

plans, drawings, and specifications; (iii) the development of any property within the Development; or (iv) the execution and filing of an estoppel certificate pursuant to Section 7.15, whether or not the facts therein are correct; provided, however, that the ACC (or any member thereof) has acted in good faith on the basis of such information as may be possessed by it (or such ACC member). Without in any way limiting the generality of the foregoing, the ACC (or any member thereof) may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the ACC. Every purchaser, by acquiring title to a Lot, agrees not to bring any action or suit against the Board or the ACC (or any member thereof) seeking to recover any such damages.

7.17 Compliance With Governmental Requirements. The application to the Association and the review and approval of any proposals, plans, or other submittals shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements, the responsibility for which lies solely with the respective Owner, nor shall it constitute the assumption of any responsibility by or impose any liability on the Board, the ACC, or their members as to the accuracy, efficacy, or sufficiency thereof. The obtaining of a permit or other approval of a government agency shall not be a substitute for nor constitute compliance with the requirements of this Article 7.

## **ARTICLE 8**

### **ASSESSMENTS AND LIENS**

8.1 Covenant of Owner. Each Owner of a Lot within the Development, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, shall be deemed to have covenanted and agreed to pay to the Association: (i) Annual Assessments; (ii) Special Assessments; and (iii) Reimbursement Assessments levied by the Association as hereinafter provided, together with all Additional Charges.

8.1.1 Association's Power to Collect. Such deed or conveyance shall be deemed to vest in the Association the right and power to initiate all actions and procedures as the Board shall deem necessary or appropriate for the collection of such Assessments and Additional Charges and for the enforcement of the liens hereinafter provided for.

8.1.2 Each Assessment Is a Separate Obligation. Each Assessment levied by the Association under this Article 8, together with all Additional Charges, shall be a separate, distinct, and personal debt and obligation of the Owner against whom it is assessed, and shall bind his or her heirs, devisees, personal representatives, successors, and assigns.

8.1.3 Obligation Runs With the Land. Such obligation to pay Assessments and Additional Charges and the right and power of the Association to initiate all actions and procedures for collection shall run with the land, so that each successive Owner or Owners of record of any Lot within the Development shall, in turn, become liable to pay all such Assessments and Additional Charges assessed during the time he or she is record Owner of such Lot.

8.1.4 Owner's Liability After Transfer. After an Owner transfers fee title to any Lot he or she owns, he or she shall not be liable for any Assessments levied thereafter with respect to such Lot. Such Owner shall remain personally liable, however, for all unpaid amounts due and owing at the time of transfer, together with Additional Charges accruing until time of collection. The seller of any Lot shall continue to be liable for all Assessments and Additional Charges until a conveyance by deed of such Lot is recorded in the Office of the County Recorder of Solano County.

8.2 Creation of Lien. Each Assessment levied by the Association pursuant to this Declaration, together with all Additional Charges, shall be a charge upon the land and upon levy shall be secured by a continuing lien upon the property against which such Assessment is levied. The Association shall have a separate lien and a separate lien is hereby created upon each Lot to secure the payment of any such Assessments and Additional Charges as may be levied under this Declaration.

8.2.1 Continuing Lien. The lien provided for herein shall continue to secure all Assessments and Additional Charges levied upon any Lot notwithstanding the transfer of record title to such Lot, and any such transfer shall be subject to the Association's lien, provided that, prior to such transfer, a Notice of Delinquent Assessment has been recorded as provided in the Declaration and by law.

8.2.2 Priority of Liens. The priority of all such liens on each Lot shall be in inverse order so that upon the foreclosure of the lien for any particular charge on any Lot, any sale of such Lot pursuant to foreclosure of the lien will be made subject to all liens securing the respective monthly Assessments and Additional Charges on such Lot for succeeding months.

8.3 Purpose of Assessments. The Assessments levied by the Board shall be used exclusively to pay for the costs of management and operation of the Development, to conduct the business and affairs of the Association, to promote the recreation, health, safety, welfare, benefit, and interests of the Owners and Residents in the Development, and for the improvement and maintenance of the Common Area and, to the extent provided for in the Governing Documents or by law, of the Lots situated within the Development.

8.4 Authority of the Board. The Board shall have the power and the duty to levy Annual, Special and Reimbursement Assessments sufficient to meet the Association's obligations under the Governing Documents and applicable law.

8.5 Association Funds. Unless otherwise determined by the Board, the Association shall maintain at least two (2) separate accounts in one or more banks or other depositories selected by the Board, which accounts shall be clearly designated SIENA OWNERS' ASSOCIATION OPERATING ACCOUNT and SIENA OWNERS' ASSOCIATION RESERVE ACCOUNT. The Assessments collected by the Association shall be properly deposited into such accounts. The Assessments collected by the Association shall be held in trust by the Association for and on behalf of each Owner and shall be used for the purposes set forth in Section 8.3. The Board shall allocate a portion of said funds as collected for the annual maintenance and operation of the Development and another portion of said funds as collected as reserves for contingencies, replacement, and deferred maintenance of the capital improvements of the Development, as specified in the annual budget. Upon sale or transfer of any Lot by any Owner, the Owner's interest in the funds held in trust by the Association shall terminate and shall be deemed automatically transferred to the successor-transferee of such Owner.

