote on an increase in the Regular Assessment or on the imposition of a Special Assessment that requires approval of the Members must be conducted by use of a secret ballot, and that balloting process shall be conducted using the same procedures for the casting of ballots in the election of directors under Section 7.5 of the Bylaws.

**Section 4.7. Maintenance of Assessment Funds.**

- a) **Establishment and Maintenance of Association Bank Accounts.** All sums received or collected by the Association from Assessments, together with any interest or late charges thereon, shall be promptly deposited in one or more insured checking, savings, or money market accounts in a bank or other financial institution selected by the Board of Directors. In addition, the Board shall be entitled to make prudent investment of reserve funds in FDIC-insured certificates of deposit, money market funds, or similar investments consistent with the

investment standards normally observed by trustees. The Board and such officers or agents of the Association as the Board shall designate shall have exclusive control of said account(s) and investments and shall be responsible to the Owners for the maintenance at all times of accurate records thereof. The withdrawal of funds from Association accounts shall be subject to the minimum signature requirements imposed by California Law.

b) **Reserve Funds.**

i. **Required Study of Reserve Account Requirements.** As more particularly provided in Section 11.6 of the Bylaws, at least once every 3 years, as part of a study of the Association's reserve account requirements, the Board shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components of the Development that the Association is obligated to repair, replace, restore, or maintain. This 3-year rolling study must also be reviewed annually by the Board and adjusted as appropriate. As used herein, the phrase "major components of the Development" includes those elements of the Development that the Association is obligated to maintain, repair, and eventually replace that have a remaining useful life of less than 30 years. The study of the Association's reserve account requirements shall include all of the following:

- A. An identification of the probable remaining useful life of the major components;
- B. An estimate of the cost of repair, replacement, restoration, or maintenance of the major components during and at the end of their useful life;
- C. An estimate of the total annual contribution necessary to defray the cost of repairing, replacing, restoring, or maintaining the major components both during and at the end of their useful life (taking into account reserve funds on hand); and
- D. A reserve funding plan that will disclose to the Members how the Association plans to fund the contribution identified in subparagraph (C) to meet the Association's obligations for the repair and replacement of all major components of the Development, not including major components that the



Association's Board has determined will not be replaced or repaired. If the plan includes a change in the amount of the Regular Assessment or imposition of a Special Assessment to provide adequate funding of reserve requirements, the funding plan shall disclose the schedule of the date and amount of that Assessment.

ii. **Adoption of the Reserve Funding Plan.** The reserve funding plan that is required under subparagraph (i)(D) shall be adopted by the Board at an open meeting before the membership of the Association, and if the plan includes an increase in Assessments to properly fund the reserve accounts, approval of that increase shall be done as a separate action of the Board, with member approval for the action if required. The Association shall provide its Members with a summary of the reserve funding plan adopted by the Board. This summary shall include notice to the Members that the full reserve study plan is available on request. On receipt of a request from a Member, the Association shall provide that Member with a copy of the complete reserve plan.

iii. **Permitted Temporary Transfers of Reserve Funds.** Notwithstanding the restrictions on the use of reserve funds set forth in subparagraph (b), the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash flow requirements or other expenses if the Board has provided notice of the intent to consider the transfer in a notice of meeting. The notice shall include the reasons why the transfer is needed, some of the options for repayment, and whether a Special Assessment may be considered. If the Board authorizes the transfer, the Board shall issue a written finding, recorded in the Board's minutes, explaining the reasons why the transfer is needed and describing when and how the monies will be repaid to the reserve fund.

The transferred funds shall be restored to the reserve fund within 1 year of the date of the initial transfer, except that the Board may, after giving the same notice required for considering a transfer, and on making a finding supported by documentation that a temporary delay would be in the best interests of the Association, temporarily delay the restoration.

c) **Limitations on Association's Authority to Assign or Pledge Assessment Obligations.** The Association may not voluntarily assign or pledge to a third

party its right to collect payments or Assessments or to enforce or foreclose a lien, except when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or state law, when acting within the scope of that charter or license, as security for a loan obtained by the Association. However, the restrictions imposed by this subparagraph (e) shall not restrict the right or ability of the Association to assign any unpaid obligations of a former Member to a third party for purposes of collection.

