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FIRST RESTATED MASTER
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS

OF

FOUNTAINGROVE RANCH
A planned community.
_____, 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.

**First Restated Master Declaration of Covenants, Conditions and Restrictions of
Fountaingrove Ranch**

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**FIRST RESTATED MASTER DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
FOUNTAINGROVE RANCH**

RECITALS

This First Restated Master Declaration of Covenants, Conditions and Restrictions of Fountaingrove Ranch (“Declaration”) is made by the Fountaingrove Ranch Master Association and its Members on the date set forth after Article 10 with reference to the following facts:

A. Declarant, Greenwich Development Corporation, was the owner of certain real property located in the City of Santa Rosa, Sonoma County, California. Declarant and its successors and assigns intended to create a planned multiphase common interest development project including the real property owned by Declarant and additional property annexed thereto.

B. All of the property described on Exhibit A attached hereto and incorporated by this reference, and all of the improvements thereon, is and shall be part of the development and referred to herein as the “Project”. Additional property may be annexed to and become part of the Project as set forth in this Declaration.

C. Each Owner of a fee interest within the Project shall receive a membership in the Fountaingrove Ranch Master Association; a non-exclusive easement for use, enjoyment, ingress and egress over the Common Area, subject to such restrictions as are hereinafter set forth; and such other interests as are provided herein or set forth in the original deed conveying a fee interest to a residential lot in the Project. Portions of the Project are subject to additional covenants, conditions, and restrictions and the additional jurisdiction of separate owners’ associations.

D. This First Restated Master Declaration of Covenants, Conditions and Restrictions restates and replaces, in its entirety, the Master Declaration of Covenants, Conditions and Restrictions made on October 16, 1985, and recorded as instrument number 1985071213 on October 23, 1985 in the Office of the Sonoma County Recorder (the “Original Declaration”), as amended in instrument number 1985074522 recorded on November 5, 1985, and any other amendments thereto recorded in the Office of the Sonoma County Recorder before the date this First Restated Master Declaration of Covenants, Conditions and Restrictions is recorded.

E. Declarant intended to develop the Project as a Common Interest Development which is a planned development project as defined in California Civil Code § 1351(k). The Project is intended

to conform to the provisions of the Davis-Stirling Common Interest Development Act (California Civil Code §§ 1350 et seq.). Declarant intended by recording the Original Declaration to impose upon the Project mutually beneficial restrictions under a general plan of improvement for the benefit of all Owners. It is the intent of the Owners within the Association, that this Declaration impose, or continue to impose, upon the Project and all Owners, mutually beneficial restrictions under a general plan of improvement for the benefit of all Owners; and to create mutual equitable servitudes upon each Lot within the Project and the Common Area, in favor of all other Owners in the Project and the Association, which servitudes shall operate as covenants running with the land for the benefit and burden of all other Lots and their Owners, the Common Area and Association. Each covenant and restriction created in this Declaration shall operate as a personal covenant, and no Owner may avoid the covenants and personal obligations herein by abandonment or transfer of his Lot.

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

ARTICLE 1
DEFINITIONS

In addition to other definitions provided for herein, the following terms shall have the following meanings:

1.1 “Approval of Members” and “Approved by Members” mean the vote or assent of a majority of Members present at a meeting (in person or by proxy) or by return of written ballots where a quorum has been established, unless another percentage is specified in this Declaration or the Bylaws for the particular action to be taken.

1.2 “Architectural Control Committee” or “Committee” means the committee created under Article 6 and charged with architectural review, approval and control of the Improvements within the Project.

1.3 “Architectural Control Guidelines” or “Guidelines” means the written architectural review standards promulgated and adopted by the Association as provided in Article 6. The Guidelines may also be referred to as the “Design Review Manual.”

1.4 “Articles” means the Restated Articles of Incorporation of the Association as amended from time to time.

1.5 “Assessments” means the Regular, Special and Reimbursement Assessments levied against each Lot and its Owner as provided in Article 5.

1.6 “Association” means the Fountaingrove Ranch Master Association, a California nonprofit mutual benefit corporation.

1.7 “Board” means the Board of Directors of the Association.

1.8 “Bylaws” means the First Restated Bylaws of the Association as amended from time to time.

1.9 “City” means the City of Santa Rosa.

1.10 “Common Area” means any portion of the Project shown and designated as “Common Open Space”, “Open Space” or “Common Space Easement” on any final subdivision map for any property within the Project. Common Area shall also include any portion of the Project shown and designated on any Map as “Drainage Easement” and/or “Private Drainage Easement,” provided, however, that if the City has accepted an offer of dedication for any such Drainage Easement, or a Sub-Association or individual Lot Owner has assumed the obligation to maintain such Drainage Easement area, then such area shall not be included as part of the Common Area herein.

1.11 “Common Open Space” shall mean those areas shown and designated on any Map as “Common Open Space” or “Open Space”. All such Common Open Space shall be owned and maintained by the Master Association.

1.12 “Condominium” means an estate as defined in Civil Code §§ 783 and 1351(f) or any successor statute thereto. “Condominium Plan” means a plan recorded pursuant to Civil Code § 1351(e) or any successor statute thereto. “Condominium Unit” and “Condominium Project” shall have the meanings set forth in Civil Code § 1351 or any successor statute thereto.

1.13 “Davis-Stirling Act” shall mean the Davis-Stirling Common Interest Development Act, Civil Code § 1350 et seq. as amended from time to time.

1.14 “Declaration” means this First Restated Master Declaration of Covenants, Conditions and Restrictions as amended from time to time.

1.15 “Director” means an individual member of the Board of Directors.

1.16 “Dwelling” means a single family residential dwelling unit or house together with garages or other structures on the same Lot and, in the case of a Condominium, all elements of a Condominium Unit as defined on the Condominium Plan recorded for that Condominium.

1.17 “Eligible First Mortgagee” means a First Mortgagee that has requested notices under section 8.9.

1.18 “Good Standing” means a Member has paid all Assessments and charges currently due and has not had his rights suspended for violation of the Project Documents.

1.19 “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 or deck; shed; greenhouse; fence or wall; pole; sign; antennae or dish; irrigation system; tent; solar or other energy system; 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 flow of surface water on or over any portion of the Project. “Improvement” shall also mean any utility line or cable, conduit, pipe or other related facility or equipment.

1.20 “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 § 1363.810 et seq.

1.21 “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, and contractors of Owners, tenants or lessees.

1.22 “Lot” means one of the residential lots of the Project, including each Condominium Unit. Where a subdivision within the Association includes time share interests or interval ownerships, the definition of “Lot” includes each underlying Condominium Unit, apartment or lot subject to time share subdivision, but “Lot” shall not include each such time share interest or interval ownership.

1.23 “Map” means one of the subdivision maps listed on Exhibit A attached hereto incorporated herein by this reference. “Maps” means all of the subdivision Maps listed on Exhibit A.

1.24 “Member” mean a person entitled to membership in the Association as provided herein. Each Owner or co-owner of a fee title interest in a Lot shall be a Member.

1.25 “Mortgage” means a mortgage or deed of trust encumbering a Lot or other portion of the Project. A “Mortgagee” includes the beneficiary under a deed of trust. A “First Mortgage” or “First Mortgagee” is one having priority over all other Mortgages or holders of Mortgages encumbering the same Lot or other portion of the Project. A “First Mortgagee” includes any holder (including FNMA and FHLMC), of a First Mortgage on a Lot or other portion of the Project. “FHLMC” shall mean the Federal Home Loan Mortgage Corporation. “FNMA” shall mean the Federal National Mortgage Association.

1.26 “Notice and Hearing” means the procedure, set forth in Article 9, which gives an Owner notice of an alleged violation of the Project Documents and the opportunity for a hearing before the Board.

1.27 “Open Space Easement” means those areas shown and designated on any Map or in any recorded Declaration of Annexation as “Open Space Easement”. Such property shall be owned by individuals or corporate entities and shall be maintained by the Master Association.

1.28 “Owner” means each person or entity holding a record fee ownership interest in a Lot, including contract sellers. “Owner” shall not include persons or entities who hold an interest in a Lot merely as security for the performance of an obligation.

1.29 “Private Open Space” means all those areas shown and designated on any Map or in any recorded Declaration of Annexation as “Private Open Space”. Such areas shall not be owned nor maintained by the Master Association.

1.30 “Project” means the real property located in Sonoma County, California and more particularly described on Exhibit A. In addition, “Project” shall include any additional real property when annexed to the Project pursuant to this Declaration.

1.31 “Project Documents” means the Articles, Bylaws, Declaration, Rules and Regulations, Architectural Control Guidelines, and any recorded Declarations of Annexation.

1.32 “Project Open Space” shall mean all those areas shown and designated on any Map or in any recorded Declaration of Annexation as “Project Open Space”. Such areas shall, be owned and maintained by Sub-Associations within the Project.

1.33 “Reimbursement Assessment” means an assessment levied against a single Owner or Lot as set forth in section 5.7.

1.34 “Resident” means any person regularly residing within a Lot including an Owner and an Owner’s family members, lessees and tenants. “Regularly residing” means living in the Lot for more than 30 consecutive days or for more than 60 days in any twelve month period.

1.35 “Rules and Regulations” or “Rules” means the rules and regulations promulgated by the Association to implement this Declaration and the Bylaws, and to govern the possession, use and enjoyment of the Project as amended from time to time.

1.36 “Sub-Association” means any incorporated or unincorporated association (other than the Fountaingrove Ranch Master Association) which is formed to facilitate the management, maintenance and/or operation of (i) any portion of the Project which is owned by a group of Owners, as tenants-in-common, who are members of such association; or (ii) any portion of the Project which is owned by such association for the benefit of a group of Owners who are members of such association.

1.37 “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 2
DESCRIPTION OF PROJECT
RIGHTS OF OWNERS

2.1 Description of Project: The Project shall consist of all of the real property described on Exhibit A. The Common Area includes the following “open space” areas within the Project as shown on any final subdivision map for property within the Project:

- (a) “Common Open Space” which includes all open space or other property owned in fee by the
- (b) Association.

(c) “Open Space Easement” which includes all property owned by individuals or corporate entities subject to the Open Space Easement and maintained by the Association.

(d) Common Area may also include any “Drainage Easement or “Private Drainage Easement” areas within the Project for which the City has not accepted an offer of dedication or for which a Sub-Association or individual Owner or other party has not accepted the maintenance obligations.

2.2 Incidents of Lot Ownership: Every Lot shall have appurtenant to it the following interests:

(a) a Membership in the Master Association, and

(b) a non-exclusive easement for use, enjoyment, ingress and egress over “Common Open Space” subject to such covenants, conditions, restrictions and easements as are contained on the Map, in the Project Documents, and subject to other reasonable regulation by the Association.

Such interests shall be appurtenant to and inseparable from ownership of the Lot. Any attempted sale, conveyance, hypothecation, encumbrance or other transfer of these interests without the Lot shall be null and void. Any sale, conveyance, hypothecation, encumbrance or other transfer of a Lot shall automatically transfer these interests to the same extent.

