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SECOND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS

OF

CHANTARELLE HOMEOWNERS ASSOCIATION

A planned unit development.

June 2009

**NOTICE:**

**If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates state and federal fair housing laws and is void. Any person holding an interest in this property may request that the county recorder remove the restrictive covenant language pursuant to subdivision (c) of Section 12956.1 of the Government Code.**

**CHANTALRELLE**  
**Declaration of Covenants, Conditions and**  
**Restrictions**

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**CHANTALRELLE  
SECOND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS**

This document amends and restates in its entirety that certain instrument entitled "Amended and Restated March 25, 1993 Declaration of Conditions, Covenants and Restrictions" recorded on December 27, 1993 in the Official Records of Sonoma County as document number 1993167035 and the Amendment to the Covenants, Conditions, and Restrictions recorded on June 4, 1996 as document number 19960049639.

The real property governed by this document is the real property within the County of Sonoma, State of California described as:

**All that land within the boundaries of the subdivision shown on the subdivision map entitled "Tract No. 769 Vista Hermosa" filed for record in the office of the Recorder of the County of Sonoma, State of California, on September 8, 1988, In Book 422 of Maps, pages 24-30.**

NOW THEREFORE, it is hereby declared that all of the real property described above shall be held, sold, leased, mortgaged, encumbered, rented, used, occupied, improved and conveyed subject to the following declarations, limitations, easements, restrictions, covenants, and conditions, which are imposed as equitable servitudes pursuant to a general plan for the development of the real property for the purpose of enhancing and protecting the value and desirability of the property and every part thereof, and which shall run with the real property and be binding on all the owners thereof and their successors and assigns, and on all parties having or acquiring any right, title or interest in or to the described property or any part thereof, and their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I  
DEFINITIONS**

- 1.1 "Articles" shall mean the Articles of Incorporation of the Association, as amended from time to time.
- 1.2 "Assessment" shall mean that portion of the cost of maintaining, improving, repairing, operating and managing the Property which is to be paid by each Lot Owner as determined by the Association.
- 1.3 "Association" shall mean the CHANTARELLE HOMEOWNERS ASSOCIATION, a California non-profit mutual benefit corporation.
- 1.4 "Board" or "Board of Directors" shall mean the governing body of the Association.
- 1.5 "Bylaws" shall mean the Bylaws of the Association, as amended from time to time.
- 1.6 "Common Area" shall mean the portions of the Property (and all improvements thereon) owned by the Association for the common use and enjoyment of the owners consisting of Parcels A, B, C, and D as shown on the Map.

- 1.7 "Common Expenses" means and includes the actual and estimated expenses of operating the Common Area, performing the Association's duties under the Project Documents, and any reasonable reserve for such purposes as determined by the Board and all sums designated common expenses by or pursuant to the Declaration, Articles or Bylaws.
- 1.8 "Davis-Stirling Act" shall mean the Davis-Stirling Common Interest Development Act, Civil Code § 1350 et seq. as amended from time to time.
- 1.9 "Declaration" shall mean this Declaration, as amended or supplemented from time to time.
- 1.10 "Eligible Mortgage Holder" shall mean a first lender who has requested notice of certain matters from the Association in accordance with Section 10.4. "Eligible Holder Mortgages" shall mean mortgages held by "Eligible Mortgage Holders". "Eligible Insurer or Guarantor" shall mean an insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters from the Association in accordance with section 10.4.
- 1.11 "First Lender" shall mean any bank, saving and loan association, insurance company or other financial institution holding a recorded First Mortgage on any Lot.
- 1.12 "First Mortgage" means a mortgage or deed of trust with first priority over any other mortgages or deeds of trust.
- 1.13 "Improvement" means any structure or thing permanently or temporarily fixed to real property including, without limitation, any Dwelling; building; garage; driveway; walkway; concrete, asphalt or gravel pad; porch; patio; shed; greenhouse; fence or wall; pole; sign; antennae; irrigation system; tent; or major landscaping of any kind and substantial plants such as trees, hedges, and shrubs. "Improvement" shall include any excavation, fill, ditch, dam or other thing which affects or alters the natural flow of surface water upon or across any portion of the Project. "Improvement" shall also mean any utility line, conduit, pipe or other related facility or equipment.
- 1.14 "Internal Dispute Resolution" means the procedures set by the Board from time to time establishing a fair, reasonable and expeditious procedure for resolution of disputes between a Member and the Association as required under Civil Code section 1363.810 et seq.
- 1.15 "Invitee" means any person whose presence within the Project is approved by or at the request of the Association or an Owner, including, but not limited to, lessees, tenants, and the family, guests, employees, licensees or contractors of Owners, tenants or lessees.
- 1.16 "Lot" shall mean each residential lot or parcel shown on the Map with the exception of the Common Area.
- 1.17 "Map" shall mean that map entitled "Tract No. 769 Vista Hermosa," filed for record the September 8, 1988, in Book 422 of Maps at pages 24 through 30, in the records of Sonoma County.
- 1.18 "Member" shall mean a person entitled to membership in the Association as provided herein.

- 1.19 "Mortgage" shall include a deed of trust as well as a mortgage. "Mortgagee" shall include a beneficiary or a holder of a deed of trust as well as a mortgagee. "Mortgagor" shall include the trustor of a deed of trust as well as a mortgagor.
- 1.20 "Notice and Hearing" means the procedure, set forth in the Bylaws, which gives an Owner notice of an alleged violation of the Project Documents and the opportunity for a hearing before the Board.
- 1.21 "Owner" shall mean the record owner or owners, whether one (1) or more persons or entities, of a fee simple title to any Lot but excluding those persons or entities having an interest merely as security for the performance of an obligation. If a Lot is sold under a contract for sale, and the contract is recorded, the purchaser, rather than the fee owner, will be considered the "Owner" from and after the date the Association receives written notice of the recorded contract.
- 1.22 "Person" means a natural person, corporation, partnership, trustee, or other legal entity.
- 1.23 "Project" shall mean the real property within the subdivision shown on the Map including all improvements and structures erected or to be erected thereon.
- 1.24 "Project Documents" shall mean and refer to this Declaration, the Articles, the Bylaws and the Rules of the Association.
- 1.25 "Property" shall mean all of the real property within the subdivision shown on the Map, including the Lots and Common Area.
- 1.26 "Reimbursement Assessment" means an assessment levied against a single Owner or Lot as set forth in section 4.7.
- 1.27 "Rules" means the rules and regulations, if any, adopted by the Association to govern the possession, use and enjoyment of the Project as amended from time to time.
- 1.28 "Voting Power of the Association" means the total number of votes of all Members of the Association less the number of votes of Members whose voting rights have been suspended.

## ARTICLE II DESCRIPTION OF PROJECT, DIVISION OF PROPERTY, AND CREATION OF PROPERTY RIGHTS

- 2.1 Description of Project:** The project is a planned development under Civil Code § 1351(k) for senior citizens, consisting of the Common Area, the 122 residential Lots, and all Improvements thereon.
- 2.2 Age Restricted Project:** The Project is intended to provide housing for Senior Citizens and to qualify as a senior citizen housing development within the meaning of Civil Code Section 51.3(b)(4). The occupancy restrictions set forth in Article VIII herein shall apply to all Lots within the Project, each Owner and their successors, assigns, and tenants.



**2.3 Easements: Dedication of Common Area:** Each of the Lots shown on the Map shall have appurtenant to it as the dominant tenement an easement over the Common Areas as the servient tenement for ingress and egress, and for use, occupancy and enjoyment, and for the construction, maintenance and operation of utilities, subject to the following provisions:

A. The right of the Association to discipline members and to suspend the voting rights of a member and the right to use the recreational facilities by any occupant of the Owner's Lot for any period during which any assessment against the Member's Lot remains unpaid, and for any infraction of the Declaration, Bylaws, Articles or Rules in accordance with the provisions of section 4.9 and 9.1 hereof.

B. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility, or to mortgage or encumber all or any part of the Common Area for such purposes and subject to such conditions as may be agreed to by the Members, provided that in the case of borrowing of money and mortgaging its property as security therefore, the rights of such mortgagee shall be subordinate to the rights of the Members of the Association. No such dedication, transfer to a public agency or authority shall be effective unless approved by the vote of sixty-seven percent (67%) of the Members, and the Association has obtained the prior written consent of a public agency, authority, utility or other entity legally entitled to accept title to the Common Area and to assume all maintenance obligations set forth in this Declaration pertaining to such Common Area.

C. The right of the Association to grant easements under, in, upon, across, over, above or through any portion of the Common Area for purposes, (including, without limitation, access, utilities and parking) which are beneficial to the development of the properties in accordance with the general plan established by this Declaration.

D. The foregoing easements are granted and reserved subject to the condition that their use and enjoyment shall not unreasonably interfere with the use, occupancy or enjoyment of all or any part of the Lot servient to them or to which they are appurtenant.

**2.4 Easements to Accompany Conveyance of Lot:** Easements that benefit or burden any Lot shall be appurtenant to that Lot and shall automatically accompany the conveyance of the Lot. All Lots are subject to the easements, rights and restrictions in this Declaration even if this Declaration or such easements, rights or restrictions are not stated in or referenced on the deed for the Lot.

**2.5 Delegation of Use:** Subject to the senior housing provisions of Article VIII and the provisions on leasing in section 7.12, any Owner may delegate, in accordance with the Bylaws, his right of enjoyment of the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property. Nonresident members, their families, guests and relatives, are not permitted to use the recreational facilities during periods when their lot is leased to and/or occupied by others.

**2.6 Common Area of Association:** The Common Area of the Association is to be held for the benefit of the Members of the Association.

**2.7 Owner's Rights and Easements for Utilities:** The rights and duties of the Owners of lots within the project with respect to sanitary sewer, drainage, water, electric, gas, television

receiving, telephone equipment, cables and lines (hereinafter referred to, collectively, as “utility facilities”) shall be as follows:

A. Whenever utility facilities are installed within the project, and any portion of such utility facilities lies in or upon a Lot or Lots owned by other than the Owner of a Lot served by said utility facilities, the Owners of any Lots served by said utility facilities, shall have the right of reasonable access for themselves or for utility companies to repair, replace and generally maintain said utility facilities as and when the same may be necessary.

B. Whenever utility facilities are installed within the project which utility facilities serve more than one (1) Lot, the Owner of each Lot served by said utility facilities shall be entitled to the full use and enjoyment of such portions of said utility facilities as service his Lot.

C. In the event of a dispute between Owners with respect to the use, repair or rebuilding of said utility facilities, or with respect to sharing the cost thereof, Owners shall first endeavor to settle the dispute through mediation prior to initiating arbitration or litigation.

