

property that has been damaged or destroyed through usage or through hazard or catastrophe such that it is no longer useable or serviceable in its current condition.

1.33 Residence. "Residence" shall mean a residential structure located upon a Lot which is designed for human residential use and occupancy.

1.34 Resident. "Resident" shall mean any person who resides on a Lot within the Development whether or not such person is an Owner as defined in Section 1.28 above.

1.35 Rules. "Rules" shall mean the rules and regulations governing the use, occupancy, management, administration, and operation of the Development or any part thereof as adopted and published by the Board of Directors from time to time.

1.36 Simple Majority. "Simple Majority" shall mean a majority of a quorum.

1.37 Special Assessment. "Special Assessment" shall have the meaning set forth in Section 8.7.

1.38 Subdivision Map. "Subdivision Map" shall be that certain "Final Map of Siena at Green Valley, which said map was filed on October 28, 2003, in Book 77 of Maps at Page 86, in the Official Records of Solano County.

1.39 Total Voting Power. "Total Voting Power" shall mean the total number of votes of all Members entitled to vote at a particular time, calculated on the basis of one vote for each Lot, excluding any Lot as to which an Owner is not then a Member in Good Standing.

ARTICLE 2

HOMEOWNERS ASSOCIATION

2.1 Management and Operation. The Association shall manage and operate the Development in accordance with the Governing Documents and California law. The Association shall have all of the powers set forth in the Governing Documents together with the general power to do any and all things that a nonprofit mutual benefit corporation may lawfully do under California law, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Governing Documents.

2.2 Membership. Every Owner of a Lot within the Development shall be a Member of the Association and shall remain a Member thereof until such

time as his or her Lot ownership ceases for any reason. Membership shall be appurtenant to and may not be separated from ownership of a Lot and shall not be transferred, encumbered, pledged, alienated, or otherwise hypothecated in any way, except in connection with the sale or encumbrance of the Lot to which it is appurtenant.

2.3 Voting. Only Members in Good Standing shall be entitled to vote, and only one vote shall be cast for each Lot, as more particularly set forth in the Bylaws.

2.4 Board of Directors. The affairs of the Association shall be managed by or under the direction of a Board of Directors consisting of five (5) Resident Owners elected by Members in Good Standing and who are themselves Members in Good Standing. The Members shall elect Directors as provided in the Bylaws.

2.5 Association Rules. Subject to *Civil Code* section 1357.100 et seq., the Board of Directors shall have the power and the authority to establish, promulgate, amend, repeal, and enforce such Rules as the Board deems necessary for the management and operation of the Development and the conduct of business and affairs of the Association.

2.6 Assessments. The Association shall have the power and duty to levy and collect Assessments, as more particularly set forth in Article 8 of this Declaration.

2.7 Insurance. The Board shall obtain and maintain the insurance policies as provided below unless the Board determines that the cost is so unreasonable as to make maintenance of the insurance not in the best interest of the Association. If the Board is unable to purchase a policy or if the Board believes that the cost of the policy is unreasonable, the Board may call a special meeting of Members to determine what action to take.

2.7.1 General Provisions and Limitations. All insurance policies shall be subject to and, where applicable, shall contain the following provisions and limitations:

(a) Named Insured. Unless otherwise provided in this Section, the named insured shall be the Association or its authorized representative, as a trustee for the Owners. However, all policies shall be for the benefit of Owners and their Mortgagees, as their interests may appear.

(b) Authority to Negotiate. Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board;

provided, however, that no Mortgagee having an interest in such losses may be prohibited from participating in any settlement negotiations related thereto.

(c) Contribution. In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by Owners or their Mortgagees.

(d) Subrogation. A waiver of subrogation by the insurer as to any claims against the Board, the manager, the Owners and their respective servants, agents and guests.

(e) Primary Coverage. That the policy will be primary, even if an Owner has other insurance which covers the same loss.

(f) Cancellation/Modification. That no policy may be canceled or substantially modified without at least ten (10) days' prior written notice to the Association.

(g) Endorsements. An agreed amount endorsement, if the policy contains a coinsurance clause; a guaranteed replacement cost or replacement cost endorsement; and an inflation guard endorsement.

(h) Term. The period of each policy shall not exceed three (3) years and must permit short rate cancellation by the insureds.

2.7.2 Types of Coverage. Unless the Board determines otherwise, the following policies shall be obtained:

(a) Property Insurance. A policy of property insurance for all insurable Common Area improvements, including fixtures and building service equipment, against loss or damage by fire or other casualty, in an amount equal to the full replacement cost (without respect to depreciation) of all insurable Common Area improvements. A replacement cost endorsement shall be part of the policy.

(b) Liability Insurance. A combined single limit policy of liability insurance covering the Common Area and all damage or injury caused by the negligence of the Association, the Board or any of its agents, or the Owners against any liability to the public or to any Owner incident to the use of or resulting from any accident or intentional or unintentional act of an Owner or a third party occurring in or about any Common Area, with limits set by the Board but in no event less than those set forth in *Civil Code* section 1365.9. If available, each policy shall contain a cross liability endorsement in which the

rights of the named insured shall not be prejudiced with respect to any action by one named insured against another named insured.

(c) Worker's Compensation. Worker's compensation insurance to the extent necessary to comply with all applicable laws of the State of California or the regulations of any governmental body or authority having jurisdiction over the Development.

(d) Fidelity Bond. A fidelity bond naming the Board, the Owners, the Association and such other persons as the Board may designate as obligees, in an amount which shall be determined by the Board. The fidelity bond shall contain a waiver of any defense based on the exclusion of persons serving without compensation.