2.3 Sub-Association Obligation to Maintain: A Sub-Association may be made responsible for the maintenance of all or a portion of the Project by this Declaration, by a recorded Declaration of Annexation annexing a property to the Project or by recorded covenants, conditions and restrictions. A Sub-Association shall maintain, repair and replace its area of responsibility and all improvements thereon, in a safe, sanitary and attractive condition. Such maintenance responsibility shall include, but shall not be limited to, the control of all weeds and other unsightly vegetation, rubbish, trash, garbage and landscaping visible from other portions of the Project. In the event that a Sub-Association fails to maintain its area of responsibility in a manner which the Board reasonably deems necessary to preserve the safety, appearance and/or value of the Project, the Board shall notify the Sub-Association of the work required and demand that it be done within a reasonable and specified period. In the event that the Sub-Association fails to carry out such maintenance within the period, the Board shall, subject to Notice and Hearing, have the right to enter upon the area, to cause such work to be done, and charge the cost thereof to the Sub-Association. Notwithstanding the foregoing, in the event of an emergency arising out of the failure of a Sub-Association to maintain its area of

responsibility, the Board shall have the right to immediately enter upon the area to abate the emergency and, subject to Notice and Hearing, charge the cost thereof to the Sub-Association.

2.4 Easements:

(a) Owners' Easements of Enjoyment: Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and pass with the title to every Lot, subject to the following provisions:

(1) The right of the Association to charge reasonable admission and other fees for the use of any improvement in the Common Area;

(2) The right of the Association to suspend the voting rights and right to use of the Common Area by an Owner for any period during which any Assessment against his Lot remains unpaid; and for a period not to exceed thirty (30) days for any infraction of the Project Documents after Notice and Hearing.

(3) The right of the Association to dedicate 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 Approved by the Members.

(b) Open Space Maintenance Easements: The Association is hereby granted an easement over all "Open Space Easement" areas for ingress and egress required to perform its maintenance duties.

(c) Maintenance Easement: Each Lot is hereby declared to have an easement over all adjoining Lots and the Common Area for the purpose of maintenance, repair or replacement of any party wall or party fence. The Association is hereby declared to have an easement over all Lots for the purpose of facilitating the Association's performance of its maintenance, repair and replacement obligations set forth in section 4.6.

(d) Encroachment Easements: Each Lot is hereby declared to have an easement over all adjoining Lots and the Common Area for the purpose of accommodating any minor encroachment due to engineering errors, errors in original construction, settlement or shifting of an Improvement, or any other cause. The Common Area is hereby declared to have an easement over all adjoining Lots for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of any Improvements. 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 encroachments,

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 willful misconduct of the Owner or Owners. In the event an improvement is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots or Common Area or by Common Area over Lots shall be permitted and that there shall be a valid easement for the maintenance of said encroachment so long as it shall exist.

(e) Easements for Utilities: Easements over and under the Project for the installation, maintenance, repair and replacement of sanitary sewer, water, electric, gas, telephone lines, audio, video, television or internet cables or lines, and drainage systems, as shown on the Maps, and as may be required to serve the Project, are hereby reserved for the Association, together with the right to grant and transfer the same.

Whenever sanitary sewer; water; electric; gas; audio, video, television, or internet lines or cables; telephone lines or cables; or other utility connections or drainage systems are located or installed within the Project, the Owner of a Lot served by the connections shall have the right, and is hereby granted an easement to the full extent necessary, to, at reasonable times, after reasonable notice, enter upon the Project or to have his agents or utility companies enter upon the Project to maintain said connections as and when necessary.

2.5 Delegation of Use: Contract Purchasers, Lessees, Tenants: Any Owner may delegate his rights of use and enjoyment in the Project to the members of his family, his guests, and Invitees, and to such other persons as may be permitted by the Project Documents, subject to the Project Documents. If however, an Owner has sold his Lot to a contract purchaser or leased or rented his Lot, the Owner, members of his family, and his Invitees shall not be entitled to use and enjoy the Project while the Owner's Lot is occupied by such contract purchaser, lessee or tenant. Instead, the contract purchaser, lessee or tenant, while occupying the Lot, shall be entitled to use and enjoy the Project and may delegate the rights of use and enjoyment in the same manner as if such contract purchaser, lessee or tenant were an Owner during the period of his occupancy. During the period that an Owner's Lot is occupied by a contract purchaser the contract purchaser shall have the right to exercise such Owner's voting rights (as to that Lot) in the Association and such Owner shall give to such contract purchaser, upon demand, such proxies as are necessary to exercise the Owner's voting rights in the Association.

Each Owner shall notify the Association of the names of any contract purchasers, lessees or tenants of the Owner's Lot. Any delegated rights of use and enjoyment are subject to suspension to the same extent as are the rights of Owners.

2.6 Responsibility for Common Area Damage: The cost and expense of repair or replacement of any portion of the Common Area resulting from the willful or negligent act of an Owner, his contract purchasers, lessees, tenants, family, guests or Invitees shall be, in addition to the party at fault, the responsibility of such Owner to the extent that it is not covered by insurance maintained by the Association. The Association shall cause such repairs and replacements to be made and subject to Notice and Hearing, the cost thereof shall be levied as Reimbursement Assessment against the Owner.

2.7 Utilities: Whenever sanitary sewer; water; electric; gas; audio, video, television, or internet lines or cables; telephone lines or cables; or other utility connections or drainage systems (collectively "Utility Installations") are located or installed within the Project, the Owner of each Lot served by the connections shall be entitled to the use and enjoyment of such portions of the connections as service his Lot. Every Owner shall pay all utility charges which are separately metered or billed to his Lot. Every Owner shall maintain all Utility Installations located in or upon his Lot except for those Utility Installations specifically arranged to be maintained by the Association, a Sub-Association or a public or private utility company. Utility companies shall have the right, at reasonable times after reasonable notice to enter upon the Project to discharge any duty to maintain, construct or install Utilities Installations.

The Association shall maintain all Utility Installations and drainage ways located within the Common Area and in Drainage Easement or Private Drainage Easement areas except for those installations and drainage ways specifically arranged to be maintained by a Sub-Association, individual Lot Owner, private or public utility company, or for which the City has accepted an offer of dedication. Drainage Easement or Private Drainage Easement areas maintained by the Association, a Sub-Association or individual lot Owner shall be maintained in accordance with "Drainage Way Maintenance Guidelines," if any, adopted by the Board or approved by the City.

ARTICLE 3
USE RESTRICTIONS

In addition to all of the covenants, conditions and restrictions contained herein, the use of the Project and each Lot therein is subject to the following use restrictions.

3.1 Use of Common Area

(a) “Common Open Space” areas shall only be used for passive recreational uses including, but not limited to, and hiking and equestrian trails. Uses which significantly injure or scar the vegetation or interfere with wildlife use of the area will be prohibited. All Members will have access to Common Open Space.

(b) “Open Space Easement” areas shall only be used for passive recreational uses which do not injure or scar the vegetation or interfere with wildlife use of the area. Uses which significantly alter Open Space Easement from its natural condition as existed when first conveyed to an Owner will be prohibited. Only the Owner of the land burdened by the easement and the Owner’s Invitees will have access to Open Space Easement areas with the exception that the Association will have access for maintenance.

(c) “Drainage Easement” or “Private Drainage Easement” areas shall only be used for passive recreational uses which do not injure or scar the vegetation or interfere with wildlife use of the area. Uses which significantly alter a Drainage Easement area or a Private Drainage Easement area from its natural condition as existed when first conveyed to an Owner will be prohibited. Only the Owner of the land burdened by the easement and the Owner’s Invitees will have access to Drainage Easement or Private Drainage Easement areas with the exception that the Association will have access for maintenance.

3.2 Use of Private Open Space and Project Open Space: Private Open Space shall be those open space areas owned and by individuals or corporate entities other than the Association. Private Open Space shall only be used for passive recreational uses which do not injure or scar the vegetation or interfere with Wildlife use of the area. Uses which significantly alter Private Open Space from its natural condition as existed when first conveyed to an Owner will be prohibited. Only the Private Open Space property Owner and the Owner’s Invitees will have access to Private Open Space.

Project Open Space shall only be used for passive recreation uses which do not injure or scar the vegetation or interfere with wildlife use in the natural Project Open Space. Active recreational uses will be permitted in developed Project Open Space where facilities are provided for such uses.

Only Members of the Sub-association having Ownership of a specific Project Open Space area and their Invitees will have access to that Project Open Space area.

3.3 Use of Individual Lot: Lots shall be occupied and used only for single family residential purposes by the Owners, their contract purchasers, lessees, tenants, or Invitees. Lots shall be occupied on a regular basis by no more than the occupancy limit set by law from time to time. Guests residing in a Lot for more than 30 consecutive or 60 cumulative days in a twelve month period shall be considered occupying the Lot on a regular basis. No trade or business shall be conducted on any Lot, except home offices permitted by the City where no signs or indications of the home office are visible to neighboring Lots or the Common Area.

3.4 Nuisances: No noxious, illegal, or offensive activities shall be carried on or allowed on any Lot or the Common Area. Nothing shall be done on any Lot or the Common Area which may be or may become an unreasonable annoyance or nuisance to any Resident or which may in any way interfere with the quiet enjoyment of a Lot by the Residents thereof, or which may increase the rate of insurance for the Project or for any other Lot, or cause any insurance policy to be cancelled or not renewed. Each Owner shall be responsible for compliance with this provision by tenants, family members, Invitees, and animals upon the Owner's Lot.

3.5 Maintenance of Lots: Each Owner shall maintain his Lot in good, safe, sanitary, and pest-free condition at all times. Each Owner shall maintain his Lot in a manner that is attractive, clean, and consistent with the appearance of other Lots in the Project.

3.6 Alterations to Lots: No alteration, remodel, addition, or other change which is visible from the Common Area, streets or another Lot, shall be made to any Improvement on any Lot, including alteration or changes in major landscaping, fencing, or repainting with different colors, until the plans for such alteration, remodel, addition or change has been approved by the Architectural Control Committee in accordance with Article 6. No Owner shall alter, repair, or maintain any portion of the Common Area without prior written approval of the Board.

3.7 Energy Systems: No Owner shall install or construct any solar or other type of energy system without the prior written approval of the Architectural Control Committee in accordance with Article 6. **The Architectural Control Committee shall consider and approve or deny requests for solar energy system in accordance with California law.**

3.8 Drainage: No Owner shall do any act or construct any Improvement which would interfere with the natural or established drainage systems or patterns within the Project without the prior written approval of the Architectural Control Committee.

3.9 Garbage and Refuse Disposal: All rubbish, trash, garbage and other waste shall be regularly removed from the Project, and shall not be allowed to accumulate thereon. Rubbish, trash, garbage and other waste shall be kept in sanitary containers. All equipment, garbage cans, woodpiles, storage piles, or trash piles, shall be kept screened and concealed from view of other Lots, from public and private streets, from the Common Area or from any other portion of the Project, except on the scheduled day of, and the evening of the day before, trash pick-up.

3.10 Right to Lease: Any rental or lease of a Lot shall be in writing and subject to the provision of the Project Documents, all of which shall be deemed incorporated by reference in the lease or rental agreement. The Owner shall give each tenant and lessee a copy of the Declaration and current Rules. A tenant's failure to comply with the provisions of the Project Documents shall constitute a default under the lease or rental agreement. Upon request by the Association, the Owner shall provide the Association with the name, phone number and contact information for each tenant and person who will be residing in the Lot.