**2.8 Encroachment Easements:** Each Lot as the dominant tenement shall have an easement over adjoining Lots and Common Area as the servient tenements for the purpose of accommodating any encroachment due to foundations, exterior wall, windows, roof overhang, and fences or walls which are built in accordance with the original design, plans and specifications, or due to minor engineering errors, minor errors or adjustments in original construction, settlement or shifting of the building, or similar causes. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting, provided, however, that in no event, shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the intentional conduct of said Owner or Owners, other than minor adjustments in the original construction. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners of each adjoining lot agree that minor encroachments over adjoining Lots and the Common Area shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

**2.9 Side Yard Easements:** There shall remain the original reserved easements over certain Lots as the servient tenement in favor of the adjoining Lot as the dominant tenement for access to and exclusive use of the side yard easement area (the “Easement Area”). The easement shall be appurtenant to the dominant tenement and may not be separated therefrom. The owner of the dominant tenement, at his expense, shall maintain the landscaping in the Easement Area and any drainage systems installed thereon. On at least five (5) days prior to notice (except in emergency situations), the Owner or occupants of the dominant tenement, or his agents, shall have access to the Easement Area as may be necessary to maintain or repair any fixtures or improvements situated on the servient tenement. Any fence that separates the Easement Area from the remainder of the Lot subject to the easement shall be considered a “shared fence along a common boundary line” and the owner of the dominant and servient tenements shall jointly share the maintenance and repair costs as described in section 11.4.

**2.10 Maintenance Easement:** Easements are reserved in favor of each other Lot as the dominant tenement, for the purpose of allowing agents of the Association to enter the Lot to

perform such maintenance, as the Association may do in accordance with the provisions of section 5.1A of this Declaration, including the maintenance of front yard landscaping.

**2.11 Drainage Easements:** An easement over and under each Lot as the servient tenement is reserved in favor of each other Lot as the dominant tenement for the purpose of allowing the Association's agents to enter the Lot to maintain that portion of any storm drainage system located thereon. No Owner or occupant shall commit any act that would interfere with the operation of any drainage system (including drainage swales) installed on the Lot or side yard easement area, and shall maintain the system free of debris and other obstacles at all times. Reciprocal appurtenant easements between each Lot and the Common Area and between adjoining Lots are reserved for the flow of water.

**2.12 Other Easements:** The Common Area and each Lot are subject to all easements, dedications and rights of way granted or reserved in, on, over and under the Property as shown on the Map.

**2.13 Rights of Entry and Use:** The Lots and Common Area shall be subject to the following rights of entry and use:

A. The right of the Association agents to enter any Lot to cure any violation of the Project Documents, provided that the Owner has received Notice and Hearing as required by Article IX (except in the case of an emergency) and the Owner has failed to cure the violation or take steps necessary to cure the violation within a reasonable time as determined by the Board, after the finding of a violation by the Association;

B. The access rights of the Association to maintain, repair or replace improvements or property located in the Common Area as described in section 5.2.E;

C. The easements described in this Article II;

D. The right of the Association's agents to enter any Lot to perform maintenance as described in section 7.13.

**2.14 Partition of Common Area:** There shall be no subdivision or partition of the Common Area, nor shall any Owner seek any partition or subdivision thereof. Notwithstanding any provisions to the contrary contained in this Declaration and in order to provide for a means of terminating the project if this should become necessary or desirable, on occurrence of any of the conditions allowing an Owner of a Lot to maintain an action for partition (as such conditions are set forth in California Civil Code §1359 as amended or succeeded from time to time), sixty-seven percent (67%) of the Owners of Lots shall have the right to petition the Superior Court having jurisdiction to vest title to the property in Owners as tenants in common and order an equitable partition of the property in accordance with California law. Nothing herein shall be construed to prohibit partition of a joint tenancy or co-tenancy in any Lot.

**ARTICLE III  
ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS**

**3.1 Association to Own and Manage Common Area:** The Association shall own and manage the Common Area in accordance with the provisions of this Declaration, the Articles, Bylaws and the Rules of the Association.

**3.2 Membership:** The Owner of a Lot shall automatically, upon becoming the Owner of a Lot, be a Member of the Association, and shall remain a Member thereof until such time as his ownership ceases for any reason. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Membership shall be held in accordance with the Project Documents of the Association.

**3.3 Transferred Membership:** Membership in the Association shall not be transferred, encumbered, pledged or alienated in any way, except upon the sale or encumbrance of the Lot to which it is appurtenant, and then only to the purchaser, in the case of a sale, or mortgagee in the case of an encumbrance of such a Lot. On any transfer of title to an Owner's Lot, including a transfer on the death of an Owner, membership passes automatically with title to the transferee.

A mortgagee does not have membership rights until it obtains title to the Lot through foreclosure or deed in lieu thereof. Any attempt to make a prohibited transfer is void. No Member may resign his or her membership. On notice of a transfer, the Association shall record the transfer on its books.

**3.4 Membership and Voting Rights:** The Association voting membership shall consist of all Owners and there shall be one (1) vote for each lot owned. Voting rights, restrictions and procedures are set forth in the Bylaws.

**ARTICLE IV  
MAINTENANCE AND ASSESSMENTS**

**4.1 Covenants To Pay:** Each Owner by acceptance of the deed to a Lot, whether or not it is stated in the deed, covenants and agrees:

(a) To pay to the Association Regular Assessments, Special Assessments, and Reimbursement Assessments for purposes permitted herein, such Assessments to be established and collected as provided in this Declaration; and

(b) To allow the Association to enforce any assessment lien by non-judicial proceedings under a power of sale or by any other means authorized by law.

The Regular Assessments, Special Assessments, and Reimbursement Assessments (as defined in sections 4.5, 4.6 and 4.7), together with interest, late charges, collection costs, and reasonable attorneys' fees, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such assessment is made; the lien to become effective upon recordation of a notice of delinquent assessment. Each assessment, together with interest, late charges, collection costs, and reasonable attorneys' fees, shall also be the personal obligation (joint and several) of each person who was the Owner of such Lot at the time the assessment fell due.

The interest of an Owner in any paid assessment shall pass to the new Owner upon the transfer of ownership of the Lot. Upon the termination of these covenants for any reason, any

amounts remaining from the collection of assessments after paying all amounts properly charged against the Assessments shall be distributed to the Owners of the Lots at the time of the termination on the same pro rata basis on which the assessments were collected. In the event of any surplus Assessments which the Board determines should be refunded to the Owners, the Assessments shall be distributed to the Owners of the Lots at the time of the refund on the same pro-rata basis on which the Assessments were collected.

**4.2 Liability for Payment:** The obligation to pay assessments shall run with the land so that each successive record Owner of a Lot shall in turn become liable to pay all assessments which become due after the date the Owner accepts a deed to the Lot. No Owner may waive or otherwise escape personal liability for assessments, or release the Lot owned by him from the liens and charges, by non-use of the Common Area, abandonment of the Lot, or any other attempt to renounce rights in the Common Area or services within the Project. Each assessment shall constitute a separate assessment and shall also be a separate, distinct and personal obligation of the Owner of the Lot at the time when the assessment becomes due and shall bind his heirs, devisees, personal representatives and assigns. The personal obligation of an Owner for delinquent assessments shall not pass to a successive Owner unless the obligation for delinquent assessments is expressly assumed by the successive Owner. No such assumption of liability by a successor Owner (including a contract purchaser under an installment land contract) shall relieve any Owner from personal liability for delinquent assessments. After an Owner transfers fee title to his Lot, he shall not be liable for any charge which becomes due thereafter. By acceptance of a deed to a Lot, whether through a market sale, tax sale, foreclosure sale, or otherwise, the new Owner of the Lot agrees to pay and be personally liable for any assessments which may have been levied but which were not yet due at the time such new Owner accepted the deed.

**4.3 Purpose of Assessments:** The assessments collected by the Association shall be used solely for the operation, care, maintenance and improvement of the Project and for the health, safety, and wellbeing of the Members as provided in this Declaration.

**4.4 Off-Sets:** No off-sets against or deductions from any assessment shall be permitted for any reason, including, without limitation, any claim that the Association is not properly discharging its duties. The covenant to pay assessments is separate and distinct from, and not contingent upon, any obligation of the Association to provide services or perform under the Project Documents. No Owner shall withhold payment of assessments for the purpose of protesting an action of the Association or to leverage any agreement from or settlement with the Association.

**4.5 Regular Assessments:**

(a) Payment of Regular Assessments: Regular Assessments for each fiscal year shall be established when the Board approves the budget for that fiscal year. Regular Assessments shall be established on a fiscal year basis; however, Regular Assessment shall be levied in twelve (12) monthly installments. An Owner may prepay any Regular Assessments whether or not such assessments have been levied.

(b) Assessment Due Date: Regular Assessments shall be due and payable for all Lots on the first day of each month and delinquent on the 15<sup>th</sup> day of that month, at which time a late fee equal to the greater of 10% of the Assessment then due or \$10 will be charged to the Owner. The Association may also charge interest on all sums more than thirty (30) days past due at a rate of twelve percent (12%) per annum or such other maximum rate allowed by law.

(c) Allocation of Regular Assessments: The total amount of the Association's anticipated revenue attributable to Regular Assessments as reflected in the budget shall be allocated to and assessed among all Owners equally, one share for each Lot.

(d) Non-Waiver of Assessments: If before the expiration of any fiscal year the Association fails to fix Regular Assessments for the next fiscal year, the Regular Assessment established for the preceding year shall continue until a new Regular Assessment is fixed.

**4.6 Special Assessments**: Subject to the limitations in section 4.8, Special Assessments may be levied in addition to Regular Assessments for (i) constructing capital improvements, (ii) correcting an inadequacy in the Current Operation Account, (iii) defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of Improvements in the Common Area or for portions of the Lots for which the Association is responsible, if any, or (iv) paying for such other matters as the Board may deem appropriate for the Project. Special Assessments shall be levied and payable upon the dates set by the Board and shall be allocated to and assessed among the Lots equally.

**4.7 Reimbursement Assessments**: The Association shall levy a Reimbursement Assessment against any Owner and his Lot to reimburse the Association for the costs of repairing damage caused by an Owner or an Owner's Invitee or pet, or if a failure to comply with the Project Documents has necessitated an expenditure of monies, including attorneys' fees, by the Association to bring the Owner or the Owner's Lot into compliance. A Reimbursement Assessment shall be due and payable to the Association when levied. A Reimbursement Assessment shall not be levied by the Association until Notice and Hearing has been given in accordance with section 9.1 and the Owner has had the opportunity to engage in Internal Dispute Resolution. Reimbursement Assessments are assessments which may be enforced by the lien rights provided in this Declaration.

**4.8 Increase Limitations**: This section 4.8 is intended to implement the limitations on increases in Regular and Special Assessments established by Civil Code §1366, as amended from time to time. To the extent that the limitations set forth in Civil Code §1366 are amended or replaced, the limitations set forth in this section shall be automatically amended and replaced by the new statutory limitations without an action of the Members.

