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**SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
BOLLINGER HILLS HOMEOWNER ASSOCIATION**

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**SECOND AMENDED AND RESTATED**  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**OF**  
**BOLLINGER HILLS HOMEOWNER ASSOCIATION**

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This Second Amended and Restated Declaration of Covenants, Conditions and Restrictions is made on the date hereinafter set forth by Bollinger Hills Homeowner Association, a nonprofit mutual benefit corporation (hereinafter sometimes referred to as the "Association").

**RECITALS**

A. WHEREAS, a Restated Declaration of Covenants, Conditions and Restrictions was recorded on September 21, 2000 as Document No. 2000-0205246-00 in the Official Records of Contra Costa County, State of California (the "2000 Declaration");

B. WHEREAS the 2000 Declaration superseded in all respects the Declaration of Covenants, Conditions and Restrictions recorded August 8, 1980 as Document No. 8095837 and all amendments thereto, as evidenced by the Certificate of Amendment of Declaration of Covenants, Conditions and Restrictions Bollinger Hills Homeowner Association (aka Twin Creeks Hills View Homes Association) recorded on September 21, 2000 as Document No. 2000-0205245-00;

C. WHEREAS, the 2000 Declaration establishes certain limitations, easements, covenants, restrictions, conditions, liens, and charges which run with and are binding upon all parties having or acquiring any right, title, or interest in that certain parcel of real property located in the County of Contra Costa, State of California, and more particularly described in Exhibit A attached hereto:

D. WHEREAS, Members, constituting at least a majority of Members entitled to vote, desire to amend, modify, and otherwise change the 2000 Declaration, pursuant to Article XIII, Section 3 thereof;

E. NOW, THEREFORE, pursuant to Article XIII, Section 3 of the 2000 Declaration, Members, constituting at least a majority of the Members entitled to vote, do hereby declare that the aforesaid 2000 Declaration be and hereby is

AMENDED AND RESTATED IN ITS ENTIRETY as set forth in the within Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Bollinger Hills Homeowner Association;

F. IT IS FURTHER HEREBY DECLARED that all of the real property described herein constitutes a Planned Development within the meaning of section 1351(k) of the *Civil Code*;

G. IT IS FURTHER HEREBY DECLARED that all of the real property described herein is held and owned and shall be held, owned, operated, managed, conveyed, hypothecated, encumbered, leased, used, occupied, and improved subject to the following covenants, conditions, and restrictions, all of which are declared and agreed to be in furtherance of a plan and purpose of protecting, preserving, and enhancing the value, desirability, and attractiveness of the said real property and every part thereof, and of fostering the development, management, improvement, enjoyment, and sale of the said real property and any part thereof; and

H. IT IS FURTHER HEREBY DECLARED that all of the covenants, conditions, and restrictions herein set forth shall constitute enforceable equitable servitudes as provided in section 1354 of the *Civil Code*, shall constitute covenants that shall run with the said real property, and shall be binding upon and inure to the benefit of each Owner of any portion of the said real property or of any interest therein and their heirs, successors, and assigns.

## ARTICLE 1

### DEFINITIONS

1.1 Additional Charges. "Additional Charges" shall mean all costs, fees, charges, and expenditures, including without limitation, interest, late charges, attorneys' fees, recording and filing fees, and all other costs actually incurred by the Association in collecting and/or enforcing payment of Assessments, fines, and/or penalties.

1.2 Annual Assessments. "Annual Assessments" shall have the meaning set forth in Section 8.6.

1.3 Architectural Review Committee. "Architectural Review Committee" and "ARC" shall mean the Architectural Review Committee created pursuant to Article 7 of this Declaration and Article 10 of the Bylaws.

1.4 Articles. "Articles" shall mean the Articles of Incorporation of Bollinger Hills Homeowner Association, as they may be amended from time to time, and as filed with the Office of the Secretary of State of California.

1.5 Assessments. "Assessments" shall mean any or all of the following: Annual Assessments, Special Assessments, and Reimbursement Assessments.

1.6 Association. "Association" shall mean the Bollinger Hills Homeowner Association, its successors and assigns. The Association was previously known as "Twin Creeks Hills View Homes Association."

1.7 Board of Directors. "Board of Directors" or "Board" shall mean the governing body of the Association.

1.8 Bylaws. "Bylaws" shall mean the Second Amended and Restated Bylaws of the Bollinger Hills Homeowner Association and any duly-adopted amendments thereto.

1.9 Capital Improvement. "Capital Improvement" shall mean the original construction of an improvement that did not previously exist, as distinguished from the repair, upgrading, renovating or replacing of an existing improvement.