3.11 Signs: No signs shall be displayed on a Lot except non-commercial signs which are no larger than 9 square feet or non-commercial 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, sides, trim, doors, windows or roof of any Improvement. 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. No signs of any type may be displayed in the Common Area without prior written approval of the Board.

3.12 Animals: A Resident may keep a reasonable number of dogs, cats or other common household pets within his Lot. No livestock, poultry, fowl, or game may be kept within the Project; except, the Association or a Sub-Association may periodically keep livestock in the Common Area for the purpose of fire fuel reduction. No illegal, wild or exotic pet shall be kept within the Project. No animals may be bred or kept for commercial purposes. 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. The Board shall have the right to prohibit the keeping or maintenance of any pet which, after Notice and Hearing, is found to be a nuisance or safety threat to other Residents or Invitees.

3.13 Sub-Association Use Restrictions: Nothing herein shall prevent a Sub-Association from adopting use restrictions for any portion of the Project which are more restrictive than those set forth herein; provided that such restrictions may supplement but shall not contradict the provisions hereof. The Association shall not be responsible for enforcement of any Sub-Association restrictions.

3.14 Compliance with Project Documents: Each Owner, contract purchaser, lessee, tenant, guest, Invitee, or other occupant or visitor of a Lot, user of the Common Area, or user of any other portion of the Project shall comply with the provisions of the Project Documents.

3.15 City of Santa Rosa Conditions: The City imposed certain conditions upon Declarant pursuant to issuance of a Use Permit and approval of the Map for the Project. These conditions are set forth in that certain document entitled "RESOLUTION NO. 5994," adopted by the City Planning Commission on January 24, 1985, and that certain document entitled "RESOLUTION NO. 5995" adapted by the City Planning Commission on February 24, 1985. Said conditions require, among other things, that this Declaration include provisions regarding fencing, solar energy, yard landscaping, fire management/weed abatement/vegetation abatement in common open areas, tree removal, lot grading, height limits/sight design/house design/design review for Lot improvements, management and maintenance of common areas and restrictions on equestrian or vehicular uses within the Fir Ridge Conservation Easement. Provisions regarding the above are more specifically set forth in this Declaration and, as to SOUTHRIDGE AT FOUNTAINGROVE specifically, in Exhibit B, attached hereto and incorporated herein by this reference.

It is contemplated that the Declaration of Annexation for other phases of the Project will enumerate supplemental conditions and use restrictions affecting only the specific phase subject to annexation. The Lots within Southridge at Fountaingrove shall not be subject to the supplemental conditions and use restrictions enumerated in the Supplemental Declaration of Annexation, nor shall any annexed phase be subject to the specific conditions and use restrictions set forth in Exhibit "B" to this Declaration, except to the extent that conditions and use restrictions are restated in the Supplemental Declaration of Annexation or the conditions impose a common maintenance requirement upon the Association.

ARTICLE 4
MEMBERSHIP IN AND DUTIES OF THE ASSOCIATION

4.1 Management of Project: The management of the Project shall be vested in the Association in accordance with the Project Documents and all applicable laws, regulations and ordinances of any governmental or quasi governmental body or agency having jurisdiction over the Project.

4.2 Membership: Each person named as a grantee of a fee ownership interest on a current deed to a Lot shall be a Member of the Association. No other person shall be accepted as a Member. Ownership of a Lot shall be the sole qualification for Association membership. Association membership is appurtenant to and may not be separated from the ownership of a Lot. Membership shall cease when Lot ownership ends. Membership shall not be transferred, pledged or alienated in any way except upon transfer of title to the Owner's Lot (and then only to the grantee of title to the Lot). Any attempt to transfer membership separate from a Lot is void. Membership shall not be related to the use or non-use of the Common Area or Lot and may not be renounced or abandoned. The rights, duties, privileges and obligations of all Members shall be as provided in the Project Documents and Davis-Stirling Act.

4.3 Transferred Membership: Membership in the Association shall not be transferred, pledged, or alienated in any way except upon the transfer of ownership of the Lot to which it is appurtenant, and then only to the new Owner. Any attempt to make a prohibited transfer is void. Any transfer of title to a Lot or interest in it shall automatically transfer the appurtenant Ownership rights in the Association to the new Owner.

4.4 Voting: Voting rights and procedures are set forth in the Bylaws.

4.5 Duties: In addition to the duties stated in the Articles of Incorporation and Bylaws, or in this Declaration, and without limiting the generality thereof, the Association shall perform the following duties:

- (a) Maintenance of Common Area: The Association shall maintain and repair the Common Area. The Master Association shall maintain the street signs and associated lights within Southridge at Fountaingrove. The responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or omission of any Owner, or his Invitee or pet. Any such repairs or replacements shall be the responsibility of the Owner as set forth in section 2.6. The Board shall have the exclusive right

to maintain, repair, develop or alter the Common Area, and to contract for and/or acquire all services, materials and other items on behalf of the Association.

In addition, the Master Association shall implement, comply with and perform all maintenance duties set forth in the "Open Space Management Plan" as amended from time to time for Phase 1 of the Project and any specific "Open Space Management Plan" for a subsequent phase. Such "Open Space Management Plans" shall be filed with the City.

(b) Insurance: The Association shall obtain and maintain such policy or policies of insurance as are required by section 7.1 of this Declaration.

(c) Manager: The Board may employ or retain a person or firm to manage the project, including the Common Area, and services of such other personnel or agents as the Board deems necessary or proper for the operation of the project.

(d) Discharge of Liens: The Association shall discharge by payment, if necessary, any lien against the Common Area and after Notice and Hearing, charge the cost thereof to the Sub-Association, Member or Members responsible for the existence of the lien.

(e) Assessments: The Association shall fix, levy, collect and enforce Assessments as set forth in Article 5.

(f) Payment of Expenses and Taxes: The Association shall pay all expenses, obligations, and taxes incurred by the Association in the conduct of its business.

(g) Enforcement: The Association shall enforce this Declaration and the Project Documents.

(h) Architectural Control: The Association shall maintain architectural control over the Project as provided in Article 6.

4.6 Powers: In addition to the powers enumerated in the Articles of Incorporation and Bylaws, or provided elsewhere in this Declaration, and without limiting the generality thereof, the Association shall have the following powers:

(a) Easements/Dedication: The Association shall have authority (by majority vote of the Board) to grant easements where necessary for utilities, cable, internet, and sewer facilities over the Common Area to serve the Common Areas and Lots, and/or where necessary to satisfy or achieve appropriate governmental purposes or requests. 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 purposes, and subject to such conditions, as Approved by the Members. No such

dedication sale or transfer shall be effective until it has been Approved by the Members in accordance with the Bylaws.

(b) Assessments, Fees, Liens, Penalties, and Fines: The Board shall have the power to levy and collect assessments in accordance with the provisions of Article 5. The Board shall have the power to adopt a schedule of reasonable fines and penalties for violations of the Project Documents and levy such fines in accordance with Article 9.

(c) Enforcement: The Board shall have the power to enforce the Project Documents as set forth in Article 9 herein.

(d) Acquisition and Disposition of Property: The Board 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 subject to any limitations in the Project Documents.

(e) Common Area Improvements: The Association shall have the authority and power to construct, improve, repair, remove and reconstruct any and all Improvements on or under the Common Area which are consistent with this Declaration, and appropriate for the use and benefit of the Members.

(f) Right of Entry: To enter upon the Common Area, upon any Lot after giving reasonable notice to the Owner thereof, or upon any other portion of the Project after giving reasonable notice to the person or entity in charge, for any purpose reasonably related to the performance by the Association of its duties under this Declaration. In the event of an emergency such right of entry upon any Lot or upon any other portion of the Project shall be immediate. Any damage caused by such entry shall be repaired or otherwise reasonably compensated for by the Association.

(g) Remedy Violations: The Board shall have the authority, but not a duty, to perform maintenance and repair of any Improvement on any Lot, if such maintenance or repair is required by the Declaration or is necessary, in the discretion of the Board, to preserve or protect the Common Areas or another Lot from damage, destruction or unusual depreciation, and to cure any violation of the Project Documents existing on a Lot. If the Owner of any Lot as to which maintenance or repair is necessary or a violation exists has failed or refused to perform the needed maintenance or repair or cure the violation after the Board has delivered a written notice demanding such, the Board shall, after Notice and Hearing, levy a Reimbursement

Assessment in accordance with section 5.7 against that Lot and Owner to recover the cost of any such maintenance or repair paid for by the Association in accordance with the foregoing provisions.

(h) Loans: The Board shall have the power to borrow money, and, upon the Approval of Members by written ballot vote, to mortgage, pledge, or deed in trust, any or all of its real or personal property as security for money borrowed or debts incurred; provided, however, the Association may pledge the proceeds of any Special Assessment as security for a loan upon approval of the majority of Owners voting by written ballot where a quorum of fifty percent (50%) is present.

(i) Contracts: The Board shall have the power to contract for goods and/or services for the Common Areas and interests of the Association. The Board shall have the power to retain legal and accounting services necessary or proper for the operation of the Project.

(j) Delegation: The Association, the Board, and the officers of the Association shall have the power to delegate their authority and powers to agents, committees, officers or employees of the Association, or to a manager employed by the Association, provided that the Board shall not delegate its responsibility to do any of the following:

- (1) Make expenditures from the reserve funds;
- (2) Conduct hearings concerning an Owner or Invitee's compliance with the Project Documents;
- (3) Make a decision to levy fines, impose Reimbursement Assessments, suspend an Owner's rights as a Member of the Association or otherwise impose discipline;
- (4) Make a decision to levy Regular or Special Assessments; or
- (5) Make a decision to bring suit, record a claim or lien, or institute foreclosure proceedings for default in payment of assessments.

However, implementation of the decision of the Board on an issue under sections (1) through (5) above may be delegated.

(k) Appointment of Collection Agency and Trustee: The Board on behalf of the Association has the power to tender a delinquent account to a professional collection agency or to appoint or designate a trustee to enforce assessment liens by sale as provided in section 5.9 and Civil Code §1367.1.

(l) Litigation/Arbitration: The Association shall have the power to institute, defend, settle or intervene in litigation, arbitration, mediation or administrative proceedings on behalf of the Association pursuant to Civil Code §1369.510 et seq. The Board of Directors has authority to file a suit, make a demand for alternative dispute resolution, incur litigation fees and costs, or enter into a contract with an attorney upon a majority vote of the Board.

(m) Other Powers: In addition to the powers contained herein, the Board may exercise the powers granted to a planned development under the Davis-Stirling Act and to a nonprofit mutual benefit corporation under Corporations Code §7140.