(a) Limitation on Regular Assessment Increases: Without the Approval of the Members obtained pursuant to the Bylaws, the Board shall not levy a Regular Assessment which is more than twenty percent (20%) greater than the Regular Assessment for the immediately preceding fiscal year.

(b) Special Assessment Limitation: Without the Approval of the Members obtained pursuant to the Bylaws, the Board shall not levy a Special Assessment which exceeds, or more than one Special Assessment within a single fiscal year which in the aggregate exceed, five percent (5%) of the budgeted gross expenses for that fiscal year.

(c) Pro Forma Operating Budget Requirement: If the Board has failed to distribute a pro forma operating budget (or summary thereof) in compliance with Civil Code §1365(a) as set forth in the Bylaws, the Board shall be prohibited from levying a Regular Assessment which

is greater than the Regular Assessment for the immediately preceding fiscal year without the Approval of the Members obtained pursuant to the Bylaws.

(d) Approval of Members. The approval of members required for assessments in excess of the limits set forth in this section 4.8 shall be a majority of the Members voting by secret written ballot where a quorum of fifty percent (50%) has been established, and all voting shall be conducted in accordance with the Bylaws.

(e) Emergency Exceptions: The limitations set forth in sections 4.8(a) and 4.8(b), above, shall not apply to any Special Assessment or any increase in Regular Assessments necessary for any: (i) extraordinary expenses required by an order of a court; (ii) extraordinary expenses necessary to repair or maintain the Common Area or any part of the Lots for which the Association is responsible where a threat to health or personal safety is discovered in the Project; or (iii) extraordinary expenses necessary to repair or maintain the Common Area or any part of the Lots for which the Association is responsible that could not have been reasonably foreseen by the Board when it prepared and distributed the budget. Prior to the imposition or collection of an assessment pursuant to this section 4.8(e), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expenses involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The resolution shall be distributed to the Members with the notice of the emergency assessment.

#### **4.9 Enforcement and Collection of Assessments:**

(a) Enforcement Of Assessments: The Board shall annually distribute, not more than ninety (90) days and not less than thirty (30) days prior to the beginning of the fiscal year, a statement of the Association's policies and practices in enforcing defaults in the payment of Regular Assessments, Special Assessments and Reimbursement Assessments, including the recording and foreclosing of liens against Lots. The Association may enforce the obligations of the Owners to pay each assessment provided for in this Declaration in any manner provided by law including, but not limited to, the following procedures:

(b) Suspension of Rights: The Board may, after notice to the Owner, suspend the right of an Owner and an Owner's family, tenants, and Invitees, to use the Common Area and recreation facilities, and/or to vote and/or to serve on a committee or the Board during any period in which such Owner's assessments are delinquent. The Board need not hold a hearing prior to suspending an Owner's rights for delinquent payment unless the Owner requests a hearing.

(c) By Suit: The Association may commence and maintain a law suit against any Owner personally obligated to pay a delinquent Assessment. The suit shall be brought in the name of the Association in any court of competent jurisdiction. Any judgment rendered in any action shall include the amount of the delinquency, Additional Charges as set forth in section 4.9(f), and any other amounts as the court may award. A proceeding to recover a judgment for unpaid Assessments may be maintained without the necessity of foreclosing or waiving the lien established herein.

(d) By Small Claims Action: The Association may file and pursue a claim for payment of delinquent Assessments in the small claims court of Sonoma County, California or any other small claims court having jurisdiction, for any amount of delinquent assessments and Additional Charges as set forth in section 4.9(f), within the Small Claims Court's

jurisdiction. The Association may enforce any Small Claims award received in any manner permitted by law.

(e) By Lien and Foreclosure: The Association may enforce payment of Assessments of any amount by recording a lien against a Lot for which assessments are delinquent and foreclosing such lien in accordance with the following procedures and Civil Code §§ 1367.1 and 1367.4 as amended from time to time. A lien shall be established after a vote of the Board at an open Board meeting by recording a Notice of Delinquent Assessments in the Sonoma County Recorder's Office. At least 30 days prior to recording a Notice of Delinquent Assessments, the Association shall provide to the delinquent Owner, by certified mail, (i) a description of the Association's collection and lien enforcement procedures and the method of calculation of the amount, a statement that the owner has the right to inspect the Association's records as provided in Civil Code §1365.2, and the statement required by Civil Code §1367.1(a); (ii) an itemized statement of the charges owed; (iii) a statement that the Owner shall not be liable for payment of late fees, interest or costs of collection if it is determined that the Owner did pay the assessments on time; (iv) a statement that the Owner has the right to meet with the Board to discuss a payment plan; (v) a statement that the Owner has the right to participate in Internal Dispute Resolution for resolution of any dispute over assessments; and (vi) a statement that the Owner may request alternative dispute resolution pursuant to Civil Code §1369.510 et seq. Prior to recording a Notice of Delinquent Assessments, the Association shall, in writing, offer the delinquent Owner the opportunity to participate in Internal Dispute Resolution.

The Association shall not commence foreclosure procedures on a lien until the following has occurred: (i) the amount of delinquent assessments, not including late fees, interest or costs of collection, exceeds the sum of \$1,800.00 or an assessment is more than 12 months delinquent; (ii) the Association has offered to the delinquent Owner, and if accepted by the Owner engaged in, Internal Dispute Resolution or alternative dispute resolution; (iii) the Board has voted in executive session to proceed with foreclosure; and (iv) provided written notice to the Owner of the Board's determination to proceed with foreclosure.

This section 4.9(e) incorporates the statutory requirements of Civil Code §§1367.1 and 1367.4. If either of these sections of the Civil Code is amended in any manner, this section 4.9(e) shall automatically be amended in the same manner without an action of the Members.

(f) Additional Charges: In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any Assessments, each Owner agrees to pay such additional costs, fees, charges and expenditures as the Association may incur or levy in the process of collecting the Assessments from that Owner. All Additional Charges shall be included in any judgment in any suit or action brought to enforce collection of delinquent Assessments or may be levied against a Lot as a Reimbursement Assessment. Additional Charges shall include, but are not limited to, the following:

(1) Professional Fees: Reasonable fees charged by any attorney, accountant, trustee, or collection agency, and costs incurred in the event an attorney, accountant, trustee or collection agency is employed to collect any assessment or sum due, whether by suit or otherwise;

(2) Late Charges: A late charge of ten percent (10%) of the Assessments due or \$10 whichever is greater, to compensate the Association for additional costs incurred in the event any Assessment or other sum is not paid when due or within any "grace" period



established by law;

(3) Costs: Costs incurred in filing any lien, notice or other documents, including, but not limited to, filing or recording fees, delivery fees or postage, and labor costs; and in the event of enforcement by legal action, court costs as allowed by the court;

(4) Interest: Interest on the delinquent assessment and Additional Charges at a rate of twelve percent (12%) per annum or such other maximum rate permitted by California law in effect at the time the assessments are delinquent; and

(5) Other: Any other additional costs that the Association may incur in the process of collecting delinquent assessments or sums.

(g) Certificate of Satisfaction of Lien: Upon payment or other satisfaction of a delinquent Assessment for which a Notice was recorded, the Association shall record a certificate stating the satisfaction and release of the Assessment lien.

**4.10 Subordination of Lien**: Notwithstanding any provision to the contrary, the liens for Assessments shall be subject and subordinate to and shall not affect the rights of the holder of a First Mortgage made in good faith and for value. The sale of any Lot pursuant to foreclosure of the First Mortgage on such Lot shall extinguish any liens in place at the time of the foreclosure sale.

**4.11 Waiver of Homestead Benefits**. Each Owner to the extent permitted by law waives, to the extent of any liens created under the Project Documents, the benefit of any homestead or exemption laws of California in effect at the time any Assessment becomes due.

**4.12 Transfer of Lot by Sale or Foreclosure**: Sale or transfer of any Lot shall not affect the assessment lien except as set forth in section 4.10. No sale or transfer shall relieve such Lot from liability for any assessments becoming due after the transfer of title or from the lien thereof, regardless of the date such assessments were levied. Any entity or person purchasing a Lot through the foreclosure of a First Mortgage shall be liable for payment of all assessments which become due after the date title is taken through the foreclosure sale, regardless of the date such assessments were levied, and the Association may enforce such assessments as provided in section 4.9.

Where the mortgagee of the First Mortgage or other purchaser of a lot obtains title to the lot as a result of foreclosure of any such First Mortgage, such acquirer of title, his successors and assigns, shall not be liable for the assessment chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer (except for assessment liens recorded prior to the mortgage). No amendment of the preceding sentence may be made without the approval of at least sixty-seven (67%) percent of the Members, and the consent of the Eligible Mortgage Holders holding First Mortgages on lots comprising fifty-one (51%) percent of the lots subject to first mortgages. The unpaid share of such assessments shall be deemed to be Common Expenses collectible from all of the Lots including such acquirer, his successors or assigns.

If a Lot is transferred by sale, foreclosure, gift or otherwise, the grantor shall remain liable to the Association for all unpaid assessments against the Lot through and including the date of the transfer. The grantee shall be entitled to a statement from the Association, dated as of the date of transfer, setting forth the amount of unpaid assessments against the Lot to be

transferred and the Lot shall not be subject to a lien for unpaid assessments in excess of the amount set forth in the statement, provided, however the grantee shall be liable for any assessments that become due after the date of the transfer.

**4.13 Unallocated Taxes:** In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than being assessed to the Lots, said taxes shall be included in the assessments made under the provisions of section 4.1 and, if necessary, a Special Assessment may be levied against the Lots in an equal amount equal to said taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

## ARTICLE V DUTIES AND POWERS OF THE ASSOCIATION

**5.1 Duties:** In addition to the duties enumerated in its Articles of Incorporation and Bylaws, or elsewhere provided for in this Declaration, and without limiting the generality thereof, the Association shall perform the following duties:

**A. Maintenance:** The Association shall maintain and repair the following:

(1) The Common Area, all Improvements and landscaping thereon, and all property owned by the Association, including without limitation, the pool, pool equipment, recreational facilities, irrigation systems, lighting fixtures, and utility, sewer or drainage systems not maintained by a public entity, utility company, or improvement district.

(2) Landscaping in the unfenced areas of the front yards of each Lot (excluding the walkways, sidewalks, and driveways which shall be maintained, repaired and replaced by the Lot Owner), including regular fertilization, irrigation and other garden management practice necessary to promote a healthy, weed-free environment for optimum plant growth and the reasonably prompt removal and replacement of any dying or dead vegetation; and

(3) Periodically repainting or restaining the exterior side of the soundwall located adjacent to the rear boundary lines of some of the Lots (the restaining or repainting of the interior side of the fence itself shall be the responsibility of the Lot Owner as described in section 7.13). Structural repairs and replacement of the soundwall shall be performed by the Association and the costs of such soundwall repair and replacement shall be shared equally by the Association and the owners of Lots bounded by the portion of the soundwall being repaired or replaced.