**Section 4.8. Collection of Assessments; Enforcement of Liens.** Installments of Regular Assessments shall be delinquent if not paid within 15 days of the due date as established by the Board. Special Assessments and Emergency Assessments shall be delinquent if not paid within the times prescribed in Sections 4.3(c) and 4.4(b), respectively. When an Assessment becomes delinquent, the amount thereof may, at the Board's election, bear interest at the maximum rate allowed by law commencing 30 days after the due date until the same is paid. In addition to the accrual of interest, the Board of Directors is authorized and empowered to promulgate a schedule of reasonable late charges for any delinquent Assessments. Once an assessment becomes delinquent, the Association may elect one or both of the following remedies:

- a) **Enforcement of Owner's Personal Obligation to Pay Assessments.** The Association may bring a legal action directly against the Owner for breach of the Owner's personal obligation to pay the Assessment, and in such action the Association shall be entitled to recover the delinquent Assessment or Assessments, accompanying late charges, interest, costs, and reasonable attorney fees. Commencement of a legal action shall not constitute a waiver of any lien rights as described in subparagraph (b).
- b) **Imposition and Enforcement of Assessment Lien; Limitations.** The Association may impose a lien against the Owner's Unit for the amount of the delinquent Assessment or Assessments, plus any reasonable costs of collection (including reasonable attorney fees), late charges, and interest by taking the following steps:
  - i. **Issuance of Delinquency Notice; Contents.** At least 30 days before Recording a lien on the Owner's Condominium to collect a delinquent Assessment, the Association shall notify the Owner in writing by certified mail (the "Delinquency Notice"), providing the following information:
    - A. A general description of the Association's collection and lien enforcement procedures and the method of calculating the amount;

- B. A statement that the Owner of the Condominium has the right to inspect the Association records;
  - C. The following statement in 14-point boldface type if printed or in capital letters if typed: "IMPORTANT NOTICE: IF YOUR LOT IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION."
  - D. An itemized statement of the charges owed by the Owner, including items that indicate the amount of any delinquent Assessments, the fees and reasonable costs of collection, reasonable attorney fees, any late charges, and interest, if any.
  - E. A statement that the Owner shall not be liable to pay the charges, interest, and costs of collection if it is subsequently shown that the Assessment was paid on time to the Association.
  - F. The right of the notified Owner to request a meeting with the Board.
  - G. The right to dispute the assessment debt by submitting to the Association a written request for dispute resolution under the Association's "meet and confer" program.
  - H. The right of the noticed Member to request alternative dispute resolution with a neutral third party before the Association may initiate foreclosure against the Owner's Unit, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure (as opposed to nonjudicial foreclosure).
- ii. **Application of Payments.** Any payments made by a delinquent Owner toward the delinquent Assessments that are in arrears shall first be applied to the Assessments that are owed at the time the payment is made; only after the Assessments owed are paid in full shall the payments be applied to the fees and the costs of collection, attorney fees, late charges, or interest.

- iii. **Pre-Lien Offer to Meet and Confer With Owner or to Participate in ADR.** Before Recording a lien for delinquent assessments, the Association must offer the Owner and, if so requested by the Owner, participate in dispute resolution under the Association's "meet and confer" program or alternative dispute resolution with a neutral third party. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure (as opposed to nonjudicial foreclosure).
- iv. **Right of Owner to Propose Payment Plans.** An Owner may also submit a written request to meet with the Board to discuss a payment plan for the delinquent assessment. This request must also be made within 15 days of the postmark of the Delinquency Notice. The Association shall provide the Owner with the standards for payment plans, if such standards have been adopted. So long as a timely request for a meeting has been tendered, the Board shall meet with the Owner in executive session within 45 days of the postmark of the request for a meeting, unless there is no regularly scheduled Board meeting within that period, in which case the Board may designate a committee of one or more Members to meet with the Owner. Payment plans may incorporate any assessments that accrue during the payment plan period. Payment plans shall not impede an Association's ability to Record a lien on the Owner's Unit to secure payment of delinquent assessments. Additional late fees shall not accrue during the payment plan period if the Owner is in compliance with the terms of the payment plan. If the Owner defaults on any payment plan, the Association may resume its efforts to collect the delinquent assessments from the time before entering into the payment plan.
- v. **Association Assessment Lien Rights.** The amount of the Assessment, plus any costs of collection, late charges, and interest assessed, shall be a lien on the Owner's Unit from and after the time the Association causes to be Recorded in the Office of the County Recorder a Notice of Delinquent Assessment. The Notice of Delinquent Assessment shall state the amount of the Assessment and other sums imposed, a legal description of the Owner's Unit against which the Assessment and other sums are levied, and the name of the Owner of Record of the Owner's Unit against which the lien is imposed. The decision to Record a lien for delinquent assessments shall be made only by the Board of Directors of the Association and may not be delegated to an agent of the Association.