4.7 Rules: The Board may propose, adopt, amend and repeal Rules appropriate for the management of the Project, which are consistent with the Project Documents and reasonable. The Rules may also establish architectural controls or standards and may govern the use of the Common Area by Members or their Invitees. All rules shall be in writing and a copy of the Rules shall be furnished to each Member. Members shall be responsible for distributing the Rules to their family, lessees and tenants. Rules related to use of the Common Area or Lots, member discipline (including, but not limited to, changes to the schedule of fines), the Internal Dispute Resolution Policy, delinquent assessment payment plan policy, election procedures, or architectural control policies or procedures, shall be adopted or changed in accordance with the following procedures:

(a) Prior to adoption or change of any Rule in the categories listed above; (i) the Board shall provide written notice of the proposed Rule to all Owners; (ii) the Board shall provide notice to all Owners of the Board meeting at which the Rule will be discussed not less than thirty (30) days before such meeting, and the notice shall include a statement specifying the Rule to be discussed; (iii) Owners shall be permitted to comment on the proposed Rule at a meeting of the Board prior to the Board vote on the Rule; (iv) the proposed Rule shall be discussed and voted upon by the Board at the meeting in which Owner comments were heard or such later meeting as the Board shall set and give notice of to the Owners; and (v) notice of adoption of the Rule shall be mailed to all Owners no later than fifteen (15) days after the date on which the Board adopts the Rule.

(b) If the Board determines that an immediate Rule is necessary to address an imminent threat to the health and wellbeing of Owners and Invitees, or an imminent risk of substantial economic loss to the Association, the Board may make an emergency Rule, without prior notice to the Owners. Notice of adoption of any emergency Rule shall be promptly mailed to each Owner

after the Board adopts the Rule. Such emergency Rule shall be effective for no longer than 120 days and may not be re-adopted as an emergency Rule, but may be adopted as a regular Rule after compliance with section 4.8(a).

(c) Written copies of the Rules and any schedule of fines adopted under to this section 4.8 shall be furnished to all Owners when adopted and periodically as the Board determines is necessary or advantageous.

(d) Any new Rule or amendment to the Rules other than an emergency rule may be challenged by Owners under the following procedure: Owners representing five percent (5%) or more of the Voting Power of the Association may call a vote of Members to reverse a Rule by delivering a written demand for a vote, bearing the signature of all such Owners, to the Board within thirty (30) days after the delivery to the Owners by the Association of the notice of adoption of the Rule. A vote shall then be called by the Board by written ballot according to the Bylaws. The Board shall give notice of the results of the voting within fifteen (15) days after the date of the meeting at which ballots were counted. The Rule may be reversed by the vote of fifty one percent (51%) of the Voting Power of the Association. Any Rule so reversed may not be re-adopted for at least one year after the date on which the Rule was reversed.

4.8 Enumerated Limitations: Except with the Approval of the Members or such other stated approval, the Board shall be prohibited from taking any of the following actions:

(a) Entering into a contract with a third person wherein the third person will furnish goods or services for the Common Area or to the Association for a term longer than one (1) year with the following exceptions:

(1) A management contract, the terms of which have been approved by the Federal Housing Administration or Veteran's Administration.

(2) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate.

(3) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration provided that the policy permits short rate cancellation by the insured.

(4) Agreements for cable television services and equipment of not to exceed five (5) years duration.

(b) Incurring aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;

(c) Any transfer of real property or transfer of personal property of an aggregate value exceeding 15% of the total value of personal property owned by the Association, shall require the Approval of the Members in accordance with the Bylaws.;

(d) Paying compensation to Directors or Officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Board may reimburse a Director or officer for actual reasonable expenses incurred in carrying on the business of the Association.

4.9 Association Records: The Association's Records shall be available for inspection and copying as provided in Article X of the Bylaws and Civil Code §1365.2, as amended from time to time.

ARTICLE 5 ASSESSMENTS

5.1 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.

Regular Assessments, Special Assessments, and Reimbursement Assessments (as defined in sections 5.5, 5.6 and 5.7), together with interest, late charges, collection costs, and reasonable attorneys' fees, shall be a charge on the Lot and 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.

5.2 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 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 come due after the date he took title to the Lot, including Assessments that may have been levied but which were not yet due at the time such Owner accepted the deed.

5.3 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.

5.4 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.

5.5 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 15th 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 California 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.

5.6 Special Assessments: Subject to the limitations in section 5.8, 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.

5.7 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 his 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 a lien as provided in this Declaration.

5.8 Increase Limitations: This section 5.8 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:, 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 except upon the Approval of the Members.

(b) Special Assessment Limitation: Without the Approval of the Members, 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) and 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.

(d) Approval of Members. The approval of Members required for Assessments in excess of the limits set forth in this section 5.8 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 5.8(a) and 5.8(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 5.8(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.

5.9 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 before the beginning of the fiscal year, a statement of the Association's policies and practices in enforcing defaults in the payment of 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) 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 5.9(e), 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.

(c) 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 5.9(e), within the Small Claims Court's jurisdiction. The Association may enforce any Small Claims award received in any manner permitted by law.

(d) 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 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.

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 and 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 5.9(d) 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 5.9(d) shall automatically be amended in the same manner without an action of the Members.

(e) 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 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: 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.

(f) 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.

5.10 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. 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 5.9.

5.11 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.

ARTICLE 6
ARCHITECTURAL CONTROL

6.1 Approval of Alterations and Improvements: Subject to the exceptions described in this section 6.1, no Improvement and/or structure may be constructed, erected, painted, altered or changed on any portion of the Project without the prior written approval of the Architectural Control Committee (“Committee”). Notwithstanding the foregoing, no Committee approval shall be required for (i) normal maintenance of previously approved Improvements; (ii) repair or rebuilding of a previously approved Improvements in accordance with the previously approved or exempt plans or in a manner that does not change the exterior appearance of the Improvement; (iii) changes to the interior of a previously approved Improvement; (iv) work reasonably required to be performed in an emergency for the purpose of protecting any person or property from damage.

6.2 Architectural Control Committee:

(a) Number, Appointment, Terms. The Committee shall be composed of no less than seven (7) members. The Board shall appoint all members of the Committee. Members of the Committee shall be Members of the Association in Good Standing. No member of the Committee may be removed without the vote of a majority of the Board of Directors then in office. If at any time no Committee has been appointed, the Board shall serve as the Committee until a Committee is appointed.

(b) Committee Operation. The Committee shall meet from time to time as necessary to properly perform its duties. The Committee shall keep and maintain minutes of each meeting and a record of all actions taken by the Committee at meetings or otherwise, and shall maintain with the Association’s records, files of all documents submitted to it. The members of the Committee shall not receive any compensation for services rendered. All members of the Committee shall be entitled to reimbursement by the Association for reasonable expenses actually incurred by them in connection with the performance of their duties and approved by the Board.

The address of the Committee shall be the principal office of the Association as designated by the Board. Unless otherwise indicated by the Committee, such address shall be the place for the submittal of plans and specifications and the place where current copies of the Guidelines shall be kept.

(c) Duties. The Committee shall review requests from Owners for approval of alterations, additions, repairs and reconstruction and shall, consistent with the standards set forth in this Declaration and the Architectural Control Guidelines, approve or deny such requests. The Committee may propose Architectural Control Guidelines (“Guidelines”) for adoption by the Board as provided in section 4.8 and shall perform other duties imposed upon it by the Project Documents or delegated to it by the Board.

6.3 Architectural Standards, Guidelines:

(a) Adoption and Amendment of Guidelines: The Committee may, from time to time, propose new Guidelines or amendments to existing Guidelines for adoption by the Board in accordance with section 4.8. New Guidelines or amendments to the Guidelines shall be approved by four (4) members of the Committee before they are submitted to the Board.

(b) Purpose of Guidelines: Said Guidelines shall interpret and implement the provisions of this Article 6 by setting forth more specific standards and procedures for Committee review. All Guidelines shall be in compliance with all applicable laws and regulations of any governmental entity having jurisdiction over Improvements in the Project, shall incorporate high standards of architectural design and construction engineering, shall be in compliance with the minimum standards of section 6.4 and otherwise shall be in conformity with the purposes and provisions of the Project Documents.

(c) Access to Guidelines: A copy of the current Guidelines shall be available for inspection and copying by any Member at any reasonable time during business hours of the Association.

6.4 Architectural Standards: The following minimum standards shall apply to any Improvements constructed, painted, altered or changed on the Project:

(a) Unless Variance is approved in writing by the City, all Improvements shall be constructed, painted and changed in compliance with the relevant provisions (including proper amendments thereto) of the Documents Governing the Use and Development of Southridge at Fountaingrove as set forth in Exhibit “C” attached hereto, and all other applicable City design regulations or requirements.

(b) All Improvements shall be constructed, painted and changed in compliance with the applicable zoning laws, building codes, subdivision restrictions and all other laws, ordinances and regulations applicable to Project Improvements. Specifically, each proposed Improvement shall be reviewed pursuant to the City of Santa Rosa site decision review process and shall be

handled by City of Santa Rosa staff unless such staff considers that such application should be reviewed by the Santa Rosa Design Review Board.

(c) All Lots shall be landscaped with a combination of trees, shrubs, ground cover, lawn, natural vegetation and limited decorative rock, bark and similar materials. Berming may be utilized so long as it does not disrupt proper drainage within the Project. Landscaping shall be designed so as to compliment, protect and harmonize with the natural terrain, existing trees and vegetation, and shall be consistent with generally accepted, customary and conventional landscape designs. Stone, gravel, concrete and similar materials shall be used only for complimentary and supplementary purposes, and no Lot shall be covered entirely with such materials. Use of low water-using plants on the Lots shall be encouraged and the Guidelines shall not prohibit use of low water-using plants as a group.

(d) All exterior and decorative lighting shall be, whenever possible, placed in such a manner that the source of the light is not visible to adjacent portions of the Project. Colored landscaping lighting shall be prohibited.

(e) All solar energy systems shall be integrated aesthetically and screened as much as possible from adjacent portions of the Project. **The Architectural Control Committee and Board shall consider and approve or deny requests for solar energy system in accordance with Civil Code § 714 et seq.**

(f) In reviewing proposed Improvements for approval, the Committee shall consider at least the following:

- (1) Does the proposed Improvement conform to the purposes and provisions of the Project Documents?
- (2) Is the proposed Improvement of a quality of workmanship and materials comparable to other improvements that are proposed or existing on the Project?
- (3) Is the proposed Improvement of a design and character which is harmonious with proposed or existing Improvements and with the natural topography in the immediate vicinity?
- (4) Will the proposed Improvement unreasonably interfere with or otherwise impair the view or solar access of other portions of the Project?

6.5 Approval Process

(a) Approval Application: Any person or Sub-Association proposing to construct, paint, alter or change any Improvement in the Project which requires the prior approval of the Committee shall apply to the Committee in writing for approval of the work to be performed and the time schedule for performing the work. The Committee may charge an applicant a reasonable fee for application review, not to exceed the Association's actual costs therefore. In the event additional plans and specifications for the work are required by the Committee, the applicant shall be notified of the requirement within thirty (30) days after receipt by the Committee of his initial application or the application shall be deemed sufficiently submitted. If timely notified, the applicant shall submit additional plans and specifications for the proposed work in the form and content reasonably required by the Committee and his application shall not be deemed sufficiently submitted until that date. Such plans and specifications may include, but shall not be limited to, showing the nature, kind, shape, color, size, materials, and location of the proposed work, or the size, species and location of any plants, trees, shrubs and other proposed landscaping.

