

conduct or presence of the occupants of the Lot, including but not limited to attorneys' fees, any claims for consequential damages, and any claims arising or alleged to arise out of the enforcement or non-enforcement by the Association of the Governing Document with respect to such occupants. Any amounts owed pursuant to this Section 5.6 may be assessed as a Reimbursement Assessment.

5.7 Owner Prohibited From Using Common Facilities While Lot Rented. Any Owner who leases or rents his or her Lot and does not still reside in the Development shall not be entitled to use and enjoy any common facility during the period the Lot is occupied by a tenant or tenants.

5.8 Time-Share Arrangements Prohibited. No Lot or Lots shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time-sharing agreement, plan, program or arrangement, including, without limitation, any so-called "vacation license," "travel club," "extended vacation," or other membership or time interval ownership arrangement. The term "time-sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess any Lot or Lots in the Development rotates among various persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like-kind use privileges, according to a fixed or floating interval or period of time. This section shall not be construed to limit the personal use of any Lot in the Development by any Owner or his or her or its social or familial guests.

ARTICLE 6

MAINTENANCE OF PROPERTY

6.1 Association Responsibility.

6.1.1 Common Area. The Association shall provide maintenance, repair, and replacement of the Common Area and all facilities, improvements, and landscaping thereon including private/common streets, curbs, street gutters, public sidewalks, public pathways, development entry gate, Common Area landscape water systems and electrical systems, and Common Area landscaping (up to but not including any fence or wall located on a Lot) including Development perimeter fences that do not enclose individual Lots, and utility facilities (except for those utility facilities which are maintained by public or private utility companies or agencies) or lines located outside the boundaries of a separate interest and serving more than one Lot, keeping such property in good condition and repair.

6.1.2 Maintenance of Lots. The Association shall provide maintenance, repair and replacement upon each Lot which is subject to

assessment as follows: maintain, repair and replace all Courts and sweep as necessary, and maintain the Landscape Maintenance Area, Entry Monumentation, Mailboxes (and their support structures), and all sidewalks within the Project that provide pedestrian circulation within the Project (but not any other walkways on an Owner's Lot.

6.1.3 Storm Drainage. If a single drainage Improvement serves two (2) adjoining Lots and the drainage Improvement is situated approximately along the common boundary of those Lots, each Owner shall clear and otherwise Maintain (a) the portions of the drainage Improvement which exclusively serve that Owner's Lot and (b) all portions of the drainage Improvement which are situated within the area the Owner is responsible for Maintaining, irrespective of the fact that the drainage Improvement is used by two (or more) Lots. Each Owner shall clean and otherwise Maintain all other drainage Improvements which serve only that Lot up to and including the point of connection into the portions of the storm drain system which serve other Lots in the Project, irrespective of whether the drainage Improvement is located on Common Area or one (1) or more Lots. The Association shall Maintain all drainage Improvements from that point of connection up to the point of connection to the publicly Maintained drainage system. All inlets, catch basins and other drainage Improvements shall be cleared and otherwise Maintained so that the Improvements function as they were designed.

6.1.4 Utility Lines Serving A Single Lot. Each Owner shall Maintain those portions of all utility lines which (i) are not Maintained by the public or a quasi-public entity or utility company and (ii) serve only that Owner's Lot, irrespective of whether the utility line is located on Common Area or on one (1) or more Lots.

6.1.5 Utility Lines Serving More Than One Lot. The Association shall Maintain those portions of all utility lines which (i) are not Maintained by the public or a quasi-public entity or utility company and (ii) serve more than one (1) Lot, irrespective of whether the utility line is located on Common Area or on one (1) or more Lots.

6.1.6 Authority for Entry of Lot. The Association or its agents may enter any Lot whenever such entry is necessary, in the Board's sole discretion, in connection with the performance of any maintenance, repair, construction, or replacement for which the Association is responsible or which it is authorized to perform. Such entry shall be made with as little inconvenience to the Residents as practicable and only upon reasonable advance written notice of not less than twenty-four (24) hours, except in emergency situations.

6.1.7 Owner Modifications. In the event an Owner or Resident has modified or added on to a Residence or to a component that would otherwise

be the maintenance responsibility of the Association and which increases the maintenance, repair and/or replacement cost to the Association, the Owner shall reimburse the Association for the increased cost, which may be levied as a Reimbursement Assessment. The Association may condition approval of a modification on an Owner assuming responsibility for increased maintenance costs associated with the modification. However, the Owner and his or her successors shall be responsible for payment of increased costs even in the absence of an express assumption of responsibility.

6.1.8 Association Liability. Except as specifically provided in this Section 6.1, the Association shall not be responsible or liable for any maintenance, repair, or replacement of a Lot or any improvement thereon, except to the extent that the need for such maintenance, repair or replacement results from the negligence or fault of the Association, its employees, contractors, or agents.

6.2 Repair of Damage Caused by Wood-Destroying Pests or Organisms. The Association shall bear the costs for the repair and maintenance of Common Area damaged by the presence of wood destroying pests or organisms. However, if any of the maintenance and repair work referred to in this Section 6.2 is necessitated by the willful or negligent acts of the Owner, members of his or her household, guests, tenants or invitees, the costs of such maintenance or repairs shall be charged to, and paid by, Owner as a Reimbursement Assessment.