(e) Directors and Officers. Errors and omissions insurance covering individual liability of Directors and Officers for their negligent acts or omissions while acting in their capacities as Directors and Officers in an amount equal to at least the minimum amount specified in *Civil Code* section 1365.7(a)(4).

(f) Other Insurance. The Association may obtain other types of insurance as the Board determines to be necessary to fully protect the interests of the Owners.

2.7.3 Deductible. Owners shall be responsible to pay the deductible on any Association insurance applicable to a loss resulting from the conduct or negligence of the Owner or from any loss which emanates from an Owner's Lot which damages Common Area or the Lot and improvements of another Owner.

2.7.4 Insurance by Owner. Each Owner, at that Owner's sole cost and expense, shall obtain and maintain a property insurance policy which provides coverage against losses caused by fire and all other hazards normally covered under a "special form" policy or its equivalent, in an amount to cover the full replacement cost of the insurable improvements on the Lot, the Residence interior, and personal property contained therein. The policy shall also provide liability coverage in such amounts and for such acts or omissions as are normally and customarily included in homeowners property insurance coverage of the types required herein. However, no Owner shall be entitled to maintain insurance coverage in a manner so as to decrease the amount which the Association, on behalf of all Owners and their Mortgagees, may realize under any insurance policy which the Association may have in effect at any time. The Board may periodically require each Owner to provide a certificate from the

Owner's insurer certifying that the required insurance under this Section 2.7.4 has been procured and is in full force and effect.

2.7.5 Claims Submission. No Owner may make a claim to or put either the agent or any insurance company providing insurance to the Association on notice of any damages or claim relating to Association-maintained insurance. Claims may only be made by the Association.

2.7.6 Notice of Damage to Lot or Residence. All Owners must notify the Association of any damage sustained to their Lot or Residence to which Association-maintained insurance may apply within 24 hours of the time when the Owner knew or should have known of the damage. Any reduction in insurance coverage available or premium increase resulting from the failure to provide notice of damage as required herein shall be the responsibility of the subject Member and not the Association and may be subject to a Reimbursement Assessment.

2.7.7 Annual Review. The Board shall review the adequacy of all insurance, including the amount of liability coverage and the amount of property damage coverage, at least once every year. At least once every three (3) years, the review shall include a replacement cost appraisal of all insurable Common Area improvements without respect to depreciation. The Board shall adjust the policies to provide the amounts and types of coverage and protection that are customarily carried by prudent owners of similar property in the area in which the Development is situated.

2.7.8 Annual Notice to Members. The Association shall provide a summary of all existing Association policies of property, general liability, earthquake, flood and fidelity insurance, as required by *Civil Code* section 1365.

2.8 Acquisition of Property. The Board, acting on behalf of the Association, shall have the power to acquire (by gift, purchase, or otherwise), own, hold, improve, build upon, operate, and maintain real or personal property in connection with the affairs of the Association; provided, however, that in any fiscal year acquisitions shall not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year or five thousand dollars (\$5,000), whichever is more, except upon the approval of a majority of the Total Voting Power of the Association.

2.9 Capital Improvements. The Board of Directors shall have the power and authority to provide for the construction, reconstruction, installation, or acquisition of capital improvements upon the Common Area, provided that in any fiscal year expenditures for capital improvements shall not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year or five

thousand dollars (\$5,000), whichever is more, except upon the approval of a majority of the Total Voting Power of the Association.

2.10 Sale or Transfer of Association Property. Except as otherwise provided herein or by law, the Board of Directors shall not in any fiscal year sell, lease, grant easements, or transfer property owned by the Association having a value in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without approval of a majority of the Total Voting Power of the Association.

2.11 Easements to Owners. The Board shall have the power to grant and convey easements, licenses for use and rights of way in, over, or under the Common Area or any portion thereof to Lot Owners, for such purposes as the Board deems to be appropriate and not inconsistent with the purposes and interests of the Association, subject to the limitations set forth in the Governing Documents. If the Association acquires fee title to any easement right over Common Area, and an exception as set forth in *Civil Code* section 1363.07 does not apply, the approval of a majority of quorum of the members (a "Simple Majority") shall be required before the Board may grant exclusive use of any portion of that Common Area to any Lot Owner.

2.12 Access. The Board and its duly authorized agents or representatives shall have the right, after reasonable notice to the Owner thereof, to enter any Lot for the purpose of performing the maintenance authorized herein or for any other purpose reasonably related to the performance by the Association or the Board of their responsibilities.

ARTICLE 3

OWNERSHIP RIGHTS AND EASEMENTS

3.1 Common Area. Subject to the provisions of the Declaration, the Common Area shall be held, maintained and used to meet the common interests of the Members of the Association and their families, tenants, and guests as provided in the Governing Documents, and there shall be no use of the Common Area except by such persons.

3.2 Owners' Non-Exclusive Easements of Enjoyment. Every Owner of a Lot shall have a non-exclusive easement of use of and enjoyment in, to, and throughout the Common Area of the Development for ingress, egress, and support over and through the Common Area. Each such non-exclusive easement shall be appurtenant to and pass with the title to every Lot, subject to the following rights and restrictions:

**RECORDING REQUESTED BY,
AND WHEN RECORDED, MAIL TO:**

Recorded in Official Records,
Solano County
Doc#: 200900029807
4/22/2009 9:46 AM

**HUGHES GILL COCHRANE, P.C.
Attn: Michael J. Hughes, Esq.
1600 S. Main Street, Suite 215
Walnut Creek, California 94596**

(Space Above For Recorder's Use)

**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
SIENA OWNERS' ASSOCIATION**