(b) Review and Approval: Upon sufficient submission of an application for Committee review, the Committee shall proceed expeditiously to review all of the documents to determine whether the proposed work is in compliance with the provisions and purposes of the Project Documents and all Guidelines of the Committee in effect at the time the documents are submitted. The Committee shall provide the applicant with a written approval or denial of the application. In the event the Committee denies an application, it shall notify the applicant in writing of the specific matters to which it objects. In the event the Committee fails to notify the applicant within forty-five (45) days after sufficient submission of the application of the action taken by the Committee, the application shall be deemed approved. One set of plans as finally approved shall be retained by the Committee as a permanent record.

(c) Appeal of Committee Decisions. If any Owner disputes the denial of approval, the Owner may appeal the decision by requesting, in writing, Board review of the plans and the Committee decision or by requesting Internal Dispute Resolution. The Owner's written request for review shall contain the reasons the Owner believes the Committee's decision was in error. The Board shall undertake the requested review at the next regularly scheduled Board meeting; provided, however, if the request for review is not received at least 5 days before such regularly scheduled meeting, the Board may undertake the review at the second regularly scheduled Board meeting

after receipt of the written request. In the event no regularly scheduled Board meeting will be held within 65 days after receipt of the request for review, the Board shall schedule a special open Board meeting at which to review the request. The Board shall notify such Owner of the time, date and place of the open Board meeting at which the plans will be reviewed. The notice shall be given in accordance with Bylaws section 6.1. The Owner shall be given the opportunity to present the plans and explain why they should be approved. Within fifteen (15) days after the hearing has taken place, the Board shall notify the Owner in writing of its decision. The determination of the Board shall be final.

6.6 Commencement, Completion of Approved Work:

(a) Upon receipt of the approval of the Committee, the applicant shall commence and diligently and continuously pursue the work to completion in substantial compliance with the approval of the Committee including all conditions imposed therewith. The approval of the Committee shall be effective for a period of one (1) year after the date of the approval subject to the right of the Committee to provide for a shorter or longer period at the time of its approval, or subsequently to extend the period upon a showing of good cause, and in the event the approved work is not commenced within the effective period of the approval, then the applicant, before commencing any work shall be required to resubmit its application for the approval of the Committee.

(b) All approved work shall be completed within one (1) year after the date of commencement, or such other reasonable period specified by the Committee at the time of approval, subject to extension by the number of days that work is delayed by causes not under the control of the applicant or his contractor. Upon request of the Owner and demonstration of good cause, the time for completion may be extended by the Committee. Any Committee decision on the time to complete approved work may be appealed in accordance with section 6.5(c).

(c) Upon completion of approved work, the applicant shall give written notice thereof to the Committee. If for any reason the Committee fails to notify the applicant of any noncompliance within sixty (60) days after receipt of notice of completion from the applicant, the improvement shall be deemed to be completed in accordance with the approved plans.

6.7 Inspection, Non-Compliance: The Committee, or any authorized representative, shall have the right at any reasonable time, after reasonable notice, to enter upon any portion of the Project for the purpose of determining whether or not any work is being performed or was performed in

compliance with the Project Documents. If at any time the Committee determines that work is not being performed or was not performed in compliance with the Project Documents or the Guidelines, whether based on a failure to apply for or obtain approval, a failure to comply with approval, a failure to timely commence or complete approved work, or otherwise, the Committee shall notify the Owner in writing of such non-compliance specifying the particulars of the non-compliance, and demanding that the owner remedy such non-compliance within a reasonable and specified period. In the event that the Owner fails to remedy such non-compliance within the period specified by the Committee, the Committee shall notify the Board in writing of the failure. The Board shall, subject to Notice and Hearing, have the right to remedy the non-compliance in any appropriate manner permitted by the Project Documents or by law or in equity, including but not limited to correcting the non-complying Improvement, completing the non-complying Improvement, or recording a notice of non-compliance or non-completion on the property, as appropriate, or to otherwise enforce this Declaration as set forth in Article 9. The owner shall have the obligation to reimburse the Master Association for any costs incurred in enforcing these provisions, including reasonable attorneys' fees incurred in obtaining compliance, and if the Association is not reimbursed upon demand the Board may levy the costs against the Owner as a Reimbursement Assessment.

6.8 Waiver: The approval by the Committee of any plans, drawings, or specifications for any Improvements constructed or proposed, or in connection with any other matter requiring the approval of the Committee, shall not be deemed a waiver of the right to withhold approval of any similar plan, drawing, specification or matter submitted for approval. Where unusual circumstances related to the topography or physical state of a Lot warrant it, the Committee may grant reasonable variances from the architectural control provisions hereof or from the Guidelines. Such variances shall be made on a case-by-case basis and shall not serve as precedent for the granting of any other variance.

6.9 Estoppel Certificate: Within thirty (30) days after written demand for an estoppel certificate is delivered to the Committee by any Owner or Mortgagee, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Board), the Committee shall execute and deliver in recordable form, if requested, an estoppel certificate executed by any three (3) of its members, certifying, with respect to the Lot of the Owner or Mortgagee, that as of the date thereof either (a) all Improvements made and other work done at the Lot comply with the Project Documents, or (b) the Improvements or work do not comply in which event the certificate shall also identify the non-complying Improvements or work and set forth with particularity the basis of the noncompliance.

Such statement shall be binding upon the Association and Committee in favor of any person who may rely upon it in good faith.

6.10 Liability: Neither the Committee, the Board nor any member of the Committee or Board, shall be liable to the Association or to any Owner or to any third party for any damages, loss, or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings, or specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, or specifications, (c) the development of any Property within the Project, or (d) the execution and filing of an estoppel certificate under section 6.9, or (e) the execution and filing of a notice of noncompliance or non-completion under section 6.7, whether or not the facts therein are correct if the Board, the Committee, or their members acted in good faith on the basis of such information as he or it possessed. Specifically, but without limitation, it is understood that plans and specification are not approved for engineering design, code compliance, energy efficiency, or construction quality or feasibility, and in approving any plans or specifications neither the Committee, the members of the Committee, the Association, the Members, the Board nor the members of the Board assume liability or responsibility therefore, nor for any defect in any structure constructed from approved or unapproved plans or specifications.

ARTICLE 7
INSURANCE, DESTRUCTION, CONDEMNATION

7.1 Insurance: In addition to other insurance required to be maintained by the Project Documents, the Association shall obtain from generally acceptable insurance carriers, and maintain in effect at all times the following insurance:

(a) Liability Insurance: The Association shall obtain and maintain comprehensive general commercial liability insurance insuring the Association, the Members, and the City (if available) against any liability related to or arising from the ownership, use, or maintenance of the Common Area and any other portions of the Project which the Association maintains, and including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than the limits set in Civil Code § 1365.9, as amended from time to time, for associations with more than 100 separate interests. Such policy may provide for a reasonable deductible. Such insurance

shall include coverage against any liability customarily covered with respect to projects similar in design, construction, location, and use.

(b) Casualty and Extended Coverage Insurance: The Association also shall obtain and maintain a policy of casualty and extended coverage insurance for the full insurable replacement value (without deduction for depreciation) of all of the Improvements within the Common Open Space or Common Area. Such insurance shall include coverage against any risk customarily covered with respect to projects similar in design, construction, location and use. The form, content, term of the policy, its endorsements and the issuing company shall meet the reasonable standards of the First Mortgagees. The policy shall name as insured the Association for the benefit of the Members and all Mortgagees as their respective interests may appear, and may contain a loss payable endorsement in favor of any trustee described in section 7.1(c). Such policy may provide for a reasonable deductible.

(c) Trustee: All casualty and extended coverage insurance proceeds payable under this section 7.1 for losses to real property and Improvements may be paid to a trustee, to be held and expended for the benefit of the Members, Mortgagees, and others, as their respective interests shall appear. The trustee shall be a commercial bank, trust company, or professional trustee in Sonoma County that agrees in writing to accept such trust.

(d) Director and Officer Insurance: The Association shall purchase and maintain insurance covering the Directors, officers, and members of the committees of the Association (collectively the “Agents”) against any liability asserted against or incurred by an Agent in the Agent’s capacity as an agent, or arising out of the Agent’s status as an agent, whether or not the Association would have the power to indemnify the Agent against such liability under applicable law. The limits of such insurance shall not be less than the limits set in Civil Code § 1365.7, as amended from time to time, for associations with more than 100 separate interests. Such policy may provide for a reasonable deductible. Such insurance shall include coverage against any liability customarily covered with respect to projects similar in design, construction, location, and use.

(e) Other Insurance: The Board shall purchase and maintain worker’s compensation insurance, to the extent that it is required by law, for all employees or uninsured contractors of the Association. The Board also shall purchase and maintain fidelity bonds or insurance (which shall be in an amount not less than one hundred fifty percent (150%) of each year’s estimated annual operating expenses and reserves and shall contain an endorsement of coverage of any

person who may serve without compensation) sufficient to meet the requirements of any First Mortgagee. The Board shall purchase and maintain insurance on personal property owned by the Association, and any other insurance that it deems necessary; that is reasonably required by any First Mortgagee; or that is customarily obtained for projects similar in construction, location and use.

(f) Owner's Liability Insurance: An Owner may carry whatever personal and property damage liability insurance with respect to his Lot that he desires or that he is required to carry by any Mortgagee. The Association's insurance shall be limited to the Common Area and shall not cover or include any Lots.

(g) Owner's Fire, Casualty and Extended Coverage Insurance: Each Owner shall obtain and maintain fire, casualty and extended coverage insurance for the full replacement value of all of the Improvements on his Lot. Notwithstanding the foregoing, this section 7.1(g) shall be deemed satisfied where a Sub-Association has obtained such fire, casualty and extended coverage insurance for an Owner's Lot. An Owner may insure his personal property. The Association's insurance shall be limited to the Common Area and shall not cover or include any Lots or any personal property of Owners or their Invitees.

(h) Waiver of Subrogation: All property and liability insurance carried by the Association, or the Owners shall contain provisions whereby the insurer waives rights of subrogation as to the Association and the Owners.

(i) Notice of Cancellation: All insurance carried by the Association shall require the insurer to notify any First Mortgagee requesting such notice at least fifteen (15) days in advance of the effective date of any reduction or cancellation of the policy.

(j) Annual Review of Policies: All insurance policies shall be reviewed at least annually by the Board in order to ascertain whether the coverage contained in the policies is adequate.

(k) Payment of Premiums: Premiums on insurance maintained by the Association shall be a common expense funded by Assessments.

7.2 Destruction

(a) Minor Destruction Affecting Common Open Space: The Board shall have the duty to repair and reconstruct the Common Open Space or Common Area Improvements promptly irrespective of the amount of available insurance proceeds, or other available funds, in all

instances of partial destruction where the estimated cost of repair and reconstruction does not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

(b) Major Destruction Affecting Common Area

(1) Proceeds Exceed 85% of Reconstruction Costs: If there is total or partial destruction of the Common Open Space or Common Area Improvements and if the available insurance proceeds and other available funds are sufficient to cover at least eighty-five percent (85%) of the costs of repair and reconstruction, the Common Area shall be repaired or reconstructed or repaired or reconstructed to the extent of available funds unless, within forty-five (45) days from the date of destruction, Members then holding at least sixty (60%) percent of the Voting Power of the Association determine that repair and reconstruction shall not take place. In the event Members vote not to repair or reconstruct the Common Area, the Association shall proceed with any work necessary to remedy any health or safety hazards, or threats to other Common Area or the Lots, and place the damaged Common Area in a reasonably safe and sanitary condition.