6.3 Owner Responsibility.

6.3.1 Maintenance of Lots. Except to the extent that maintenance of any improvement on a Lot is expressly and clearly made the responsibility of the Association, each Owner shall be responsible for the maintenance, repair and replacement of his or her Lot and all improvements thereon, including but not limited to the driveway, private walkways providing ingress and egress to each Lot and Residence, wood and stone walls and fences within or around each Lot (except perimeter fencing, the maintenance of which is expressly made the responsibility of the Association), and external lighting fixtures controlled by electricity from each Residence and not by the Association Common Area wiring.

6.3.2 Maintenance of Utility Lines Serving Lot. Each Owner shall be responsible for providing maintenance, repair and replacement of sewer, water, electrical and other utility lines and fixtures that exclusively serve his or her Lot, even if located outside of the Lot. If the repair to any utility lines or fixtures impacts or affects Common Area, the Owner must obtain the written approval of the Board before proceeding with repairs. The provisions of this Section 6.3.2 shall not be construed to permit any interference with or damage to the structural integrity of any building.

6.3.3 Compliance with Architectural Review Guidelines. An Owner's right and responsibility for maintaining, repairing or replacing any portions of his or her Lot shall be subject to any applicable provisions of the Governing Documents relating to landscaping and architectural control, including Article 7.

6.3.4 Board Discretion. The Board shall have the absolute discretion to determine whether any maintenance, repair, or replacement, which is the responsibility of an Owner, is necessary to correct a safety hazard for the neighbor(s) adjacent to an Owner's Lot or to preserve the appearance and value of the property within the Development or any portion thereof, and may notify an Owner of the work the Board deems necessary. In the event an Owner fails to perform such work within sixty (60) days after notification by the Board to the Owner the Board may, after written notice to the Owner, and the opportunity of a hearing before the Board, cause such work to be done and charge the cost thereof to the Owner as a Reimbursement Assessment. In the case of an emergency, or if the Owner's failure to perform work presents a safety hazard, the Board may cause such work to be done immediately, without notice to the Owner, and charge the cost thereof to the Owner as a Reimbursement Assessment.

6.3.5 Owner Liability. In the event the need for any maintenance, repair, or replacement of a component which is otherwise Association responsibility is caused by the willful or negligent act or omission of an Owner or members of an Owner's household, tenants, guests, invitees, or household pets, the cost of such maintenance, repair, or replacement, including the cost of materials, labor, supplies, and services, shall be charged to, and paid by, such Owner in the form of a Reimbursement Assessment.

6.4 Maintaining Fences and Walls. If a fence is attached to the top of a wall, that wall shall be deemed to be part of the fence for purposes of this Section.

6.4.1 Party Fences. The Owners of a Party Fence shall Maintain it and shall share the costs of Maintaining it equally except that all costs of Maintaining the Party Fence which are a result of the negligent or willful action of an Owner shall be borne by that Owner. An Owner who Maintains a Party Fence is entitled to and has a right of contribution from the other Owners of the Party Fence which shall be appurtenant to the Lot and shall pass to the successor(s) in interest of the Owner entitled to contribution.

6.4.2 Perimeter Masonry Wall. The masonry wall which surrounds the Project shall be Maintained as follows: (a) the Association shall Maintain both sides and provide structural repair and replacement of those portions of the wall which are on Common Area; (b) the Owner of each Lot on which a portion of

the masonry wall is situated shall Maintain the interior surface of the wall (that which faces the Residence on the Lot); (c) the City shall Maintain the exterior surface of the wall (that which faces public right of way) and provide structural repair and replacement of the wall.

6.4.3 Other Fences and Walls. Except as otherwise provided herein, all other fences and walls in the Project shall be Maintained as follows: (a) the Owner of each Lot shall Maintain the surface of the fence or wall which faces the Residence on the Lot; (b) the Association shall Maintain the surface of the fence or wall which faces Common Area and (c) the Association shall provide structural repair and replacement of the fence or wall.

ARTICLE 7

ARCHITECTURAL CONTROL COMMITTEE

7.1 Submission of Plans and Specifications. Except for improvements made or constructed by or on behalf of the Association, no exterior addition or modification of any kind, including fence, wall, obstruction, balcony, screen, patio cover, tent, awning, carport cover, improvement or other structure of any kind or any landscaping, shall be commenced, erected, painted or maintained within the Development, nor shall any exterior addition to or change or alteration thereto be made without prior written approval by the Architectural Control Committee ("ACC") or, if there is no Committee, the Board as provided in this Article 7.

7.2 Establishment of Architectural Control Committee.

7.2.1 Members. The ACC shall be composed of three (3) Members in Good Standing appointed by the Board of Directors. The Board shall also appoint one alternate member who may be designated by the ACC to act as a member of the ACC in the absence or incapacity of any ACC member. ACC members shall serve two-year terms subject to the Board's power to remove any ACC member and to appoint his or her successor. Neither the members of the ACC nor its designated representatives shall be entitled to any compensation for service performed pursuant hereto.

7.2.2 Vacancies. In the event of a vacancy on the ACC, the Board shall have the full authority appoint a new member. If at any time there shall not be a duly-constituted Architectural Control Committee, the Board shall exercise the functions of the ACC in accordance with the terms of this Article 7.

7.3 Duties. It shall be the duty of the ACC to consider and act upon proposals or plans submitted to it pursuant to the terms of this Article 7, to perform other duties delegated to it by the Board, to carry out all other duties

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(Space Above For Recorder's Use)

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