If the Association incurs any maintenance or repair costs because of the willful or negligent act or omission of any Owner or an Owner's agents, occupants, Invitees, or pets and such cost was not covered by insurance maintained by the Association, the Association shall levy a Reimbursement Assessment against the responsible Owner in accordance with section 4.7.

**B: Insurance:**

1) The Association shall maintain the following insurance:

- (a) A hazard policy insuring all improvements and fixtures owned by the Association, unless the Board in its sole discretion determines that such insurance is not necessary;
- (b) A comprehensive public liability policy insuring the Association, its agents, and the Owners and their respective family members, against any liability incident to ownership or use of the Common Area or any other Association owned or maintained real or personal property;
- (c) Workers Compensation insurance to the extent required by law;
- (d) Fidelity bonds or insurance covering officers, directors, and employees that have access to Association funds;
- (e) Flood insurance on the Common Area improvements if the project is located in an area designated by an appropriate governmental agency as a special flood hazard area;
- (f) Officers and Directors liability insurance; and
- (g) Such other insurance as the Board in its discretion considers necessary or advisable.

2) The amount of coverage shall be no less than the minimum amounts set forth in Civil Code Sections 1365.7 and 1365.9, as amended from time to time, and the amount, term and coverage of any policy required hereunder (including the type of endorsements, the amount of the deductible, the names of the insureds, the loss payees, standard mortgage clauses, notices of changes or cancellations, and the insurance company rating) shall satisfy the minimum requirements imposed for this type of project by the Federal National Mortgage Association ("FNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC") or any successor thereto. If the FNMA or the FHLMC requirements conflict, the more stringent requirement shall be met. If FNMA and FHLMC do not impose requirements on any policy required hereunder, the term, amount and coverage of such policy shall be no less than that which is customary for similar policies on similar projects in the area.

3) Each Owner appoints the Association or any insurance trustee designated by the Association to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Association, including without limitation, representing the Owners in any proceeding, negotiation, settlement or agreement.

4) Any insurance maintained by the Association shall contain "waiver of subrogation" as to the Association and its officers, directors and Members, the Owners and occupants of the Lots and mortgagees, and, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The Association shall periodically, and not less than once every three (3) years, review all insurance policies maintained by the Association to determine the adequacy of the coverage and to adjust the policies accordingly.

5) Each Owner shall obtain and maintain, at the owner's sole expense, fire and casualty coverage as may be required by any mortgagee of the Owner's Lot and in no event less than the amount and type of fire and casualty insurance as may be required by the Board. All such individually carried insurance shall contain a waiver of subrogation by the carrier as to the other Owners, the Association, and the mortgagees of such Lot.

6) The Association, and its directors and officers, shall have no liability to any Owner or mortgagee, if after a good faith effort, it is unable to obtain the liability insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the Members fail to approve any assessment increase needed to fund the insurance premiums. In such event, the Board immediately shall notify each member and any mortgagee entitled to notice that the liability insurance will not be obtained or renewed.

**C. Discharge of Liens:** The Association shall discharge by payment, if necessary, any lien against the Common Area, and charge the cost thereof as a Reimbursement Assessment to the Member or Members responsible for the existence of the lien.

**D. Assessments:** The Association shall fix, levy, collect and enforce assessments as set forth in Article IV hereof.

**E. Payment of Expenses:** The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business including, without limitation, all licenses, taxes or governmental charges levied or imposed against the property of the Association.

**F. Enforcement:** The Association shall enforce the Project Documents.

**5.2 Powers:** In addition to the powers enumerated in its Articles of Incorporation and Bylaws, or elsewhere provided herein, and without limiting the generality thereof, the Association shall have the following powers:

**A. Utility Service:** The Association shall have the authority (but not the obligation) to obtain, for the benefit of all the Owners, all water, gas and electric service and refuse collection.

**B. Easements:** The Association shall have authority, subject to section 2.3B, to grant easements where necessary for utilities and sewer facilities over the Common Area to serve the Common Areas and Lots.

**C. Manager:** The Association may employ a manager or other persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, except for the responsibility to levy fines, impose discipline, hold hearings, file suit, record or foreclose liens, or make capital expenditures, provided that any contract with a firm or person appointed as a manager or managing agent shall not exceed a one (1) year term, shall provide for the right of the Association to terminate the contract without payment of a termination fee and without cause on no more than ninety (90) days written notice, or for cause on no more than thirty (30) days written notice.

**D. Adoption of Rules:** The Board may adopt reasonable rules not inconsistent with this Declaration relating to the use of the Common Area and all facilities thereon, and the conduct of Owners and their tenants, guests, Invitees, and pets with respect to the property and other Owners in accordance with section 7.5 of the Bylaws.

**E. Access:** For the purpose of performing construction, maintenance or emergency repair for the benefit of the Common Area or the Owners in common, the Association agents or employees shall have the right, after reasonable notice (except in emergencies), of not less than twenty-four (24) hours to the Owner thereof, to enter any Lot at reasonable hours. Such entry shall be made with as little inconvenience to the Owner as practicable and any damage caused thereby shall be repaired by the Association at the expense of the Association.

**F. Assessments, Liens and Fines:** The Association shall have the power to levy and collect assessments in accordance with the provisions of Article IV hereof.

**G. Enforcement:** The Association shall have the power to enforce this Declaration as set forth in Article IX.

**H. Acquisition and Disposition of Property:** The Association shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the Association. Any transfer of property with an aggregate value exceeding five percent (5%) of the total value of the Association's personal and real property shall be approved by secret written ballot vote by sixty-seven percent (67%) of the total Voting Power of the Association and any deed or conveyance instrument shall be signed by the President and Secretary after certification of approval by the Members.

**I. Loans:** The Association shall have the power to borrow money, and only with the approval of a majority of the Members voting by written ballot where a quorum of no less than fifty percent (50%) has been established, to mortgage, pledge, or deed in trust, any or all of its real or personal property as security for money borrowed or debts incurred.

**J. Dedication:** The Association shall have the power to dedicate, sell, or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members in accordance with section 2.3B.

**K. Contracts:** The Association shall have the power to contract for goods and/or services for the Common Areas, facilities and interests or for the Association, subject to limitations set forth in the Bylaws, or elsewhere herein.

**L. Delegation:** Subject to any limitations set forth in this Declaration or the Bylaws, the Association, the Board and the officers of the Association shall have the power to delegate their authority and power to committees, officer or employees of the Association, or to a manager employed by the Association, provided that the Board shall not delegate its responsibility:

- (1) To make expenditures for capital additions or improvements chargeable against the reserve funds;

- (2) To conduct hearings concerning compliance by an Owner or his tenant, lessee, guest or Invitee with the Declaration, Bylaws or Rules;
- (3) To make a decision to levy monetary fines, temporarily suspend an Owner's rights as a Member of the Association or otherwise impose discipline;
- (4) To make a decision to levy Regular, Special, or Reimbursement Assessments; or
- (5) To make a decision to bring suit, record a claim of lien or institute foreclosure proceedings for default in payment of assessments.

The Board and officers may not delegate the responsibilities above to a manager; however, the Board may direct a manager to implement or process the decisions and acts of the Board, including those listed above.

**M. Use of Recreational Facilities:** The Association shall have the power to limit the number of an Owner's tenants or guests who may use the recreational facilities, provided that all limitations apply equally to all Owners, unless imposed for disciplinary reasons, in accordance with Article IX.

**N. Water and Garbage Service:** The Association shall have the authority, but not an obligation, to acquire and pay for water service and trash or garbage service for all homes situated on the property.

**O. Appointment of Trustee:** The Association or the Board, acting on behalf of the Association, has the power to contract with or tender delinquent account to a professional collection agency and/or appoint or designate a trustee to enforce assessment liens by sale as provided in section 4.9 and as provided in Civil Code Section 1367.1.

**P. Other Powers:** In addition to the powers contained herein, the Association may exercise the powers granted to a non-profit mutual benefit corporation under California Corporations Code Section 7140.

## ARTICLE VI ARCHITECTURAL CONTROL

**6.1 Approval of Plans:** No building, fence, wall, shed, out building, pool, spa, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, trellis, antennae, dish, improvement, or structure of any kind shall be commenced, installed, erected, painted or maintained upon the Property, nor shall any alteration or improvement of any kind be made thereto, or to the exterior of any residence, until the same has been approved in writing by the Board, or by an Architectural Control Committee appointed by the Board. Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements, alterations, etc., shall be submitted to the Board or the Architectural Control Committee for approval as to quality of workmanship and design and harmony of external design with existing structures, topography, and finish grade elevation. No fence or wall shall be erected, placed or altered on any Lot nearer to any Street than the minimum building setback line. No permission or approval shall be required to repaint in accordance with the original color scheme, or to rebuild in accordance with the original plans

and specifications. No permission or approval shall be required to repaint in accordance with a color scheme previously approved by the Committee or by the Board. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his residence, or to paint the interior of his residence any color desired.

**6.2 Architectural Control Committee Action:** The Architectural Committee shall consist of three (3) members. The Board shall have the power to appoint all of the Architectural Control Committee. Members appointed to the Architectural Control Committee by the Board shall be from the membership of the Association. A majority of the Architectural Control Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the successor shall be appointed by the Board. Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant hereto but may be reimbursed for actual reasonable expenses incurred in performance of their duties, when approved by the Board. In the event the Committee fails to approve or disapprove plans and specifications within sixty (60) days after the same have been submitted to it, approval will not be required and the related covenants can be deemed to have been fully complied with.

**6.3 Landscaping:** No Owner shall maintain or interfere with the landscaping on the Owner's Lot that is maintained by the Association as described in section 5.1A(2). The landscaping to be maintained by the Association (including the Common Area and unfenced yards as described in section 5.1A) or any agent retained by the Association, shall be maintained in accordance with the Landscaping Maintenance Guidelines (the "Guidelines"). The Board may from time to time, in accordance with section 7.5 of the Bylaws, update the Guidelines to reflect current prudent landscaping maintenance practices, subject to the prior approval of the Director of Planning of the County of Sonoma or any official of the County acting in a similar capacity.

**6.4 Architectural Guidelines:** The Board may, in accordance with section 7.5 of the Bylaws, from time to time, adopt, amend, revise, or repeal architectural guidelines establishing standards for Improvements and policies and procedures for approval of plans under this Article VI.

**6.5 Governmental Approval:** Before commencement of any alteration or improvements approved by the Architectural Control Committee, the Owner shall comply with all appropriate governmental laws and regulations and obtain all applicable permits. Approval by the Committee does not satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction.

## ARTICLE VII USE RESTRICTIONS

In addition to all of the covenants contained herein, the use of the property and each Lot therein is subject to the following:

**7.1 Use of Lot:** Lots shall be occupied and used only for residential purposes by the Owners, their tenants, Invitees, and guests, except that Owners may conduct such commercial and professional activities as are specified in section 7.5. No tent, shack, trailer, basement, garage,

outbuilding or structure of a temporary nature shall be used on any Lot at any time as a residence, either temporarily or permanently.