(2) Proceeds Less than 85% of Reconstruction Costs: If the available insurance proceeds and other available funds are less than eighty-five percent (85%) of the costs of repair and reconstruction, the Improvements shall be promptly repaired or reconstructed unless, within forty-five (45) days from the date of destruction, Members then holding at least a majority of the Voting Power of the Association determine that repair and reconstruction shall not take place; provided, however, if the Members do not approve a Special Assessment in accordance with section 5.6 to cover the costs of the repair and reconstruction over the available insurance proceeds, the Association shall use the available insurance proceeds and other funds to remedy any health or safety hazards, or threats to other Common Area or the Lots, and place the damaged Common Area in a reasonably safe and sanitary condition, then repair or restore the Common Area to the extent of remaining funds.

(c) Special Assessment to Rebuild: If the determination is made to rebuild, pursuant to Sections 7.2(a) or 7.2(b), the Association may levy a Special Assessment, in accordance with section 7.8, against all Lot Owners to cover the cost of rebuilding not covered by insurance proceeds, and other available funds.

(d) Rebuilding Contract: If the determination is made to rebuild, the Board shall have the authority to enter into a written contract with a licensed and insured contractor for the repair and

reconstruction and the insurance proceeds shall be disbursed to the contractor according to the terms of the contract. It shall be the obligation of the Board to take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date.

(e) Rebuilding Not Authorized: If the determination is made not to rebuild, then, any insurance proceeds and any other funds held for rebuilding of the Common Area shall, subject to the Corporations Code § 8724, be distributed among the Lots equally, and between the Lot Owners and Mortgagees as their interests shall appear.

(f) Destruction Affecting Lots: If there is a total or partial destruction of a Lot, the Owner thereof shall have the following options:

(1) the Owner shall rebuild or repair the Lot in substantial conformity with its appearance, design, and structural integrity immediately prior to the damage or destruction. Rebuilding shall be commenced within ninety (90) days of the date of the damage or destruction and shall be diligently pursued to completion.

Notwithstanding the foregoing, any Owner of an affected Lot may apply to the Architectural Control Committee for approval of reconstruction of his Lot in a manner which will provide for an exterior appearance and/or design which is different from that which existed prior to the destruction. Application for such approval shall be made in accordance with Article 6. The Architectural Control Committee shall grant such approval only if it finds that the reconstructed Lot will be compatible in exterior appearance and/or design with the other lots in the Project; or,

(2) the Owner shall clear all structures from the Lot, place the Lot in a safe and sanitary condition, and landscape it in a manner which is approved by the Architectural Control Committee. Failure to rebuild the Lot shall not relieve the Lot or its Owner from any Assessment obligation. Landscaping shall be commenced within ninety (90) days of the date of the damage or destruction and shall be diligently pursued to completion.

(3) Sub-Association Restrictions: Notwithstanding the foregoing, should any Lot within a Sub-Association be subject to recorded covenants, conditions and restrictions which contain provisions regarding an Owner's obligation to repair or rebuild his Lot after total or partial destruction, then in the event of any conflict between the provisions herein and the Sub-Association provisions, the Sub-Association provisions shall, control.

7.3 Condemnation

(a) Condemnation Affecting Common Area

(1) Sale in Lieu: If an action for condemnation of all or a portion of the Common Area is proposed or threatened by any entity having the right of eminent domain, then on the consent by written ballot of one hundred percent (100%) of the Voting Power of the Association and subject to the rights of all Mortgagees, the Common Area, or a portion of it may be sold by the Board. Subject to Corporations Code 8724 the proceeds of the sale shall be distributed among the Lots equally and between the Owners and their Mortgagees as their respective interests appear.

(2) Award: If the Common Area, or a portion of it, is not sold but is instead taken, the judgment of condemnation shall by its terms apportion the award among the Owners and their respective Mortgagees. If the judgment of condemnation does not apportion the award then the award shall, be distributed as provided in section 7.3(a)(1).

(b) Condemnation Affecting Lots: If an action for condemnation of all, or a portion of, or otherwise affecting a Lot is proposed or threatened, the Owner and the Mortgagees of the affected Lot, as their respective interests appear, shall be entitled to the proceeds of any sale or award relating to the affected Lot. If any Lot is rendered irreparably uninhabitable as a result of such a taking, the Lot shall be deemed deleted from the Project and the Owners and Mortgagees of the affected Lot, upon receiving the award, shall be released from the applicability of the Project Documents and deemed divested of any interest in the Common Area.

ARTICLE 8 MORTGAGEE PROTECTIONS

8.1 Mortgages Permitted: Any Owner may encumber his Lot with Mortgages.

8.2 Subordination: Any lien created or claimed under the provisions of this Declaration is expressly made subject and subordinate to the rights of any First Mortgage that encumbers any Lot or other portion of the Project, made in good faith and for value, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of such First Mortgage unless the First Mortgagee expressly subordinates his interest, in writing, to such lien.

8.3 Effect of Breach: No breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith and for value, but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee's sale, or otherwise.

8.4 Non-Curable Breach: No Mortgagee who acquires title to a Lot by foreclosure or by deed in lieu of foreclosure or assignment-in-lieu of foreclosure shall be obligated to cure any breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure. The foregoing does not limit or prevent the Association from requiring an Owner obtaining title through foreclosure sale, trustee's sale, or otherwise, to remedy curable breaches of the Project Documents.

8.5 Right to Appear at Meetings: Any Mortgagee may appear at meetings of the Members or the Board.

8.6 Right to Furnish Information: Any Mortgagee may furnish information to the Board concerning the status of any Mortgage.

8.7 Right to Examine Association Books and Records: The Association shall make the books and records of the Association available to Owners and First Mortgagees as set forth in the Bylaws. Any First Mortgagee shall be entitled, upon written request and at its expense, to an audited financial statement for the immediately preceding fiscal year. Such financial statement shall be furnished by the Association within a reasonable time following such request.

8.8 Owners Right to Ingress and Egress: There shall be no restriction upon any Owners' right of ingress and egress to his Lot as originally constructed, which right shall be perpetual and appurtenant to his Lot ownership.

8.9 Notice of Intended Action: Upon written request to the Association, any First Mortgagee shall be entitled to timely written notice of:

- (a) Any proposed amendment to the Project Documents effecting a change in (i) the boundaries of any Lot or the exclusive easement rights appertaining thereto, if any, (ii) the interests in the general or limited common elements appertaining to any Lot or the liability for common expenses appertaining thereto, (iii) the number of votes in the Association appertaining to any Lot or (iv) the purposes to which any Lot or the common elements are restricted;
- (b) Any proposed termination of the legal status of the Project as a planned unit development.

(c) Any condemnation loss or 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 the requesting party.

(d) Any delinquency in the payment of Assessments owed by an Owner of a Lot subject to a First Mortgage held, insured, or guaranteed by the requesting party which remains uncured for a period of sixty (60) days.

(e) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(f) Any proposed action which would require the consent of a specified percentage of First Mortgagees as specified in this Article 8.

8.10 Approval by First Mortgagees: Any provision in this Article 8 or elsewhere in the Project Documents which requires approval by Eligible First Mortgagees shall be read to require the approval of the specified percentage (or if not specified a majority) of the votes cast by Eligible First Mortgagees, based on one (1) vote for each First Mortgage held, insured or guaranteed.

8.11 Restoration Conformity: 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 this Declaration and the original plans and specifications for the Project, unless other action is approved by fifty-one percent (51%) of the Eligible First Mortgagees.

8.12 Termination Generally: Except as provided in section 8.13, any election to terminate the legal status of the Project as a planned unit development must be approved by sixty-seven percent (67%) of the Voting Power of the Association and sixty-seven percent (67%) of the Eligible First Mortgagees.

8.13 Termination after Destruction or Taking: Any election to terminate the legal status of the Project after substantial destruction or a substantial taking in condemnation must be approved by fifty-one percent (51%) of the Eligible First Mortgagees.

8.14 Reallocation of Interest in the Common Area: No reallocation of interests in the Common Area resulting from a partial condemnation or partial destruction of the Project shall be effected without the approval of fifty-one percent (51%) of the Eligible First Mortgagees.

8.15 Termination of Professional Management: When professional management has been previously required by any First Mortgagee, any decision to establish self management by the

Association shall require the approval of sixty-seven percent (67%) of the Voting Power of the Association and, fifty-one percent (51%) of the Eligible First Mortgagees.

8.16 Approval of Material Changes: The approval of sixty-seven percent (67%) of the Voting Power of the Association and fifty-one percent (51%) of the Eligible First Mortgagees shall be required to materially amend any provisions of the Project Documents, or to add any material provisions thereto, which establish, provide for, govern or regulate any of the following:

- (a) Voting;
- (b) Assessments, Assessment liens or subordination of such liens;
- (c) Reserves for maintenance, repair and replacement of the Common Areas, or any other portions of the Project which the Association has a duty to maintain, repair and replace;
- (d) Insurance or Fidelity Bonds;
- (e) Rights to use the Common Areas;
- (f) Responsibility for maintenance and repair of the several portions of the Project;
- (g) Expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project;
- (h) Boundaries of any Lot;
- (i) The interests in the Common Areas;
- (j) Convertibility of lots into Common Areas or Common Areas into Lots.
- (k) Leasing of Lots;
- (l) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his Lot;
- (m) Any provisions which are for the express benefit of First Mortgagees.

An addition or amendment to the Project Documents shall not be considered material if it is for the purpose of correcting technical errors, complying with the law, or for clarification only. A First Mortgagee 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.

8.17 Inapplicability of Right of First Refusal: The right of an Owner to sell, transfer, or otherwise convey his Lot shall not be subject to any right of first refusal or similar restriction. No “right of first

refusal” contained in the Project Documents shall impair the rights of a First Mortgagee to foreclose or take title to a Lot pursuant to the remedies provided in the Mortgage, accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor, or sell or lease a Lot acquired by the Mortgagee.

8.18 First Mortgagee Assessment Liability: Any First Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage shall not be liable for the unpaid Assessments of such Lot which became due prior to the First Mortgagee taking title. Any First Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage is liable for the Assessments of such Lot which became due after the date such First Mortgagee takes title.

8.19 Restriction on Certain Changes: Unless at least sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the First Mortgagees (based on one vote for each First Mortgage owned) or sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the Owners have given their prior written approval, the Master Association shall not:

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area (the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area by the Association shall not be deemed a transfer within the meaning of this clause); or
- (b) Change the method of determining the Assessments, or other charges which may be levied against a Lot Owner; or
- (c) 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 party walks or common fences and driveways, or the upkeep of lawns and plantings in the Project; or
- (d) Fail to maintain fire and extended coverage on insurable Common Area and other portions of the Project which the Association has a duty to insure on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost); or
- (e) Use hazard insurance proceeds for losses to any Common Area or other Project Improvements for other than the repair, replacement or reconstruction of such Common Area or Improvements.

8.20 Distribution; Insurance and Condemnation Proceeds: No provision of the Project Documents shall give a Lot Owner, or any other party, priority over any rights of the First Mortgagee of the Lot pursuant to its Mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Lot and/or Common Area.

8.21 Taxes: First Mortgagees 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 for such Common Area, or secure new hazard insurance coverage for such Common Area on the lapse of a policy, and First Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of all First Mortgagees duly executed by the Association.

