

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:

(a) The right of the Board of Directors to establish and enforce reasonable rules and regulations governing the use of the Common Area and facilities thereon;

(b) The right of the Board to charge reasonable admission and other fees for the use of any facilities situated upon the Common Area;

(c) The right of the Board to suspend an Owner's rights and privileges as a Member, including voting rights and the right to use the recreational facilities, for any period during which any Assessment against such Owner's Lot remains unpaid and/or for infraction of the Governing Documents of the Association;

(d) The right of the Board, as set forth in Section 3.10, to grant easements and rights of way in, on, over, or under the Common Area subject to the limitations set forth in Section 2.11 and *Civil Code* section 1363.07 and any successor statute thereto;

(e) The right of the Board to mortgage, pledge, encumber, or otherwise hypothecate the Common Area and facilities thereon as security for money borrowed by the Association; and

(f) The right of the Association or its authorized agents, as provided in this Declaration, to perform its obligations under this Declaration, including obligations with respect to construction, maintenance, repair, or replacement for the benefit of the Common Area or the Owners in common.

3.3 Acquisition of Ownership Interest. Any person who acquires title to a Lot or any ownership interest within the Development must notify the Association of his or her acquisition of an ownership interest. Notice must be provided in writing, to the Association's managing agent, within thirty (30) days of the person's acquisition of an ownership interest.

3.4 Delegation of Membership Rights. Any Owner may delegate his or her rights of use and enjoyment, including easements, in the Development to the members of his household, tenants, guests and invitees, subject to the terms of the Governing Documents. Each Owner shall notify the Association's managing agent of the names of any tenants of such Owner's Lot. Each Owner and/or tenant shall also notify the Association's managing agent of the names of all members of his or her household to whom such Owner or tenant has delegated any rights of enjoyment in the Development as provided herein and the relationship which each such person bears to such Owner or tenant. Any rights of enjoyment delegated pursuant to this Section 3.4 are subject to suspension to

the same extent that rights of Owners are subject to suspension as provided in the Governing Documents. Notwithstanding the above, a leasing or renting Owner shall be deemed to have delegated to tenants all rights of use and enjoyment of Common Area facilities. The renting and leasing of Lots shall be subject to the provisions of Article 5 of this Declaration.

3.5 Common Area Construction. Except as may be authorized by the Board, no person or entity, other than the Association or its duly-authorized agents, shall construct, reconstruct, refinish, alter, or maintain any improvement upon the Common Area, or shall make or create any excavation or fill upon the Common Area, or shall change the natural or existing drainage of the Common Area, or shall plant, remove, or destroy any seed, plant material, tree, shrub, or other vegetation upon the Common Area.

3.6 Mechanic's Liens. In the event there shall be filed against the Common Area a Notice of Mechanic's Lien for, or purporting to be for, labor or materials alleged to have been furnished or delivered for any Owner within the Development or his or her Lot, such Owner shall forthwith cause such lien to be discharged by payment, bond, or otherwise. If the Owner fails to cause the lien to be discharged, the Board may send written notice to the Owner specifying that unless the Owner causes the lien to be discharged within five (5) days from the date of such notice, the Board may cause the lien to be discharged. Within such five (5) day period, the Owner shall be permitted a hearing before the Board regarding the validity of such lien and any offsets or defenses thereto. At that time, the Board shall determine whether the lien adversely and improperly affects and encumbers the rights and interests of the Association or the other Owners. If the Board of Directors determines that the lien does adversely and improperly affect and encumber such rights and interests and that adequate protection of such rights and interests has not been provided, the Board may cause the lien to be discharged by payment, bond, or otherwise. The Board shall have the right to levy a Reimbursement Assessment against the subject Owner for all amounts paid by the Association together with interest thereon at the legal rate and all costs and expenses incurred in connection with discharging a lien, including reasonable attorneys' fees.

3.7 Easements in General. In addition to all easements reserved and granted on the Subdivision Map(s) and the Private Storm Drain Easement and Maintenance Agreement (recorded on July 6, 2007 in the Solano County Recorder's Office as document #200700074934), there are hereby specifically reserved and granted for the benefit of the Lots and Lot Owners in common and for each Lot and Lot Owner severally, and for the Association, as their respective interests shall obtain, the easements, reciprocal negative easements, secondary easements and rights of way as particularly identified in this Article 3.

3.8 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Lot and such portion or portions of the Common Area adjacent thereto and/or as between adjacent Lots due to the unwillful placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon in accordance with the terms of the Declaration; provided, however, that in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, a tenant, or the Association.

In the event that a structure on any Lot is partially or totally destroyed and then repaired or rebuilt in accordance with the provisions of the Declaration, the Owners of each Lot agree that minor encroachments over adjoining Lots shall be permitted and there shall be easements for the maintenance of said encroachments so long as they shall exist. In addition, each Lot and its Owner(s) are hereby declared to have an easement for retaining walls, footings, and all other encroachments as originally constructed over each adjoining Lot and/or Common Area for the maintenance thereof, together with an easement for the drainage of water from gutters and all other encroachments over each such adjoining Lot and/or Common Area.