**7.2 Nuisances:** No noxious, illegal, or seriously offensive activities shall be carried on upon any Lot, or any part of the Project, nor shall anything be done thereon which may be or may become a serious annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment by each Owner of his respective Lot or the Common Area.

**7.3 Vehicle Restrictions and Towing:** No trailer, camper, mobile home, commercial vehicle, truck (other than standard size pickup truck or standard size van), boat, inoperable or unlicensed automobile, or similar equipment shall be permitted to remain upon any area within the Project, unless placed within an enclosed garage, or placed in such other enclosed area on the Owner's own Lot, as may be approved in writing by the Board. Commercial vehicles shall not include sedans (or standard size vans or pickup trucks) which are used both for personal and business use, provided that any signs and markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board. No noisy or smoky vehicles shall be operated on the property. No unlicensed motor vehicles shall be operated on the Project.

The Association may cause the removal of any vehicle wrongfully parked on the property, including a vehicle owned by an occupant. The Association shall comply with all applicable laws and regulations in removing vehicles. Prior to removing a vehicle the Association shall give the owner of the improperly parked vehicle (if such owner is known or can reasonably be ascertained) notice of the violation and forty-eight hours to move the vehicle; provided, notwithstanding the foregoing, the Association may cause the removal, without notice, of any vehicle parked in a marked fire lane, within fifteen (15) feet of a fire hydrant, in a parking space designated for disabled persons without proper authority or in a manner which interferes with any entrance to or exit from the Project or any Lot, parking space or garage located thereon. The Association shall not be liable for any damages incurred by the vehicle owner because of the removal in compliance with this section or for any damage to the vehicle caused by the removal, unless such damage resulted from the intentional or negligent act of the Association or any person causing the removal of or removing the vehicle. If requested by the owner of the vehicle, the Association shall state the grounds for the removal of the vehicle.

**7.4 Garages / Parking:** A garage may not be converted to any use (such as a recreational room) that would prevent its use as a parking space for the number of vehicles it was designed to contain. Owners are to use their garages for parking of their vehicles so that any Common Area parking will be available primarily for guest parking. The Association may, from time to time, establish rules and regulations in accordance with Bylaws section 7.5 for the parking of vehicles in the Common Area.

**7.5 Commercial Activity:** Owners may conduct commercial or professional activities on their Lot, provided these activities meet all of the following criteria:

- (a) Causes no unreasonable increase in vehicular or pedestrian traffic.
- (b) Results in no increased noise levels which are objectionable to neighbors.
- (c) Complies with all pertinent federal, state and local regulations.
- (d) There are no signs or visible or audible indications of the business.



- 7.6 **Storage in Common Area:** Nothing shall be stored in the Common Area without the prior consent of the Board.
- 7.7 **Signs:** No signs shall be displayed on a Lot except non-commercial signs which are no larger than 9 square feet or banners no larger than 15 square feet, and made of paper, cardboard, cloth, plastic, or fabric. No signs may be made of lights, roofing, siding, paving materials, flora, or similar building, landscaping or decorative materials. No signs may be painted or written directly on the walls, trim, doors, windows or roof of any building. No commercial signs except for sale, for lease/rent, or for exchange signs shall be displayed on any Lot and no more than one for sale, for lease/rent or for exchange sign of reasonable dimensions shall be displayed on any Lot.
- 7.8 **Animals:** No animals of any kind shall be raised, bred, or kept on any Lot or in the Common Area for any commercial purposes. The Board may establish rules regulating access to and use of Common Areas by any pets. No dog shall be allowed in the Common Area unless it is on a hand-held leash under the control of a person capable of controlling such dog. Each Resident or his Invitee shall immediately remove any feces left by his pet or his Invitee's pet in the Common Area and restore the Common Area to the condition it was in immediately preceding its use by the pet. The Association, after a reasonable attempt to notify the owner (if known or reasonably ascertainable) or any Owner may cause an unleashed dog found within the Common Area to be removed to an animal shelter under the jurisdiction of Sonoma County by calling the appropriate authorities. Owners shall be fully responsible for any damage caused by their pet. The Board shall have the authority, after Notice and Hearing, to require the containment on a Lot or removal from the Project of any pet that is determined by the Board to be a threat to the health or safety of persons in the Project.
- 7.9 **Garbage and Refuse Disposal:** All rubbish, trash and garbage shall be regularly removed from the Lots, and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition, and shall be screened from view of neighboring Lots, Common Areas and streets.
- 7.10 **Radio and Television Antennas:** No external antennas, towers, poles, satellite dishes or other equipment used for the purpose of transmitting or receiving radio, television or other signals (other than equipment installed by the Association or at the Association's direction), shall be installed except upon approval of the Association in accordance with Article VI, and in a manner that minimizes, to the greatest extent possible, visibility of the antennae, tower, pole, satellite dish or other equipment from any Lot or Common Area.
- 7.11 **Liability of Owners for Damage to Common Area:** The Owner of each Lot shall be liable to the Association for all damage to the Common Area improvements (including landscaping) caused by such Owner or the Owner's agents, family, tenants, Invitees, or pets, except for that portion of damage covered by insurance carried by the Association. The responsible Owner shall be charged by levy of a Reimbursement Assessment with the cost of repairing such damage as described in section 5.1A.

## 7.12 Leasing of Lots:

(a) **Limit on Number of Rentals:** In order to protect and preserve the Common Area and the value of the Lots within the Project, to assure conventional financing shall be available for purchase of Lots, and to further proper and orderly operation of the Association in furtherance of the purpose stated in the Articles of Incorporation, the number of Lots which, by reason of rental or lease, are not occupied by the Owners of said Lots is limited to no more than twenty percent (20%) of the total number of Lots at any given time. However, the Association may grant to Owners who demonstrate hardship or emergency need to lease or rent their Lot, the right to lease or rent such owner's Lot, up to an additional ten percent (10%) of the total Lots. Hardship or emergency need shall include, but is not limited to, medical condition or family emergency requiring an Owner to be absent from the area or unable to reside in the Project for more than 90 days and management of a Lot by an Owner's estate or trust after the Owner's death for no longer than two years. A Lot that is rented or leased may continue to be rented or leased (even though the tenants change) until one of the following events occurs: (1) the Owner occupies the Lot, (2) the Lot is sold, conveyed or transferred, or (3) the Lot is unoccupied for a period exceeding 60 days, except Lots which are rented or leased under due to hardship, which Lots may be rented or leased for a period of two (2) years with the Board having the discretion to grant a one (1) year extension thereof. Subleasing shall not be permitted.

(b) **Restriction of Rentals:** An Owner shall be entitled to rent or lease his Lot, if:

(i) Less than twenty percent (20%) of the total number of Lots within the project are rented, leased or otherwise occupied by persons other than the Owner, or the Owner demonstrates hardship requiring leasing or rental of the Lot;

(ii) The Owner seeking to rent or lease his or her Lot has applied for and received consent of the Board of Directors to rent or lease the Lot;

(iii) The Owner is renting or leasing the entire Lot under one lease or rental agreement and the Lot shall not be occupied by more than two persons per bedroom plus one person or such other housing occupancy limit as is established by California law;

(iv) Renting or leasing the Lot will be in compliance with the senior housing requirements of Article VIII;

(v) There is a written rental or lease agreement specifying that (1) the tenant shall be subject to all provision of the Project Documents and a failure to comply with any provision of the Project Documents shall constitute a default under the agreement and (2) prohibiting subleasing;

(vi) The period of the rental or lease is not less than thirty (30) days; and

(vii) The Owner gives notice of the tenancy to the Board and has otherwise complied with the terms of the Project Documents.

(c) **Renting of Rooms:** Owners may lease or rent rooms within their Lot if such Owner is residing in the Lot concurrently with the renters, the rooms are rented for a period of 30 days or greater and the Lot will not be occupied by more than two persons per bedroom plus one person or such other housing occupancy limit as is established by California law.

(d) **Notification of Association:** Promptly after leasing or renting his Lot, an Owner shall notify the Association of the names and phone numbers of the his tenants and demonstrate

their qualification for senior housing in accordance with Article VIII, provide the Association with the Owner's address and phone number, and provide the Association a copy of the executed lease or rental agreement.

(e) Owner Use of Common Area: Upon commencement of the lease or rental agreement, all rights to use and enjoyment of the Common Area shall be exercised by the tenant rather than by the Owner of the leased or rented Lot.

(f) Tenant Compliance with Governing Documents: Each Owner is responsible for assuring his tenants and lessees comply with all provisions of the Governing Documents, including, without limitation, the senior housing provisions of Article VIII.

**7.13 Owner's Right and Obligation to Maintain and Repair:** Except for those portions of the project which the Association is required to maintain and repair, each Lot Owner shall, at his sole cost and expense, maintain and repair his Lot and all Improvements and landscaping thereon, keeping the same in good condition. Owner shall be responsible for periodic inspection of his Lot for the presence of wood-destroying pests or organisms and for the treatment and repairs resulting from the presence of wood-destroying pests or organisms. Except as provided in section 5.1A(3), each Owner shall be responsible for maintaining the fences located on the Owner's Lot including structural repairs and repainting or restaining. Any Lot Owners that share a fence along a common boundary line shall jointly maintain and repair the fence and the cost shall be allocated equally between the Lots unless circumstances warrant a different allocation so that the cost is allocated equitably. Any disputes between the Owners regarding the need for maintenance and repair, the type of maintenance and repair, the allocation of cost or related issues shall be submitted to Internal Dispute Resolution or to the Board or a committee selected by the Board for resolution. The decision of the Board or committee shall be conclusive and binding on the Owners and may be enforced in any court with appropriate jurisdiction.

Each Owner shall maintain and repair the storm drainage improvements located on the Owner's Lot, shall keep the improvements free of debris and obstacles at all times and shall take no action that could in any manner interfere with the operation of the improvements.

In the event an Owner of a Lot shall fail to maintain his Lot and the improvements thereon as required herein, the Association's agents may, after Notice and Hearing as provided in section 9.1, enter the Lot and perform the necessary maintenance. The cost of such maintenance shall be charged to the Owner as a Reimbursement Assessment in accordance with section 4.7.

**7.14 Agricultural Areas:** Agricultural areas occur in the vicinity of the project and such areas are consistent with the Sonoma County General Plan. Pesticide, herbicide, fertilizer, and other chemical use associated with agricultural areas may occur.