8.22 Maintenance Reserves: Association Assessments or charges shall include an adequate reserve fund for maintenance, repair, and replacement of those elements of the Project that must be replaced by the Association on a periodic basis and shall normally be payable through Regular Assessments rather than through Special Assessments.

8.23 Notice of Default: A First Mortgagee, upon request, shall be entitled to written notification from the Association of any default in the performance by the affected Owner of any obligation under the Project Documents which is not cured within sixty (60) days.

8.24 Contracts: Any agreement for professional management of the Project shall not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

8.25 FHLMC and FNMA Requirements: The Project shall comply with all, of the requirements of the Federal Home Loan Mortgage Corporation ("FHLMC") and the Federal National Mortgage Association ("FNMA"). All casualty and liability insurance covering any portion of the Project encumbered by a Mortgage held by FHLMC or FNMA, shall therefore conform to the applicable FHLMC and FNMA requirements. All Owners also agree that in the event the Project or the Project Documents do not comply with the FHLMC and FNMA requirements, the Board and each Owner shall take any action or adopt any resolutions required by First Mortgagee to conform such Project Documents or the Project, to the FHLMC and FNMA requirements.

8.26 Conflicts: In the event of a conflict between any of the provisions of this Article 8 and any other provisions of this Declaration, the provisions of this Article 8 shall control.

ARTICLE 9
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 Resident, or by the Association against any Owner or Resident.

(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 and the right to take possession of the Lot in the manner provided by law. The Association may also temporarily suspend an Owner's use of the Common Area or his membership rights (including the right to vote or serve on the Board or on any committee) 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 hearing 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 the Board or a committee, and right to use Common Area of any Owner (and such Owner's Invitees and Resident's 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 the Board or a committee, and right to use Common Area of any Owner (and such Owner's Invitees and Resident's of such Owner's Lot), after Notice and Hearing, 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 Notice and 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 as originally constructed for the Lot, 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 Residents 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.

9.2 No Waiver: The failure to enforce the provisions of any covenant, condition or restriction contained in the Project Documents shall not constitute a waiver of the right to enforce such provisions or any other provisions of the Project Documents at a later date against the same Owner or against another Owner. The failure to enforce any provisions of the Project Documents shall not be deemed or considered to be abandonment of such provision or any other provision of the Project Documents or acquiescence to violations of the Project Documents.

9.3 Internal Dispute Resolution. The Association shall provide a fair, reasonable and expeditious procedure for resolving disputes between and 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 4.8, 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.

9.4 Attorneys Fees and Costs. 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.

9.5 Right of City to Compel Maintenance of Common Area: In consideration of the approval by the City of the development of the real property to which this Declaration relates, each Owner of a Lot covered by this Declaration, by the acceptance of any deed thereto, whether or not this agreement shall be so expressed in the deed, and all heirs, executors, administrators, assigns, and successors in interest of each Owner is deemed to covenant and agree as follows:

(a) City May Compel Performance. In the event the Association fails to provide for the maintenance of the Common Area to the end that the same shall at all times present a neat, clean and well-kept appearance, the City shall have the right, but not the duty, to compel such maintenance in the manner hereinafter provided. After due notice and a public hearing, the City Council shall authorize and direct the giving of sixty (60) days written notice to the Association to correct such failure to maintain the Common Area. In the event the Association fails to take steps satisfactory to the City to correct such failure within the sixty (60) day period, the City shall have the right to do any of the following:

(1) Do or perform any act the Association is authorized to do or perform under the provisions of this Declaration which is necessary to the maintenance of the Common Area, including but not limited to (i) performance of the necessary maintenance and (ii) levy and collect the cost of doing the maintenance in accordance with the assessment procedures set forth in this Declaration.

(2) Take such legal steps as may be necessary to compel performance by the Association.

(b) Costs of Enforcement: In the event the City exercises any of the remedies afforded to it under the preceding section, any sums recovered from any suit or foreclosure sale or judicial foreclosure proceedings shall be applied first to cover the City's costs of suit or foreclosure, including but not limited to filing fees, title company charges, miscellaneous foreclosure costs, and reasonable attorneys' fees. The balance of any sums recovered shall then be applied against any amount which is then lawfully owing to the City or other public entities. All remaining sums shall be paid to the owner of the property foreclosed upon as his interest may appear.

(c) Waiver. Failure of the City to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

(d) Mortgage Protection. Notwithstanding all the other provisions hereof, any lien created by the City hereunder upon the Project or any Lot covered by this Declaration, shall be subject to and subordinate to, and shall not affect the rights of a holder of an indebtedness secured by any Mortgage or deed of trust upon such Project or Lot made in good faith and for value; provided the Mortgage or deed of trust had been recorded prior to the recording of a notice of delinquency by the City. No foreclosure of any such Mortgage or deed of trust shall impair the City's right to enforce the provisions of this section 9.7 against the purchaser of such Project or Lot at foreclosure sale as to existing or future failures to maintain the Common Areas.

(e) Indemnification of City: In consideration of and as a condition of approval of the subdivision development, the Association does hereby release, discharge, hold and save harmless the City, its officers and employees from any and all liability, claims, or demands arising out of the inadequate or negligent maintenance of Common Areas or improvements thereto. Should the City be joined or named as a party in any legal proceedings or in any other action related to the maintenance responsibilities of the Association or the individual members thereof, the Association does hereby agree to indemnify, hold harmless, and defend or settle any and all claims or actions against the City and to pay any and all claims, damages, judgments, or other liability legally imposed upon the City arising out of any such proceeding and will pay all costs and expenses, including attorney fees and reasonable defense costs incurred in connection therewith.

ARTICLE 10
GENERAL PROVISIONS

10.1 Annexation: Upon the approval of sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the Voting Power of the Association, an owner of any real property who desires to annex such real property to the Project, to subject it to the Project Documents, and to subject it to the rights, powers and duties of the Association may record a Declaration of Annexation in a form approved by the Board. Upon annexation, the annexed parcel shall become part of the Project, subject to the Project Documents and subject to the rights, powers and duties of the Association to the same extent as all other property in the Project. Rights to use of Common Area and terms of annexation shall be determined by the Board prior to the vote of the Membership. Assessments shall commence as to all Lots in the annexed property on the first day of the month following the first conveyance or the first rental, whichever first occurs, of a Lot in the annexed property.

10.2 Notices: Notices provided for in the Project Documents shall be in writing and shall be deemed sufficiently given when delivered personally or seventy-two (72) hours after deposit in the United States mail, postage prepaid, addressed to an Owner at the last address such Owner designates to the Association for delivery of notices, or in the event of no such designation, at such Owner's last known address, or if there be none, at the address of the Owner's Lot. Notices may be delivered by electronic mail or facsimile where the Owner has consented to delivery by electronic means and provided an electronic mail address or facsimile number. Notices to the Members as a whole may be

made by mailing to all Owners as provided above or by publication in an Association newsletter, posting on a bulletin or message board within the Project or on an Association webpage, or inclusion of a note with statements or other mailings. Notices to the Association shall be addressed to the address designated by the Association by written notice to all Owners.

10.3 Notice of Transfer: No later than five (5) days after the sale or transfer of any Lot, the transferee shall notify the Association in writing of the sale or transfer. The notice shall set forth: (i) the Lot involved; (ii) the names and addresses of the transferee and the transferor; and (iii) the date of sale or transfer. Unless and until such notice is given, the Association shall not be required to recognize the transferee for any purpose, and any action taken by the transferor as an Owner may be recognized by the Association. Prior to receipt of any notification by the Association, any and all communications required or permitted to be given by the Association shall be deemed duly given and made to the transferee if duly and timely made and given to such transferor's last known address.

10.4 Severability: The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision or provisions shall not invalidate any other provisions.

10.5 Easements Reserved and Granted: Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in a deed to any Lot.

10.6 Binding Effect: This Declaration shall inure to the benefit of and be binding on the Association, the Owners, and the heirs, personal representatives grantees, tenants, successors and assigns of any Owner.

10.7 Conflict of Project Documents: If there is any conflict between the Project Documents the provisions of this Declaration shall prevail; thereafter, priority shall be given to Project Documents in the following order: the Articles, Bylaws, then the Rules and Regulations and Architectural Control Guidelines.

10.8 Delivery of Project Documents and Disclosures on Transfer: Prior to the transfer of title to a Lot, the transferor (seller) shall provide to the prospective transferee (buyer) a copy of the Project Documents and such other documents and information as are required by Civil Code § 1368. The transferee (seller) shall be solely responsible and liable for all disclosures required by law related to

the Lot, the Common Area or the Association, and the Association makes no disclosures, representations or warranties of any type.

10.9 Termination of Declaration: This Declaration shall run with the land, and shall continue in full force and effect for a period of twenty (20) years from the date on which this Declaration is recorded. After that time, this Declaration and all its covenants and other provisions shall be automatically extended for successive ten (10) year periods unless this Declaration is revoked by the vote of seventy-five percent (75%) of the Voting Power of the Association, and an instrument certifying the vote is recorded in the office of the Sonoma County Recorder within one year before the end of the 20-year period or any succeeding 10-year period.

10.10 Amendment: Despite section 10.9, this Declaration may be amended only upon the affirmative vote by secret written ballot in accordance with the Bylaws of a majority of the Voting Power of the Association. The percentage of the voting power necessary to amend a specific clause or provision herein shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause or provision. An amendment shall become effective when it has received the required approvals and the Secretary of the Association has executed, acknowledged and recorded in the Office of the Sonoma County Recorder, an instrument stating the amendment and certifying that the required approval was received.

10.11 Construction Of Provisions: The provisions of this Declaration shall be liberally construed to affect its purpose of creating a uniform plan for the development and operation of a planned development pursuant to the Davis-Stirling Common Interest Development Act. All codes, laws, and regulations referred to in this Declaration are the codes, laws and regulations of California unless otherwise specified.

10.12 Gender, Number And Captions: As used herein, the singular includes the plural and masculine pronouns shall include feminine pronouns, where appropriate. The title and captions of each paragraph are for reference only and shall not affect the construction or interpretation of any paragraph.

10.13 Successor Statutes: Any reference in the Project Documents to a statute shall be deemed a reference to any amended or successor statute.

This First Restated Declaration of Conditions, Covenants and Restrictions has been duly approved and adopted this ____ day of _____, 2009.

Dated: _____, 2009

**Fountaingrove Ranch Master Association,
A California nonprofit mutual benefit corporation**

By: _____
_____, Secretary

Certification

On _____, 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: _____, 2009

President

Dated: _____, 2009

Secretary

ACKNOWLEDGEMENT

State of California)
) ss
County of Sonoma)

On _____, 200__, before me, _____, Notary Public, personally appeared _____, 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

Signature _____ (Seal)

State of California)
) ss
County of Sonoma)

On _____, 200__, before me, _____, Notary Public, personally appeared _____, 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

Signature _____ (Seal)

Exhibit A

Real property subject to the
First Restated Master Declaration of Covenants, Conditions and Restrictions
of Fountaingrove Ranch.