The Board shall approve the decision by a majority vote of the Board in an open meeting, and the vote shall be recorded in the minutes of the meeting.

For the lien to be imposed by nonjudicial foreclosure as provided in subparagraph (vii), the Notice of Delinquent Assessment shall state the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Delinquent Assessment shall be signed by any officer of the Association or by the person designated by the Association for that purpose or, if no one is designated, by the president of the Association. A copy of the Recorded Notice of Delinquent Assessment shall be mailed by certified mail to every person whose name is shown as an Owner of the Unit in the Association's records, and the notice shall be mailed no later than 10 calendar days after its Recordation. On receipt of a written request by an Owner identifying a secondary address for purposes of collection notices, the Association shall send additional copies of any notices, including Notices of Delinquent Assessments and Notices of Default, required by Civil Code §§5600-5740 to the secondary address that is specified.

- vi. **Priority of Assessment Liens.** A lien created under this Section, shall be prior to all other liens Recorded against the Owner's Unit after the Notice of Delinquent Assessment, except as described in Section 4.12.
- vii. **Enforcement of Assessment Liens.** Subject to the limitations of this Section 4.10(b), after the expiration of 30 days following the Recordation of a Notice of Delinquent Assessment, the Association's lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the Notice of Delinquent Assessment, or sale by a trustee. Any sale by the trustee shall be conducted in accordance with the California Civil Code applicable to the exercise of powers of sale in mortgages and deeds of trusts.

The following specific limitations shall apply to the Association's authority to pursue foreclosure remedies as a means of collecting delinquent Assessments:

- A. The decision to initiate foreclosure of a lien for delinquent assessments that has been validly Recorded shall be made only by the Board of Directors of the Association and may not be delegated

to an agent of the Association. The Board shall approve the decision by a majority vote of the Board in an executive session and shall record the vote in the minutes of the next meeting of the Board that is open to attendance by the Members. The Board shall maintain the confidentiality of the Owner(s) of the Condominium to which the delinquent Assessment pertains by identifying the matter in the minutes by the parcel number of the property rather than the name of the Owner(s). A Board vote to approve foreclosure of a lien shall take place at least 30 days before any public sale of the Condominium in question.

- B. Before initiating a foreclosure for delinquent assessments, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution under the Association's "meet and confer" program or alternate dispute resolution with a neutral third party. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate judicial foreclosure (as opposed to nonjudicial foreclosure).
- C. If the Board votes to commence foreclosure proceedings to collect delinquent assessments under this Section, the Board shall provide notice of that decision by personal service to an Owner of the Unit who occupies the Residence on the Unit or to the Owner's legal representative. If the Owner does not occupy the Residence and Condominium that are the subject of the foreclosure proceeding, the Board shall provide written notice to the Owner by first-class mail, postage prepaid, at the most current address for the Owner that is shown on the books of the Association. In the absence of written notification by the Owner to the Association, the address of the Owner's Condominium may be treated as the Owner's mailing address.
- D. Debts for Assessments, Regular or Special, may not be collected through judicial or nonjudicial foreclosure until the delinquent assessment amount, exclusive of any accelerated assessments, late charges, fees, costs of collection, attorney fees, and interest equals or exceeds \$1800.00 or the Assessments are more than 12 months delinquent. Delinquent Assessments in a smaller amount

may not be collected through foreclosure but may be collected by any of the following other means: (1) a civil action in small claims court; (2) a lien on the Owner's Condominium (subject to the restrictions on foreclosure of that lien); or (3) any other manner provided by law, other than foreclosure. If the Association elects to Record a lien for delinquent Assessments, before Recording the lien the Association must offer the Owner and, if so requested by the Owner, participate in dispute. The limitations on the use of foreclosure remedies set forth in this subparagraph (D) do not apply to assessment collection actions against the Declarant in its capacity as an Owner when the Declarant's Assessment obligations are delinquent.

- viii. **Foreclosed Owner's Right of Redemption.** A nonjudicial foreclosure by the Association of an Owner's interest in his or her Unit to collect a debt for delinquent Assessments shall be subject to a right of redemption. The redemption period within which the Condominium may be redeemed from a foreclosure sale under this subparagraph (viii) ends 90 days after the sale. In addition, a notice of sale in connection with the Association's foreclosure of a Condominium in the Association shall include a statement that the property is being sold subject to the right of redemption.