8.6 Annual Assessments.

8.6.1 Calculation of Estimated Requirement. Not later than thirty (30) days nor more than ninety (90) days prior to the beginning of each fiscal year, the Board shall complete and distribute to all Owners an estimate of the net funds required by the Association for such fiscal year, including a reasonable amount allocated to contingencies and to a reserve fund for restoration, repair, and/or replacement of those components for which the Association is responsible and which must be repaired or replaced on a periodic basis; to manage, administer, operate, and maintain the Development; to conduct the affairs of the Association; and to perform all of the Association's duties in accordance with this Declaration.

8.6.2 Allocation of Annual Assessment. The Board shall allocate and assess the Annual Assessment equally among the Lots by dividing the total amount of the Annual Assessment by the number of Lots within the Development. Unless the Board shall designate otherwise, the Annual Assessment shall be levied on an annual basis and shall be paid in twelve (12) equal monthly installments during the fiscal year, and each installment shall be due and payable on the first day of each month.

8.6.3 Surplus Funds. If, as of the end of any fiscal year, there is a surplus of cash in the Association's maintenance and operating account, as

reflected in the Association's financial statement for such fiscal year, such surplus shall be applied to reserves unless some other disposition of such surplus funds is determined by the vote of the Members.

8.6.4 Increases in Annual Assessment. Pursuant to *Civil Code* section 1366(b), except as otherwise provided by law, the Board shall not increase the Annual Assessment for any fiscal year above the amount of the Annual Assessment for the preceding fiscal year by more than twenty percent (20%) (or such other limitation on the increase as may be imposed by law), except upon the affirmative vote of a majority of Members voting on any such increase in the Annual Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members of the Association (i.e., at least 75 Lots), notwithstanding any lower quorum requirement set forth in the Bylaws.

## 8.7 Special Assessments.

8.7.1 Purpose of Special Assessments. If at any time during any fiscal year the Annual Assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof or the unexpected repair, replacement, or reconstruction of improvements located in the Development, or if funds are otherwise required for any authorized activity of the Association, the Board may levy a Special Assessment in the amount of such actual or estimated inadequacy or cost.

8.7.2 Allocation of Special Assessments. Special Assessments shall be allocated and assessed among the Lots in the same manner as Annual Assessments.

8.7.3 Approval of Special Assessments. Except in the case of an emergency situation as defined in *Civil Code* section 1366, in any fiscal year the Board may not levy Special Assessments which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, except upon the affirmative vote of a majority of the Members voting on any such Special Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members of the Association (i.e., at least 75 Lots), notwithstanding any lower quorum requirement set forth in the Bylaws.

8.8 Notice of Assessment Increases. Upon the imposition of a Special Assessment or an increase in the Annual Assessment, notice shall be sent by first class mail to each Owner not less than thirty (30) days and not more than sixty (60) days prior to the due date of the Assessment.

8.9 Reimbursement Assessments. The Association shall levy a Reimbursement Assessment against any Owner and his or her Lot if a failure by such Owner, or any person or pet for whom the Owner is responsible, to comply with any provision of the Governing Documents has necessitated or resulted in an expenditure of funds by the Association, specifically including legal fees. A Reimbursement Assessment shall include any costs, including attorneys' fees incurred by the Association and costs of collecting from an Owner any amount which the Owner is obligated to pay to the Association. A Reimbursement Assessment shall be due and payable to the Association when levied and subject to the same enforcement procedures as Annual and Special Assessments, including lien and foreclosure.

8.10 Failure to Fix Assessments. The failure or omission by the Board to fix or levy any Annual Assessment provided for by the terms of this Declaration before the expiration of any fiscal year, shall not be deemed either a waiver or a modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay Assessments or any installment thereof for that or any subsequent year, but the amount of the Annual Assessment fixed for the preceding fiscal year shall be the amount of the Annual Assessment for the ensuing fiscal year until a new Annual Assessment is levied.

8.11 No Offsets. All Assessments levied by the Board shall be payable in the full amount specified, including any Additional Charges imposed as provided by the terms of this Declaration, and no offsets against any such amounts shall be permitted for any reason whatsoever, including without limitation a claim that the Association has failed to properly exercise its duties of maintenance or enforcement.