1.10 City. "City" shall mean the City of San Ramon.

1.11 Civil Code. "Civil Code" shall mean the California Civil Code as amended from time to time.

1.12 Common Area. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners and Residents of the Development, including but not limited to: the swimming pool; clubhouse/cabana and parking lot; tot lot; tennis courts; bocce ball court; open space areas; entrances to the development at Morgan Drive and Bollinger Canyon Road, Morgan Drive and San Ramon Valley Boulevard, and Paddock Drive and Bollinger Canyon Road; and landscaping along San Ramon Valley Boulevard and Bollinger Canyon Road.

1.13 County. "County" shall mean the County of Contra Costa.

1.14 Declaration. "Declaration" shall mean this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Bollinger Hills Homeowner Association, recorded in the Office of the County Recorder of Contra Costa, California, and any amendments thereto.

1.15 Development. "Development" shall mean all the real property described in this Declaration which comprises the Bollinger Hills development, including such additions thereto as may hereafter be brought within the jurisdiction of the Association.

1.16 Governing Documents. "Governing Documents" shall mean the Articles, Bylaws, Declaration, Rules, and the policies and resolutions adopted by the Board and distributed to the Members.

1.17 Jointly Owned Common Area. "Jointly Owned Common Area" shall mean that Common Area that was or is owned together with Twin Creeks Hills Courtside Homes Association when the properties were developed.

1.18 Lot. "Lot" shall mean any plot of land shown upon any recorded subdivision map of the Development upon which a Residence has been constructed, with the exception of the Common Area. There are 538 Lots in the Development.

1.19 Maintenance. "Maintenance" or to "maintain" (whether the term is capitalized or not) shall mean the act of caring for property and keeping it well-maintained, preserving it from failure or deterioration.

1.20 Member. "Member" shall mean an Owner.

1.21 Member in Good Standing. "Member in Good Standing" shall mean a Member of the Association who: is current in the payment of all Assessments, fines, penalties, and other charges imposed in accordance with the Governing Documents; is otherwise free from sanctions imposed by the Association; and is in compliance with all provisions of the Governing Documents.

1.22 Mortgage. "Mortgage" shall mean a deed of trust as well as a mortgage in the conventional sense.

1.23 Mortgagee. "Mortgagee" shall mean a beneficiary under a deed of trust as well as under a Mortgage.

1.24 Owner. "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Development.

1.25 Reimbursement Assessment. "Reimbursement Assessment" shall have the meaning set forth in Section 8.9.

1.26 Repair. "Repair" (whether the term is capitalized or not) shall mean the restoration of property that is torn, broken, or otherwise damaged, or has sustained wear, tear, or deterioration such that restoration is necessary.

1.27 Replacement. "Replacement" or to "replace" (whether the term is capitalized or not) shall mean substantial reconstruction, restoration, or substitution of the whole or a substantial part of property that has been damaged

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

1.28 Residence. "Residence" shall mean a residential structure located upon a Lot which is designed for human residential use and occupancy. The term "Residence" shall include any garage, driveway porch, stoop, deck, entry steps, patio, etc. attached to and/or serving the Residence.

1.29 Resident. "Resident" shall mean any person who resides on a Lot within the Development whether or not such person is an Owner as defined in Section 1.23 above.

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

1.31 Simple Majority. "Simple Majority" and "Simple Majority of the Members" shall mean a majority of those voting, provided a quorum of Members is represented in person, by proxy, or by ballot.

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

1.33 Subdivision Map. "Subdivision Map" or "Map" shall collectively refer to those Subdivision Maps listed on Exhibit A attached hereto.

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

1.35 Visible. "Visible" (whether capitalized or not) or "visible from the street" shall mean seen by a six (6) foot tall person standing on any portion of the street in front of or next to a Residence.

## ARTICLE 2

### HOMEOWNERS ASSOCIATION

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

subject only to the limitations upon the exercise of such powers as are expressly set forth in the Governing Documents.

2.2 Membership. Every Owner of a Lot within the Development shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot, and shall not be transferred, encumbered, pledged, alienated, or hypothecated in any way, except upon the transfer or encumbrance of the Lot to which it is appurtenant. Any attempt to make a prohibited transfer is void. Upon any transfer of title to a Lot including a transfer upon the death of an Owner, membership in the Association shall pass automatically to the transferee.

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

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

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

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

2.7 Insurance. The Association shall obtain and maintain the insurance policies as provided below.

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

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

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

(c) Subrogation. All policies shall include a waiver of subrogation by the insurer as to any claims against the Board, the manager, and/or the Owners.

(d) Primary Coverage. The policy or policies obtained by the Association will be primary to all other insurance.

(e) Cancellation/Modification. No policy may be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association.

(f) Endorsements. All policies shall include: an agreed amount endorsement, if the policy contains a coinsurance clause; a replacement cost endorsement; and an inflation guard endorsement.

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

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

(b) Liability Insurance. A commercial general liability policy with limits set by the Board but in no event less than those set forth in *Civil Code* section 1365.9. The policy shall include the Association, Board and Owners as insureds. If available, each policy shall contain a cross liability endorsement in which the rights of the named insured shall not be prejudiced with respect to any action by one named insured against another named insured.