**Section 4.9. Transfer of Condominium by Sale or Foreclosure.** The following rules shall govern the right of the Association to enforce its Assessment collection remedies following the sale or foreclosure of a Condominium:

- a) Except as provided in subparagraph (b), the sale or transfer of any Condominium shall not affect any Assessment lien that has been duly Recorded against the Condominium before the sale or transfer, and the Association can continue to foreclose its lien in spite of the change in ownership.
- b) The Association's Assessment lien shall be extinguished as to all delinquent sums, late charges, interest, and costs of collection incurred before the sale or transfer of a Condominium under a foreclosure or exercise of a power of sale by the holder of a prior encumbrance (but not under a deed in lieu of foreclosure). A "prior encumbrance" means any first Mortgage or other Mortgage or lien Recorded against the Condominium at any time before Recordation of the Association's Assessment lien.

- c) No sale or transfer of a Condominium as the result of foreclosure, exercise of a power of sale, or otherwise shall relieve the new Owner of such Condominium (whether it be the former beneficiary of the first Mortgage or other prior encumbrance or a third party acquiring an interest in the Condominium) from liability for any Assessments that thereafter become due with respect to the Lot or from the lien thereof.
- d) Any Assessments, late charges, interest, and associated costs of collection that are lost as a result of a sale or transfer of a Condominium covered by subparagraph (b) shall be deemed to be a Common Expense collectible from the Owners of all of the Condominiums, including the person who acquires the Condominium and his or her successors and assigns.
- e) No sale or transfer of a Condominium as the result of foreclosure, exercise of a power of sale, or otherwise shall affect the Association's right to maintain an action against the foreclosed previous Owner personally to collect the delinquent Assessments, late charges, interest, and associated costs of collection incurred before and/or in connection with the sale or transfer.

**Section 4.10. Priorities.** When a Notice of Delinquent Assessment has been Recorded, such notice shall constitute a lien on the Condominium prior and superior to all other liens except:

- a) All taxes, bonds, assessments, and other levies that by law would be superior thereto; and
- b) The lien or charge of any first Mortgage of record (meaning any Recorded Mortgage with first priority over other Mortgages) made in good faith and for value, provided, however, that such subordination shall apply only to the Assessments that have become due and payable before the transfer of such property under the exercise of a power of sale or a judicial foreclosure involving a default under such first Mortgage or other prior encumbrance.

**Section 4.11. Assignment of Rents.** Each Owner hereby presently assigns to the Association, absolutely and regardless of possession of the property, all rents and other monies now due or hereafter to become due under any lease or agreement or otherwise for the use or occupancy of any or all parts of any Unit owned by the Owner, now existing or hereafter made for the purpose of collecting all Assessments due the Association under this Declaration that are in default. The Association hereby confers on each Owner the authority to collect and retain the rents and other monies derived



from any such lease or agreement as they become due and payable, provided, however, that the Association, at its sole discretion, may revoke such authority at any time on written notice to the Owner of a default in the payment of any Assessment due hereunder. On revocation of such authority, the Association may, under court order or by court-appointed receiver, collect and retain such monies, whether past due and unpaid or current.

**Section 4.12. Waiver of Exemptions.** Each Owner, to the extent permitted by law, waives, to the extent of any liens created under this Article, the benefit of any homestead or exemption law of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed.

## ARTICLE V

### ARCHITECTURAL CONTROL

#### **Section 5.1. Architectural Committee Approval of Improvements.**

- a) **Approval Generally.** Before commencing construction or installation of any Improvement, as defined in Section 1.20, within the Association, the Owner planning such Improvement must submit to the Architectural Committee a written request for approval. The Owner's request shall include structural plans and specifications satisfying the minimum requirements. No work on the Improvement shall be undertaken unless the Committee's approval of the proposal is first obtained. The Architectural Committee shall base its decision to approve, disapprove, or conditionally approve the proposed Improvement on the criteria described in Section 5.6.
- b) **Modifications to Approved Plans Must Also Be Approved.** Once a proposed work of Improvement has been duly approved by the Architectural Committee, no material modifications shall be made in the approved plans and specifications therefor and no subsequent alteration, relocation, addition, or modification shall be made to the work of Improvement, as approved, without a separate submittal to, and review and approval by, the Committee. If the proposed modification will have, or is likely to have, a material effect on other aspects or components of the work, the Committee, in its discretion, may order the Owner and his or her contractors and agents to cease working not only on the modified component of the Improvement but also on any other affected component.