## ARTICLE VIII SENIOR HOUSING

**8.1 Applicable Law and Amendment Requirements.** The provisions in this Article VIII are intended to comply with the housing for senior citizen requirements in Civil Code Section 51.3, the housing for older persons exemption under the Federal Fair Housing Amendments Act of 1988, as amended by the Housing for Old Persons Act of 1995 (42 U.S. Code 3607), and the HUD regulations (24 CFR 100.300 et seq.) in effect as of the date this Declaration was recorded in the County records. To the extent of any conflict between the provisions of this Article VIII

and any applicable law regulating age restrictions in senior housing developments, the applicable law shall control. If any applicable law is subsequently modified or amended in any manner, the provisions of this Article VIII automatically shall be considered modified and amended in a like manner without a vote of the Members in order to remain in compliance with applicable laws.

**8.2 Federal Law Requirements.** The Project is intended to qualify as housing for older persons exempt from the age restriction prohibition contained in the Federal Fair Housing Amendments Act of 1988, as amended by the Housing for Old Persons Act of 1995 (the "Acts"). In order to satisfy the requirements of the Acts, at least 80 percent (80%) of the occupied Lots must be occupied by at least one person 55 years of age or older, and the Association shall:

(a) Publish and adhere to policies and procedures which demonstrate an intent by the Association to provide housing for persons 55 years of age or older and

(b) Adopt and implement procedures for the periodic verification of compliance with the age restrictions, including procedures for routinely determining the occupancy of each Lot including the identification of whether at least one occupant is a Senior Citizen. The procedures shall provide for regular updates no less than once every two years.

**8.3 Senior Housing Definitions:** For purposes of this Article VIII the following terms shall have the definitions set forth in Civil Code §51.3, including the following:

(a) "Cohabitants" means people' living together as spouses or domestic partners within the meaning of Family Code section 297.

(b) "HUD" means the Department of Housing and Urban Development

(c) "Permitted Healthcare Resident" means a person hired to provide live-in, long-term or terminal healthcare to a Senior Citizen or a family member of the Senior Citizen providing that care. The care must be substantial in nature and must provide either assistance with necessary daily activities or medical treatment or both.

(d) "Qualified Disabled Resident" means a disabled person or person with a disabling illness or injury who is a child or grandchild of the Senior Citizen or a Qualified Permanent Resident who needs to live with the Senior Citizen or Qualified Permanent Resident because of the disabling condition, illness or injury. A "disabled" person means a person with a disability as defined in Civil Code section 54(b). A "disabling injury or illness" means an illness or injury which results in a condition meeting the definition of disability as defined in Government Code Section 12926.

(e) "Qualified Permanent Resident" means a person who satisfies both of the following requirements: (a) the person was residing with the Senior Citizen prior to the Senior Citizen's death, hospitalization, or other prolonged absence or prior to the dissolution of marriage with the Senior Citizen, and (b) the person is 45 years of age or older and was the spouse or domestic partner of the Senior Citizen, was a Cohabitant with the Senior Citizen, or was providing the primary physical or economic support to the Senior Citizen.

(f) "Senior Citizen" means a person 55 years of age or older.

**8.4 Age Restriction Occupancy Requirements.** This Project is a development designed to provide housing for Senior Citizens and is intended to qualify as a senior citizen housing development within the meaning of Civil Code Section 51.3(b)(4). As required by Civil Code §51.3(c) and HUD regulations (24 CFR 100.305), at commencement of occupancy of the Lot, at least one resident must be a Senior Citizen who intends to reside on the Lot as his or her primary

residence on a permanent basis. As set forth in Civil Code §51.3, all other residents must qualify under one of the following categories:

- (a) the resident is 45 years or older;
- (b) the resident is the spouse or domestic partner of the Senior Citizen;
- (c) the resident and the Senior Citizen are Cohabitants;
- (d) the resident is providing the primary physical or economic support to the Senior Citizen;
- (e) the resident is a Qualified Disabled Resident; or
- (f) the resident is a Permitted Health Care Resident

Upon the death or dissolution of marriage or upon hospitalization or other prolonged absence of the Senior Citizen, a Qualified Permanent Resident or Qualified Disabled Resident may continue to reside in the Lot as long as at least eighty percent (80%) of the occupied Lots at the Project are occupied by a person age 55 or older and the continued occupancy by the Qualified Permanent Resident or Qualified Disabled Resident does not reduce the percentage to less than eighty percent (80%) so as to disqualify the Development as housing for older persons under federal Law. (Civil Code §51.3(c); 24 CFR 100.305)

**8.5 Termination of Disability.** For any person who is a Qualified Disabled Resident and the disabling condition ends and the Qualified Disabled Resident does not otherwise qualify to reside in the Lot under Section 8.4, the Board may require the formerly disabled resident to cease residing in the Project upon receipt of six months written notice provided that the Board may allow the person to remain a resident for up to one year after the disabling condition ends. (Civil Code §51.3(b)(3)).

**8.6 Termination of Occupancy Rights of a Qualified Disabled Resident.** The Board may take action to prohibit or terminate the occupancy by a person who is a Qualified Disabled Resident solely because of a disability if the Board, based on credible and objective evidence, finds that the person is likely to pose a significant threat to the health or safety of others that cannot be improved by means of a reasonable accommodation; provided that the action to prohibit or terminate the occupancy may be taken only after satisfying each of the following conditions:

- (a) The Board provides reasonable notice to and an opportunity to be heard for the disabled person whose occupancy is being challenged, and reasonable notice to the co-resident parent or grandparent of that person; and
- (b) The Board gives due consideration to the relevant, credible, and objective information provided at the hearing. The evidence shall be taken and held in a confidential manner in an executive session by the Board in order to preserve the privacy of the affected person. The affected persons shall be entitled to have present at the hearing an attorney or any other person authorized by them to speak on their behalf or to assist them in the matter. (Civil Code §51.3(b)(3)).

**8.7 Occupancy by a Permitted Health Care Resident.** A Permitted Health Care Resident may occupy a Lot during any period that the Permitted Health Care Resident is actually providing live-in, long-term or terminal health care to the Senior Citizen for compensation. Compensation shall include provision of lodging and food in exchange for care. A Permitted Health Care Resident shall be entitled to continue his or her residency if the Senior Citizen is

absent from the Lot on satisfaction of each of the following conditions:

(a) The Senior Citizen became absent due to hospitalization or other necessary medical treatment and expects to return to the Lot within 90 days from the date the absence began; and

(b) The absent Senior Citizen or an authorized person acting for the Senior Citizen submits a written request to the Board stating that the Senior Citizen desires that the Permitted Health Care Resident be allowed to remain in order to be present when the Senior Citizen returns to reside in the Lot. (Civil Code §51.3(b)(7))

**8.8 Temporary Residency.** Nothing in this Article VIII shall prohibit the temporary residency of any person under the age of 55 as a guest of the Senior Citizen or Qualified Permanent Resident. For purposes herein, "temporary residence" shall mean occupancy of a Lot for no more than 60 days in any consecutive 12 month period.

## ARTICLE IX ENFORCEMENT OF RESTRICTIONS

**9.1 Enforcement Rights and Procedures:** The provisions of this Declaration shall be equitable servitudes, enforceable by any Owner against the Association or any other Owner or occupant, or by the Association against any Owner or occupant.

(a) Rights to Enforce: The Association and/or any Owner shall have the power to enforce the provisions of the Project Documents in any manner provided by law or in equity and in any manner provided in this Declaration. Any Owner may institute appropriate legal action (after compliance with Civil Code § 1369.510 et seq.) to enforce the Project Documents including bringing an action for damages or an action to enjoin the violation or specifically enforce the provisions of the Project Documents; provided however, no Owner shall have the right to enforce independently of the Association any Assessment or Assessment lien. The Association shall have the right to enforce compliance with the Project Documents in any manner provided by law or in equity including without limitation, the right to enforce the Project Documents by bringing an action for damages, an action to enjoin the violation or specifically enforce the provisions of the Project Documents, to enforce the liens provided for herein and any statutory lien provided by law, including the foreclosure of any lien. The Association may also temporarily suspend an Owner's use of the Common Area or his membership rights and/or levy a fine against an Owner in the amount or amounts provided on the schedule of fines established by the Board from time to time.

(b) Notice and Hearing. Prior to instituting any disciplinary actions, the Association shall provide notice of the violation to the responsible Owner and discuss and act on the implementation of disciplinary measures at a Board meeting held in accordance with the Bylaws. The Association shall provide notice of the violation and of the date and time of the Board meeting to the Owner at least ten (10) days prior to the meeting date. The Owner may attend the Board meeting and address the Board regarding the alleged violation. The Owner may request the meeting be held in executive session as provided in the Bylaws. Within fifteen (15) days after the date the Board acts on disciplinary measures, the Association shall give the Owner written notice of the discipline to be instituted. Any notice required under this section shall be given by any method reasonably calculated to provide actual notice to the Owner.

(c) Dispute Resolution Requirements. Prior to instituting any disciplinary actions, the Association shall offer to resolve any dispute regarding a Member's or the Association's rights, duties or liabilities under the Project Documents, the Davis-Stirling Act or the Corporations Code, by meeting with the Owner under the Association's Internal Dispute Resolution procedures.

(d) Suspension of Rights. The Association may suspend the voting rights, right to serve on a committee or the Board, and right to use recreational facilities of any Owner (and such Owner's Invitees and occupants of such Owner's Lot) during any period in which assessments are past due. The Association need not provide Notice and Hearing prior to suspending rights for non-payment of assessments; provided, however, the Association shall provide such Owner notice that his rights are suspended until payment of assessments is made and that the Owner has the right to request a hearing or Internal Dispute Resolution. Suspension of rights and privileges for failure to pay assessments shall be for a maximum of thirty (30) days for each month assessments are unpaid or successive 30 day periods until paid. The Association may suspend the voting rights, right to serve on a committee or the Board, and right to use recreational facilities of any Owner (and such Owner's Invitees and occupants of such Owner's Lot), after Notice and Hearing as set forth in this section 9.1, for a period of up to 30 days for violation of the Project Documents. The Association may continue such suspension for successive periods of 30 days or less without further Hearings as long as the violation persists; provided the Association shall send the Owner a notice that the suspension has been continued.

(e) No Forfeiture of Use of Lot. Despite anything to the contrary contained in this Declaration, the Association shall not have the power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his individually owned Lot, including access thereto over and across the Common Area, due to the Owner's failure to comply with the provisions of the Project Documents, unless the loss or forfeiture is the result of the judgment of a court, an arbitration award, a foreclosure proceeding or a sale conducted pursuant to this Declaration.

(f) Violation of Law: The Association may treat an Owner's violation of any federal, state, or local law, ordinance or regulation, which creates a nuisance or substantial annoyance to the other Owners in the Project or to the Association, in the same manner as a violation of the Project Documents by making the violation subject to any or all of the enforcement procedures set forth in this Declaration.

(g) Remedies Cumulative: Each remedy in this Declaration is cumulative and not exclusive.

(h) Nonwaiver: The failure to enforce the provisions of any covenant, condition or restriction contained in this Declaration shall not constitute a waiver of the right to enforce such provisions or any other provisions of this Declaration at a later date or against another Owner. The failure to enforce any provisions of this Declaration shall not be deemed or considered to be abandonment of such provision or any other provision of this Declaration or consent to or acceptance of violations of this Declaration.