8.12 Delinquent Assessments. Any installment or other portion of an Assessment not paid within fifteen (15) days after its due date shall be delinquent and shall be subject to interest and late charges not to exceed the maximum rate permitted by law, as well as all other Additional Charges. The Board, on behalf of the Association, may enforce the payment of any delinquent Assessment plus Additional Charges by bringing an action at law against any Owner personally obligated to pay the same, or by foreclosing the lien against the Owner's Lot by judicial or non-judicial foreclosure, except as prohibited by law. Prior to recording a Notice of Delinquent Assessment, the Association shall provide notice to the Owner in accordance with *Civil Code* section 1367.1 or successor statute. No procedures shall be initiated to foreclose the lien securing any Assessment levied under this Article 8 except as in accordance with *Civil Code* section 1367.1 or successor statute. Except as prohibited by law, upon the recording of the Notice of Delinquent Assessment referred to above, the Association may, at its option, declare the entire balance of all sums then due or to become due from the Owner, immediately due and payable, which total sum may then be included in

any suit, action, or other procedure initiated to collect said sums, including all Additional Charges. Notwithstanding any other provision of this Declaration, the Association must comply with the requirements of *Civil Code* section 1367.1 or successor statute when collecting delinquent Assessments.

8.13 Power of Sale. Each Owner does hereby appoint the Association as trustee to enforce and to foreclose any lien which is established pursuant to the terms of this Declaration, by private power of sale as provided by law, and does further grant to the Board of Directors, on behalf of the Association, the authority and power to sell the Lot of such Owner in the event of any default in payment of any Assessments or Additional Charges levied against such Lot, for lawful money of the United States, to the highest bidder, to satisfy said lien. The Association, as trustee for the remaining Owners, or any other Owner, may purchase the Lot at said sale. The decision to record a lien and initiate foreclosure may only be made by the Board and may not be delegated.

8.14 Remedies Cumulative. The remedies provided in this Declaration for collection of delinquent Assessments shall be cumulative and not exclusive; that is, the Association may use one or more or all of the available remedies to collect delinquent Assessments.

8.15 Certificate of Satisfaction and Release of Lien. Upon payment in full of a delinquent Assessment, including any Additional Charges, or the satisfaction thereof, the Board shall cause to be recorded, in the same manner as the Notice of Delinquent Assessment, a further certificate stating the satisfaction thereof and the release of the lien.

8.16 Priority. Except as otherwise expressly provided by law, the lien securing each of the Assessments provided for under this Article 8 shall have priority as of the date of recording of the original Declaration applicable to the Development over all other liens and encumbrances applicable to the Lots; provided, however, that such Assessment lien shall be subordinate to the lien of any first Mortgage or first deed of trust recorded against the Lot; and provided, further, that such subordination shall apply only to the Assessments which have become due and payable prior to the sale of such property pursuant to a decree of foreclosure of any such Mortgage or deed of trust, or pursuant to a power of sale contained in any such Mortgage. Such foreclosure sale shall neither relieve such property from liability for any Assessments and Additional Charges thereafter becoming due, nor from the lien of any subsequent Assessment.

8.17 Waiver of Exemptions. Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Article 8, the benefit of any homestead or exemption laws of the State of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed pursuant to the terms of this Article 8.

8.17.1 Property Exempt From Assessments. The following property subject to this Declaration shall be exempt from the Assessments, Additional Charges, and liens created herein:

(a) All property dedicated to and accepted by Solano County or other local public authority and devoted to public use;

(b) Any Lot which is owned by the Association as a result of the Association having acquired such Lot through foreclosure; provided, however, that such exemption shall be applicable only during the period in which the Association is record owner of such Lot; and

(c) All Common Area.

## **ARTICLE 9**

### **ENFORCEMENT**

9.1 Violations as Nuisance. Every act or omission constituting or resulting in a violation of any of the provisions of the Governing Documents shall be deemed to constitute a nuisance and, in addition to any other remedies which may be available, such nuisance may be abated or enjoined by the Association; provided, however, that the Board shall not be obligated to take action to abate or enjoin a particular violation if, in the exercise of its discretion, the Board determines that acting to abate or enjoin such violation is not likely to foster or be in the best interests of the Association and its Members as a whole. Notwithstanding the preceding sentence and without limiting its generality, nothing in the Governing Documents shall be deemed to impose upon the Association, the Board, or the officers, employees, or agents of the Association a duty to intervene in any physical dispute or altercation or any criminal or alleged criminal activity other than to notify law enforcement officials.

9.2 Violation of Law is a Violation of Declaration. Any violation of a state, municipal or local law, ordinance or regulation pertaining to the ownership, occupancy, or use of any property within the Development is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth herein.

9.3 Owners' Responsibility for Conduct of Others and Damages. Each Owner shall be fully responsible for informing members of his or her household and his or her tenants and guests of the provisions of the Governing Documents, and shall be fully responsible for the conduct, activities, any Governing Document violation of any of them, and for any damage to the Development or the Association resulting from the negligent or intentional conduct of any of them or any household pets. If a Lot is owned jointly by two (2) or more persons, the

**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.  
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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**