3.9 Utility Easements. Easements over and under the Development or any portion thereof for the installation, repair, maintenance, and replacement of electric, telephone, water, gas, and sanitary sewer lines and facilities, heating and air-conditioning facilities, cable or master television antenna lines, drainage facilities, walkways, and landscaping as may be hereafter required or needed to service the Development, are reserved by and shall exist in favor of the Association, together with the right to grant and transfer the same. The Association shall maintain all utility installations located in the Common Area except for those installations maintained by utility companies, public, private, or municipal. The Association shall pay all charges for utilities supplied to the Development except those metered or charged separately to the Lots.

3.10 Easements Granted by the Board. The Board shall have the power to grant and convey to any person or entity easements and rights of way, in, on, over, or under the Common Area for the purpose of constructing, erecting, operating, or maintaining thereon, therein, or thereunder overhead or underground lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkler systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities, and for any other purposes deemed by the Board to be appropriate and not inconsistent with the purposes and interests of the Association; provided, however, that no such easements may be granted if such easement would interfere with the use, occupancy, or enjoyment by an Owner or Resident of any Lot and any existing

exclusive easements over Common Area appurtenant thereto, if any, without the consent of the Owner(s) affected.

3.11 Partition Prohibited. There shall be no judicial partition of the Development, or any part thereof, nor shall any Owner or any person acquiring any interest in the Development or any part thereof seek any judicial partition therefore; provided, however, that if any Lot is owned by two or more co-tenants as tenants in common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition by sale as between such co-tenants.

3.12 Party Fences. The following provisions shall govern Party Fences:

3.12.1 General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding Party Fences and liability for property damage due to negligence of willful acts or omissions shall apply thereto.

3.12.2 Sharing of Repair and Maintenance. The cost of reasonable maintenance and repair of a Party Fence shall be shared by the Owners who make use of the wall/fence in proportion to such use.

3.12.3 Destruction by Fire or Other Casualty. If a Party Fence is destroyed or damaged by fire or other casualty, any Owner who has used the wall or fence may restore it, and if the other Owners thereafter make use of the wall or fence, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

3.12.4 Weatherproofing. Notwithstanding any other provision of this Section 3.12, an Owner who, by his or her negligent or willful act, causes a Party Fence to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

3.12.5 Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section 3.12 shall be appurtenant to and run with the land and shall pass to such Owner's successors in title.

3.12.6 Arbitration. If any dispute arises concerning a Party Fence, or under the provisions of this Section 3.12, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator. The decision shall be by a majority of all the arbitrators and shall be binding.

3.12.7 Reciprocal Non-Exclusive Easement. Each Owner of a Lot containing a Party Fence shall have a reciprocal non-exclusive easement over and across such portions of the contiguous Lot as are necessary to Maintain the Party Fence.

3.13 Courts. Each of the groups of Lots shown on Exhibit C share a Court, as shown in the table therein. The Owners of each Lot in each group were granted non-exclusive appurtenant easements over the Court on each other Lot in the same group by the 2004 Declaration and the Declarations of Annexation for Phases 2 and 3, which recording information is included in the Recitals section of this Declaration. Pursuant to the non-exclusive easement rights created in those documents, each Court may be used for the purposes of (i) ingress to and egress from the Lots, (ii) installing, operating or Maintaining utilities which serve any or all of the Lots and which are not Maintained by the Association or publicly Maintained, (iii) installing, operating and Maintaining storm drainage Improvements and irrigation which serve any or all of the Lots, (iv) installing, operating and Maintaining the Court surface, rolled curbs and gutters and (v) parking, subject to the provisions of Section 4.18, 4.19, 4.20, 4.21, and any Rules duly adopted by the Board of Directors pursuant to the authority granted to it by the Declaration. Improvements within each Court shall be Maintained as provided in Article 6 of this Declaration.

3.14 Landscape Maintenance Areas. The Association shall have a non-exclusive easement over the Landscape Maintenance Areas to Maintain and irrigate the Landscape Maintenance Areas.

3.15 Entry Monumentation. The Association shall have an exclusive easement over those portions of any Lot which contain Entry Monumentation installed by the original Declarant.

3.16 Mailboxes. Each owner whose mailbox is not located on that Owner's Lot shall have a non-exclusive easement to use the mailbox over those portions of the Project on which the mailbox is located.

3.17 Storm Drains. There are reserved and granted for the benefit of each Lot and the Common Area, over, under, across and through the Project, except Residences, non-exclusive easements for surface and subsurface storm drains and the flow of water in accordance with natural drainage patterns and the drainage patterns and Improvements installed or constructed by Declarant. Additionally, this Declaration and each Lot and the Common Area shall be subject to all easements granted by Declarant to install and Maintain drainage Improvements necessary for the development of the Project.

**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**

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**(Space Above For Recorder's Use)**

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