**9.2 Internal Dispute Resolution.** The Association shall provide a fair, reasonable and expeditious procedure for resolving disputes between an Owner and the Association involving the Owner's or Association's rights, duties or obligations under the Project Documents, the Davis-Stirling Act, or the California Nonprofit Mutual Benefit Corporation Law. The Board

shall adopt in accordance with section 5.2D and the Bylaws, and from time to time amend, a rule or procedure establishing the dispute resolution process and terms ("Internal Dispute Resolution") which meet the requirements of Civil Code § 1363.830.

**9.3 Binding Arbitration:** Any controversy or claim between members and the Association arising out of or relating to the Project Documents shall be resolved by neutral binding arbitration or by mediation, and not by a court action as provided by California law for judicial review of arbitration proceedings. The proceedings shall be conducted in accordance with the rules of the American Arbitration Association unless the parties otherwise agree to another procedural format. The parties shall agree on either a public or private arbitration/mediation service, or if they cannot agree, any party may petition a court for an order to compel arbitration and/or mediation and that party may designate, subject to court approval, the arbitration/mediation service to be used. Judgment may be entered on an arbitration award in any court having jurisdiction. The parties shall have the right of discovery in accordance with Code of Civil Procedure Section 1283.05.

The following matters are excluded from arbitration and/or mediation.:

- a) An action for injunctive relief or for unlawful detainer.
- b) An action or proceeding to enforce the obligation to pay Regular and Special Assessments, including a judicial or non-judicial foreclosure to enforce a lien against a Lot.
- c) An action for partition pursuant to California Civil Code §1359.
- d) An action brought pursuant to the California Small Claims Act.
- e) An action arising out of or related to condemnation or eminent domain.
- f) An action for bodily injury or wrongful death.
- g) An action or proceeding which is within the jurisdiction of a probate or domestic relations court.
- h) An action or proceeding to compel arbitration and/or mediation, including an action to impose sanctions for frivolous or bad faith activity designed to delay or frustrate arbitration and/or mediation.
- i) Any action affecting the rights of an Eligible Mortgage Holder.

A judicial action to record a notice of pending action or for an order of attachment, receivership, injunction or other provisional remedy shall not constitute a waiver of the right to compel arbitration and/or mediation.

**9.4 Attorneys Fees and Costs.** If the Association is reasonably required to retain an attorney to enforce any provision of the Project Documents, the Association shall be entitled to reimbursement of reasonable attorneys' fees and costs, which fees and costs may be charged to the Owner as a Reimbursement Assessment, whether or not legal action is commenced. If any action including litigation, arbitration, or any other form of alternative dispute resolution, is brought to enforce the Project Documents or to resolve any dispute regarding a Member's or the Association's rights, duties or liabilities under the Project Documents, the Davis-Stirling Act or the Corporations Code, the prevailing party will be entitled to its costs and reasonable attorneys' fees, which may be set by the court or arbitrator in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled. All



sums payable hereunder by an Owner shall bear interest at the maximum rate permitted by law from the due date or the date advanced or incurred by the Association commencing fifteen (15) days after repayment is demanded.

## ARTICLE X MORTGAGEE PROTECTIONS

**10.1 Rights of First Lenders:** No breach of any of the covenants, conditions and restrictions contained herein, nor the enforcement of any lien provisions herein, shall render invalid the lien of any First Mortgage on any Lot made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise. Notwithstanding any provisions in this Declaration to the contrary, First Lenders shall have the rights set forth in this Article.

**10.2 Copies of Project Documents:** The Association shall make available to Lot Owners and First Lenders, and to holders, insurers and guarantors of any First Mortgage, current copies of the Declaration, Bylaws, Articles and Rules concerning the project and the books, records and financial statements of the Association as set forth in the Bylaws.

**10.3 Audit Statement:** Any holder, insurer or guarantor of a First Mortgage shall be entitled, upon written request, to an audited financial statement for the immediately preceding fiscal year, free of charge to the party requesting. Such statement shall be furnished within a reasonable time following such request.

**10.4 Notice of Action:** Upon written request to the Association, identifying the name and address of the Eligible Mortgage Holder or Eligible Insurer or Guarantor, and the Lot number and address, such Eligible Mortgage Holder or Eligible Insurer or Guarantor will be entitled to timely written notice of: (1) any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, as applicable; (2) any default in performance of obligations under the project documents or delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, which remains uncured for a period of sixty (60) days; (3) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; (4) any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as specified in section 10.5. The Association shall discharge its obligation to notify Eligible Mortgage Holders or Eligible Insurers or Guarantors by sending written notices required herein to such parties, at the address given on the current request for notice or electronically if an email address is provided, in the manner prescribed by section 11.7.

**10.5 Consent to Action:**

(a) Except as provided by Statute or by other provision of the Project Documents in case of substantial destruction or condemnation of the Project:

(1) The consent of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding mortgages on Lots which at least sixty-seven percent (67%) of the votes of Lots

subject to Eligible Holder Mortgages, shall be required to terminate the legal status of the Project as a planned unit development project.

(2) The consent of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding mortgages on Lots which have at least fifty-one percent (51%) of the votes of the Lots subject to Eligible Holder Mortgages, shall be required to add or amend any material provisions of the project documents which establish, provide for, govern or regulate any of the following: (i) voting; (ii) assessments, assessment liens or subordination of such liens; (iii) reserves for maintenance, repair and replacement of the Common Area(s) (or Lots if applicable); (iv) insurance or fidelity bond; (v) rights to use of Common Areas; (vi) responsibility for maintenance and repair of the several portions of the Project; (vii) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project; (viii) boundaries of any Lot; (ix) the interest in the general or restricted Common Areas; (x) convertibility of Lots into Common Areas or of Common Areas into Lots; (xi) leasing of Lots; (xii) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his Lot; (xiii) any provisions which are for the express benefit of mortgage holders, Eligible Mortgage Holders, or Eligible Insurers or Guarantors of First Mortgages on Lots.

(3) An addition or amendment to such document shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. An Eligible Mortgage Holder who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

(b) Unless the holders of at least sixty-seven percent (67%) of the First Mortgages (based upon one (1) vote for each First Mortgage or deed of trust owned), or sixty-seven percent (67%) of the Owners of the Lots have approved the action by vote by written ballot, the Association and/or the Owners shall not be entitled to:

(1) By act or omission, seek to obtain or terminate the Project, or abandon, partition, subdivide, encumber, sell or transfer the Common Area or property owned directly or indirectly, by the Association (the granting of easements for public utilities or for other public purposes consistent with the intended use of such property shall not be deemed a transfer within the meaning of this clause) except for abandonment or termination provide by law in the case of substantial destruction by fire or other casualty, or in the case of a taking by condemnation or eminent domain; or

(2) Change the method of determining the obligations, assessments or dues or other charges which may be levied against an Owner; or

(3) By act or omission, change waiver or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots, the exterior maintenance of Lots, the maintenance of the Common Area walks or fences and driveways, or the upkeep of landscaping in the Common Area; or

(4) Fail to maintain fire and extended coverage on insurable Association Common Area improvements on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement costs); or

(5) Use hazard insurance proceeds for losses to any Association common property for other than the repair, replacement or reconstruction of such common property.

**10.6 Right of First Refusal:** The right of an Owner to sell, transfer or otherwise convey his or her Lot shall not be subject to any right of first refusal or similar restriction.

**10.7 Contracts:** Any agreement for professional management of the Project, or lease or any other contract providing for services may not exceed one (1) year. Any such agreement, contract or lease must provide for termination by either party without payment of a termination fee or penalty, for cause on not more than thirty (30) days written notice or without cause on not more than ninety (90) days or less written notice.

**10.8 Reserves:** Association assessments or charges shall include an adequate reserve fund for maintenance, repairs, and replacement of those improvements which the Association is obligated to maintain that must be replaced on a periodic basis, and the assessments therefore shall be payable in regular installments rather than by special assessments.

**10.9 Priority of Liens:** Any First Lender who obtains a title to a Lot pursuant to the remedies provided in the mortgage or foreclosure of the mortgage will not be liable for such Lot's unpaid assessments and fees, late charges, fines or interest levied in connection therewith which accrue prior to the acquisition of title to such Lot by the mortgagee (except for claims for pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all Lots including the mortgaged Lot, and except for assessment liens recorded prior to the mortgage).

**10.10 Distribution of Insurance or Condemnation Proceeds:** No Owner or any other party shall have priority over any rights of First Lender pursuant to their mortgages in the case of a distribution to Lot owners of insurance proceeds or condemnation awards for losses to or taking of Common Area property.

**10.11 Restoration or Repair:** Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original plans and specifications, unless other action is approved by Eligible Mortgage Holders holding mortgages which have at least fifty-one percent (51%) of the votes of Lots subject to Eligible Holder Mortgages.

**10.12 Termination:** Any election to terminate the legal status of the Project after substantial destruction or a substantial taking in condemnation of the Project property must require the approval of Eligible Mortgage Holders holding mortgages on Lots which have at least fifty-one percent (51%) of the votes of Lots subject to Eligible Mortgage Holders.

**10.13 Reallocation of Interests:** No reallocation of interests in the Common Areas resulting from a partial condemnation or partial destruction of the Project may be effected without the prior approval of Eligible Mortgage Holders holding mortgages on all remaining Lots whether existing in whole or in part, and which have at least fifty-one percent (51%) of the votes of such remaining Lots subject to Eligible Holder Mortgages.

**10.14 Termination of Professional Management:** When professional management has been previously required by any Eligible Mortgage Holder or Eligible Insurer or Guarantor, whether

such entity became an Eligible Mortgage Holder or Eligible Insurer or Guarantor at that time or later, any decision to establish self management by the Association shall require the prior consent of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding mortgages on Lots which have at least fifty-one percent (51%) of the votes of Lots subject to Eligible Holder Mortgages.

**10.15 Payment of Taxes or Insurance by Lenders:** First Lenders may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Area and First Lenders making such payment shall be owed immediate reimbursement therefore from the Association, provided that said lender(s) have given notice to the Association prior to the making of such payment(s) and the Association has failed to pay the same.

## **ARTICLE XI GENERAL PROVISIONS**

**11.1 Invalidity of Any Provision:** Should any provision or portion hereof be declared invalid or in conflict with any law of the jurisdiction where this Project is situated, the validity of all other provisions and portions herein shall remain unaffected and in full force and effect.

**11.2 Term:** The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, approved by sixty-seven percent (67%) of the then Owners of the Lots, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to terminate this Declaration.

**11.3 Amendments:** This Declaration may be amended only by the affirmative vote by secret written ballot of Members representing a majority of the total Voting Power of the Association. However, the percentage of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be certified in writing executed and acknowledged by the President or Vice President and Secretary of the Association and recorded in the Recorder's Office of Sonoma County.