South Ridge at Fountaingrove

Lots 1 through 39, inclusive, and Lots A, B, C, D, E, and F, as shown on that certain map entitled "Southridge at Fountaingrove", filed in the Office of the Sonoma County Recorder on October 22, 1985, in Book 376 of Maps, at Pages 38 through 41, Sonoma County Records.

Fir Ridge at Fountaingrove

Lots 1 through 48, inclusive, as shown on that certain map entitled "Fir Ridge at Fountaingrove", filed in the Office of the Sonoma County Recorder on December 4, 1985, in Book 378 of Maps, at Pages 17 through 19, Sonoma County Records.

South Ridge Estates (South Ridge II)

Lots 1 through 21, inclusive, and Lot A as shown on that certain map entitled "Southridge II", filed in the Office of the Sonoma County Recorder on December 31, 1986, in Book 393 of Maps, at Pages 8 through 10, Sonoma County Records.

Stone Creek

Lots 1 through 28, inclusive, and Lot A as shown on that certain map entitled "Stone Creek at Fountaingrove", filed in the Office of the Sonoma County Recorder on November 6, 1987, in Book 404 of Maps, at Pages 46 through 52, Sonoma County Records.

Fir Ridge North

Lots 1 through 60, inclusive, and Lots A, B, C, and D, as shown on that certain map entitled "Fir Ridge North at Fountaingrove", filed in the Office of the Sonoma County Recorder on June 8, 1988, in Book 418 of Maps, at Pages 43 through ____, Sonoma County Records.

Lake Pointe at Fountaingrove

Lots 1 through 5, inclusive, and Lot A as shown on that certain map entitled "Lake Pointe at Fountaingrove", filed in the Office of the Sonoma County Recorder on June 8, 1988, in Book 418 of Maps, at Pages 49 through 52, Sonoma County Records.

Fairway Isle

Lots 1 through 44, inclusive, and Lots A, B, C, and D as shown on that certain map entitled "Fairway Isle at Fountaingrove", filed in the Office of the Sonoma County Recorder on June 8, 1988, in Book 418 of Maps, at Pages 37 through 42, Sonoma County Records.

Stonefield at Fountaingrove

Lots 2 and 3 as shown on the Map entitled "Unit 1, Stonefield at Fountaingrove", filed for record August 5, 1988, in Book 422 of Maps, Pages 21 through 23, Sonoma County Records.

Lots "2 and 3", as shown on the Map entitled "Unit 2, Stonefield at Fountaingrove", filed for record September 23, 1988, in Book 424 of Maps, Pages 18 through 23, Sonoma County Records. And

Parcels 1, 2 and 3 as shown on the Map entitled "Stonefield Unit 3", filed for record June 9, 1989, in Book 439 of Maps at Pages 13 through 17, Sonoma County Records.

Lake Pointe Estates

Lots 1 through 9, inclusive, and Parcels A and B as shown on that certain map entitled "Lake Pointe Estates", filed in the Office of the Sonoma County Recorder on November 16, 1990, in Book 468 of Maps, at Pages 6 through 8, Sonoma County Records.

Deer Meadow Unit I at Fountaingrove

Lots 1 through 19, inclusive, and Lots A and C as shown on that certain map entitled "Deer Meadow Unit 1 at Fountaingrove", filed in the Office of the Sonoma County Recorder on August 15, 1990, in Book 462 of Maps, at Pages 43 through 46, Sonoma County Records.

Fairway Knoll at Fountaingrove

Lots 1 through 24, inclusive, as shown on that certain map entitled "Fairway Knoll at Fountaingrove, a Planned Unit Development", filed in the Office of the Sonoma County Recorder on November 21, 1990, in Book 468 of Maps, at Pages 9 through 11, Sonoma County Records.

Deer Meadow Unit II at Fountaingrove

Lots 1 through 42, inclusive, and Lots A, B, and C as shown on that certain map entitled "Deer Meadow Unit II at Fountaingrove", filed in the Office of the Sonoma County Recorder on December 31, 1990, in Book 468 of Maps, at Pages 44 through 48, Sonoma County Records.

Second Fairway

Lots 1 through 26, inclusive, and Parcels A, B, and C as shown on that certain map entitled “Second Fairway at Fountaingrove”, filed in the Office of the Sonoma County Recorder on March 19, 1991, in Book 473 of Maps, at Pages 18 through 21, Sonoma County Records.

Skyfarm at Fountaingrove

Lots 1 through 10, inclusive, and Parcel A as shown on that certain map entitled “Skyfarm at Fountaingrove Unit 1A”, filed in the Office of the Sonoma County Recorder on February 20, 1992, in Book 489 of Maps, at Pages 47 through 50, Sonoma County Records.

Lots 1 through 77, inclusive, and Parcels A, B and C as shown on that certain map entitled “Skyfarm at Fountaingrove Unit 1B”, filed in the Office of the Sonoma County Recorder on February 20, 1992, in Book 489 of Maps, at Pages 38 through 46, Sonoma County Records.

Lots 1 through 13, inclusive, as shown on that certain map entitled “Skyfarm at Fountaingrove Unit 1D”, filed in the Office of the Sonoma County Recorder on February 20, 1992, in Book 490 of Maps, at Pages 4 through 6, Sonoma County Records.

Lots 1 through 21, inclusive, as shown on that certain map entitled “Skyfarm at Fountaingrove Unit 2B”, filed in the Office of the Sonoma County Recorder on February 20, 2003, in Book 645 of Maps, at Pages 1 through 6, Sonoma County Records.

The Oaks at Fountaingrove

Lots 1 through 46, inclusive, and Parcels A and B as shown on that certain map entitled “The Oaks No. 1 at Fountaingrove a Planned Unit Development”, filed in the Office of the Sonoma County Recorder on July 14, 1993, in Book 511 of Maps, at Pages 14 through 19, Sonoma County Records.

Viewpointe North

Lots 1 through 31, inclusive, and Parcels A, B, and C as shown on that certain map entitled “Viewpointe North Subdivision”, filed in the Office of the Sonoma County Recorder on October 21, 1994, in Book 532 of Maps, at Pages 1 through 3, Sonoma County Records.

Altruria Heights

Lots 1 through 37, inclusive, and Parcels C and D as shown on that certain map entitled “Altruria Heights”, filed in the Office of the Sonoma County Recorder on November 12, 1996, in Book 556 of Maps, at Pages 26 through 31, Sonoma County Records.

Buena Vista

Lots 1 through 65, inclusive, and Parcels A, B and C as shown on that certain map entitled “Buena Vista”, filed in the Office of the Sonoma County Recorder on April 8, 1997, in Book 563 of Maps, at Pages 18 through 22, Sonoma County Records.

Fountainview 1 at Fountaingrove

Lots 1 through 30, inclusive, and Lots A, B and C as shown on that certain map entitled “Fountainview 1 at Fountaingrove”, filed in the Office of the Sonoma County Recorder on April 1, 1997, in Book 563 of Maps, at Pages 11 through 14, Sonoma County Records.

Fountainview 2 at Fountaingrove

Lots 1 through 20, inclusive, and Parcels A and B as shown on that certain map entitled “Fountainview Unit 2”, filed in the Office of the Sonoma County Recorder on March 25, 1999, in Book 592 of Maps, at Pages 3 through 7, Sonoma County Records.

Exhibit B

Documents Governing the
Use and Development of Southridge at Fountaingrove, Phase 1 of the
Fountaingrove Master Project.

- (1) The recorded Map of Southridge at Fountaingrove.
- (2) Resolution No. 5995 (February 24, 1984) of the Planning Commission of the City of Santa Rosa approving the Tentative Subdivision Map for Fir Ridge Subdivision, File No. 84-0009.
- (3) Engineering Advisory Committee Report (December 26, 1984) on Fir Ridge – Tentative Map, as amended January 14, 1985.
- (4) Development Plan, Fountaingrove Ranch.
- (5) Policy Statement, Fountaingrove Ranch.
- (6) Use permit, design review and construction standards of the City of Santa Rosa.
- (7) Resolution No. 5994 of the Planning Commission of the City of Santa Rosa approving a use permit for Single-Family Residential use of the Fir Ridge subdivision.
- (8) Final Environmental Impact Report for Fountaingrove Ranch.
- (9) An approximate 4.5 Conservation Easement area being a portion of Lot F shall be offered for dedication to the California Native Plant Society with the underlying title remaining in the Fountaingrove Ranch Master Association. In the event the easement dedication offer is not accepted by the California Native Plant Society, the easement area will be maintained by Fountaingrove Ranch Master Association, in accordance with the recommendations of the Western Ecological Services Company title “Survey of Ceanothus Confusus.”
The Fountaingrove Ranch Master Association shall be responsible for the development of a maintenance program for the conservation easement area unless the California Native Plant Society or another qualified group acceptable to the Department of Community Development agrees to maintain the easement area. Management of the conservation easement shall include annual hand clearing of tree and brush encroachment as needed.
The subdivider shall be responsible for installing a low, wood, corral-type fence or an approved type of open wire fence to be on the boundaries of the conservation easement, adjacent to residential lots and streets.
Vehicular and equestrian use of the conservation easement area is prohibited at all times.
The rear yard landscaping on Lots 25, 26, 27, 28, 29 and 30 shall be designed and maintained to insure that sunlight is not inhibited from reaching plants located within the conservation easement.
- (10) No trees shall be removed from a Lot for house construction unless approved by permit as authorized by the Department of Community Development.
- (11) House construction shall be designed to complement each site and shall preserve the natural contours and significant vegetation to the extent possible. House construction through the use of high piers and beams shall be prohibited.

- (12) Lot grading for house construction shall be limited to garage pads, driveways and under structure areas. "Flat pad" grading of lots is prohibited as well as large level lawn and surface patios where sloping terrain is located. Decks extending from the house are the preferred alternative over sloping terrain.
- (13) Each lot is subject to building setbacks as shown on the recorded Map of Southridge at Fountaingrove incorporated herein.
- (14) Lots 1, 6, 7, and 8 are limited to single-story construction with a height limitation of 20 feet. All other lots shall be restricted to a maximum height limit of 35 feet, except that chimneys may protrude above the maximum building elevation only to the extent permitted by, and in accordance with, the most current Uniform Building Code adopted by the City and any variances which may be obtained from the Architectural Control Committee.
- (15) For all lots, detached accessory buildings and second dwelling units shall be located not less than ten (10) feet in the rear of the main building.
- (16) The rear and side yard setback shall not be less than:
 - a. 5 feet for all lots on slopes less than 5%
 - b. 10 feet for all lots on slopes less than 10%
 - c. 15 feet for all lots on slopes over 10%
- (17) Entry for Maintenance: An easement is hereby reserved in favor of Declarant and Subsequent Developer for maintenance of any trees initially planted on the Lots by Declarant and/or Subsequent Developer. No Owner shall do any act or construct any improvement which would interfere with the irrigation lines initially installed by Declarant or Subsequent Developer without the written approval of the Architectural Control Committee.
- (18) The maximum lot coverage permitted by residential structures shall be 50 percent (50%) of the total lot area.
- (19) Each lot shall contain a minimum of two covered parking spaces per lot, except that an additional covered or uncovered parking space shall be required for any second dwelling unit. Second dwelling units shall be governed by the Second Dwelling Unit Ordinance of the City of Santa Rosa.

* Southridge at Fountaingrove has superseded the tentative map subdivision name of Fir Ridge.