**11.4 Damage or Destruction:**

(a) **Lot Damage or Destruction:** If an improvement on any Lot other than Common Area is damaged or destroyed by fire or other casualty, the Owner of such Lot shall repair or reconstruct the improvement in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction or as authorized by the Architectural Control Committee.

(b) Common Area Damage or Destruction: If any Common Area improvement is damaged or destroyed by fire or other casualty, the improvement shall be repaired or reconstructed substantially in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction and subject to alterations or upgrades as may be approved by the Architectural Control Committee, unless either of the following occurs: (1) The cost of repair or reconstruction is more than fifty percent (50%) of the current replacement costs of all project improvements, available insurance proceeds are not sufficient to pay for at least eighty-five percent (85%) of the cost of such repairs or reconstruction, and seventy-five percent (75%) of the total Voting Power of the Association and their First Lenders vote against such repair and reconstruction; or (2) available insurance proceeds are not sufficient to substantially repair or reconstruct the improvement within a reasonable time as determined by the Board, a special assessment levied to supplement the insurance fails to receive the requisite approval (if such approval is required) as provided in section 4.8, and the Board, without the requirement of approval by the Owners, is unable to supplement the insurance by borrowing on behalf of the Association sufficient monies to enable the improvements to be substantially repaired or reconstructed within a reasonable time.

(c) Procedure for Repair of Common Area: If the Common Area improvement is to be repaired or reconstructed and the cost for repair or reconstruction is in excess of \$20,000, the Board shall designate a construction consultant and/or architect, and a general contractor for the repair or reconstruction. All insurance proceeds, Association monies allocated for repair or reconstruction, and any borrowings by the Association for the repair or reconstruction shall be deposited with a commercial lending institution experienced in the disbursement of construction loan funds (the "depository") as selected by the Board. Funds shall be disbursed in accordance with the normal construction loan practices of the depository that require as a minimum that the construction consultant or architect, and general contractor certify within ten (10) days prior to any disbursement substantially the following:

(1) That all of the work completed as of the date of such request for disbursement has been done in compliance with the approved plans and specifications;

(2) That such disbursement request represents monies which either have been paid by or on behalf of the construction consultant, the general contractor or the architect and/or are justly due to contractors, subcontractors, materialmen, engineers or other persons (whose name and address shall be stated) who have rendered or furnished certain services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the respective amounts paid or due to each of said persons in respect thereof and stating the progress of the work up to the date of said certificate;

(3) That the sum then requested to be disbursed plus all sums previously disbursed do not exceed the cost of the work insofar as actually accomplished up to the date of such certificate;

(4) That no part of the cost of the services and materials described in the foregoing paragraph A has been or is being made the basis for the disbursement of any funds in any previous or then pending application; and

(5) That the amount held by the depository, after payment of the amount requested in the pending disbursement request, will be sufficient to pay in full the costs necessary to complete the repair or reconstruction.

If the cost of repair or reconstruction is \$20,000 or less, the Board shall disburse the available funds for the repair or reconstruction under such procedures as the Board deems appropriate under the circumstances

(d) **Timing of Repair or Reconstruction:** Any repair or reconstruction, including repair or reconstruction of a residence, shall commence no later than ninety (90) days after the date of such damage or destruction, and shall be completed no later than one hundred eighty (180) days after such date, subject to delays that are beyond the control of the party responsible for making the repairs. Notwithstanding the foregoing, the Owner immediately shall take such steps as may be reasonably required to secure any hazardous conditions resulting from the damage or destruction, and to screen any unsightly views.

(e) **Common Area Not to be Repaired:** If the Common Area improvement is not repaired or reconstructed in accordance with the foregoing, all available insurance proceeds shall be disbursed among all Owners and their respective mortgagees in the same proportion that the Owners are assessed, subject to the rights of the Owners' mortgagees, after first applying the proceeds to the cost of mitigating hazardous conditions on the property, making provision for the continuance of public liability insurance to protect the interests of the Owners until the property can be sold, and complying with all other applicable requirements of governmental agencies.

**11.5 Condemnation:** If all or any part of a Lot (except the Common Area) is taken by eminent domain, the award shall be disbursed to the Owner of the Lot, subject to the rights of the Owners mortgagees. If the taking renders the Lot uninhabitable, the Owner shall be divested of any further interest in the Project, including membership in the Association, and the interests of the remaining Owners shall be adjusted accordingly. If all or any part of the Common Area is taken by eminent domain, the proceeds of condemnation shall be used to restore or replace the portion of the Common Area affected by the condemnation, if restoration or replacement is possible, and any remaining funds, after payment of any and all fees and expenses incurred by the Association relating to such condemnation, shall be distributed among the Owners in the same proportions as such Owners are assessed, subject to the rights of mortgagees. If necessary, the remaining portion of the Project shall be resurveyed to reflect such taking. The Association shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where Lots are not valued separately, by the condemning authority or by the court. The Association shall represent the Lot Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area, or part thereof.

**11.6 Owners' Compliance:** Each Owner, tenant or occupant of a Lot shall comply with the provisions of this Declaration and (to the extent they are not in conflict with the Declaration) the Articles, Bylaws and Rules, and the decisions and resolutions of the Association or the Board, as lawfully amended from time to time. Failure to comply with such provisions, decisions, or resolutions shall be grounds for an action: (1) to recover sums due, (2) for damages, (3) for injunctive relief, (4) for costs and attorneys' fees, or (5) any combination of the foregoing. All agreements and determinations lawfully made by the Association in accordance with the voting

percentages established in this Declaration, or in the Articles or the Bylaws, shall be deemed to be binding on all Lot Owners, their successors and assigns.

**11.7 Notice:** Any notice permitted or required by the Project Documents may be delivered personally or by mail. If delivery is by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, first class or registered, postage prepaid, addressed to the person to be notified at the current address given by such person to the Association or addressed to the Lot of such person if no address has been given to the Association. Any notice may be given by electronic mail, facsimile or other electronic means if the Owner has approved receipt of notices by such means and provided an email address, facsimile number or other electronic number or address to the Association.

**11.8 Fair Housing:** No Owner shall, either directly or indirectly, forbid or restrict the conveyance, encumbrance, leasing, or mortgaging or occupancy of his Lot or any other Lot to any person of a specified race, sex, marital status, color, religion, ancestry, physical or mental disability or national origin.

**11.9 Rights of the County of Sonoma:** The County of Sonoma ("the County") is a third party beneficiary of this Declaration within the meaning of Civil Code §1559, and as such, will have the rights described in this section 11.9.

If the Association fails to properly perform its maintenance obligations as described in section 5.1A, or in the event of any violation of the restrictions described in sections 2.2, 2.3B, Article VIII, and 7. 14, the County shall have the right, but not the duty, to take such action as it deems necessary to compel compliance with the maintenance obligations or restrictions described above. The County first shall give the Association sixty (60) days prior written notice to cure the breach. If the Association fails to take steps satisfactory to the County within this sixty (60) day period, the County shall have the right to do any or all of the following

- (a) Do or perform any act the Association might do or perform under the provisions of this Declaration which shall be necessary to remedy the breach, including but not limited to: (i) performance of the necessary maintenance and (ii) levy and collect the cost of doing such maintenance in accordance with the assessment procedures described in this Declaration; or
- (b) Take all legal steps necessary to compel performance or to collect any assessments as the County may determine necessary in each individual case.

If the County exercises any of the remedies described herein, it shall be entitled to recover its reasonable costs and expenses, including witness, expert and attorneys' fees. In addition, if any sums are recovered from a suit or foreclosure sale or judicial foreclosure proceedings, the sum shall be applied first to cover the County's cost of suit or foreclosure, including but not limited to filing fees, title company charges, miscellaneous foreclosure charges, and reasonable attorneys' fees. The balance of any sum so recovered shall then be applied against any amount which is then lawfully owing to the County, other public entities or the Association. All remaining sums shall be paid to the Owner of the property foreclosed on as that Owner's interest may appear. Failure of the County to take any action as described herein, shall in no event be deemed a waiver of the right to do so thereafter.

Any lien established by the County hereunder shall be subject and subordinate to and shall not affect the rights of the holder of an indebtedness secured by any mortgage or deed of trust on

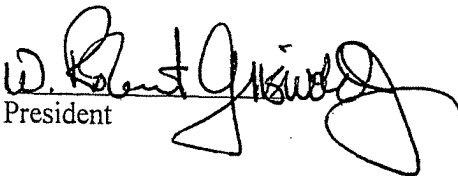
such interest made in good faith and for value which mortgage or deed of trust has been recorded prior to the recording of a notice of delinquency by the County. No foreclosure of any such mortgage or deed of trust shall impair the County's right to enforce the provisions of this section as to future failures to maintain the Common Area or to comply with the descriptions described in this section on the purchaser at such foreclosure sale or others.

Notwithstanding anything herein to the contrary, sections 2.2, 2.3B, 5.1A, Article VIII, 7.14, and this 11.9 cannot be amended or rescinded without prior written consent of the County as evidenced by a resolution of the Board of Supervisors or such other approval method as may be authorized by the Board of Supervisors.

**11.10 Construction:** The singular and plural number, and the masculine, feminine and neuter gender shall each include the other where the context requires.

IN WITNESS THEREOF, the undersigned, being the Association President herein, has executed this Declaration this 16 day of JUNE, 2009,

CHANTARELLE HOMEOWNERS ASSOCIATION,  
a California Non-Profit, Mutual Benefit Corporation,

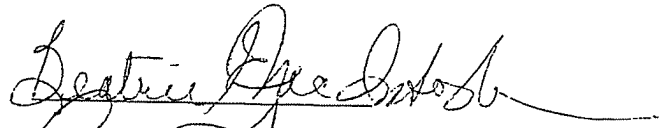
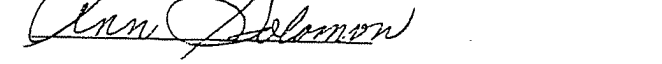
By:   
It's President

**Certification**

On June 16, 2009, more than a majority of the Owners of Lots within the Project affirmatively voted by secret written ballot to amend and restate the Original Declaration with this Declaration in accordance with the procedures for amendment set forth in the Original Declaration. Each of the undersigned officers declares under penalty of perjury under the laws of the State of California that he or she has read this certification and knows the contents thereof and that the same is true of his or her own knowledge.

Dated: June 16, 2009

Dated: June 16, 2009

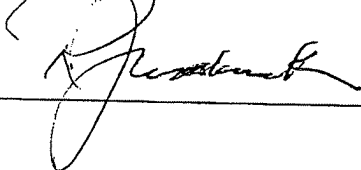


STATE OF CALIFORNIA )  
( ss.  
COUNTY OF Sonoma )

On June 16 \_\_, 2009, before me, R.J. Makaruk, Notary Public, personally appeared W. Robert Griswold, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

  
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