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

(d) Fidelity Bond. A fidelity bond or employee dishonesty policy naming the Board, the Owners, the Association and such other persons as the Board may designate as obligees, in an amount which shall be determined by the Board. This bond or policy shall extend coverage for acts of employees, agents, volunteers, and the management company and management company employees, if applicable.

(e) Directors and Officers. A policy covering individual liability of Directors, officers and the Association for the negligent acts or omissions of the Directors and officers in an amount equal to at least the minimum amount specified in *Civil Code* section 1365.7(a)(4). The policy shall include coverage for the acts of the agents of the Board/and or Association, including the management company and its employees if applicable and if such coverage is available.

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

2.7.3 Deductible. Owners shall be responsible to pay the deductible on any Association insurance applicable to a loss resulting from the conduct or negligence of the Owner.

2.7.4 Insurance by Owner. Each Owner, at that Owner's sole cost and expense, should obtain and maintain a "special causes of loss" policy in an amount equal to or greater than the total replacement value of the insurable improvements on the Lot, the Residence interior, and personal property contained therein (commonly known as a "HO-3" policy). The policy should provide liability coverage in such amounts and for such acts or omissions as are normally and customarily included in homeowners property insurance coverage of the types discussed herein.

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

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

2.7.7 Annual Review. The Board shall review the adequacy of all insurance, including the amount of liability coverage and the amount of property damage coverage, at least once every year. At least once every three (3) years, the review shall include a replacement cost appraisal of all insurable Common Area improvements without respect to depreciation. The Board shall adjust the

policies to provide the amounts and types of coverage and protection that are customarily carried by prudent owners of similar property in the area in which the Development is situated.

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

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

2.9 Capital Improvements. The Board of Directors shall have the power and authority to provide for the construction, reconstruction, installation, or acquisition of Capital Improvements upon the Common Area. The Board shall provide at least 60 days written notice to all Members of the Board's intention to commit to a Capital Improvement project with a value of less than ten percent (10%) of the budgeted gross expenses for that fiscal year. The Board shall also provide at least 60 days written notice to all Members of the Board's intention to borrow money on the Association's behalf equal to or in excess of five percent (5%) of the budgeted gross expenses of that fiscal year to construct a Capital Improvement. The approval of a Simple Majority of the Members is required for any Capital Improvement valued at ten percent (10%) or more of the budgeted gross expenses for that fiscal year.

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

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

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

### ARTICLE 3

#### OWNERSHIP RIGHTS AND EASEMENTS

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

3.1.1 Jointly Owned Common Area. Portions of the Jointly Owned Common Area were originally held in undivided interests by the Association together with Twin Creeks Hills Courtside Homes Association, a California Non-Profit Corporation (also known as "The Courtside Association"). The Association has executed or will execute quitclaim deeds to said properties to The Courtside Association and/or accept quitclaim deeds for said properties from The Courtside Association.

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

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

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

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

(d) The right of the Board, as set forth in Section 3.11, to grant easements and rights of way in, on, over, or under the Common Area subject to the limitations set forth in Section 2.11 and *Civil Code* section 1363.07 and any successor statute thereto;

(e) The right of the Board to mortgage, pledge, encumber, or otherwise hypothecate the Common Area and facilities thereon as security for money borrowed by the Association, subject to any Member approval requirements set forth in this Declaration or the Bylaws; and

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

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

3.4 Delegation of Membership Rights. Any Owner may delegate his or her rights of use and enjoyment, including easements, in the Development to the members of his household, tenants, guests and invitees, subject to the terms of the Governing Documents. Each Owner shall notify the Association's managing agent of the names of any tenants of such Owner's Lot. Each Owner and/or tenant shall also notify the Association's managing agent of the names of all members of his or her household to whom such Owner or tenant has delegated any rights of enjoyment in the Development as provided herein and the relationship which each such person bears to such Owner or tenant. Any rights of enjoyment delegated pursuant to this Section are subject to suspension to the same extent that rights of Owners are subject to suspension as provided in the Governing Documents. Notwithstanding the above, a leasing or renting Owner shall be deemed to have delegated to tenants all rights of use and enjoyment of Common Area facilities. The renting and leasing of Lots and Residences shall be subject to the provisions of Article 5 of this Declaration.

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

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

3.7 Easements in General. In addition to all easements reserved and granted on the Subdivision Map(s), and the easements provided in Section 3.2, there are hereby specifically reserved and granted for the benefit of the Lots and Lot Owners in common and for each Lot and Lot Owner severally, and for the Association, as their respective interests shall obtain, the easements, reciprocal negative easements, secondary easements and rights of way as particularly identified in this Article 3.

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

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

Common Area for the maintenance thereof, together with an easement for the drainage of water from gutters and all other encroachments over each such adjoining Lot and/or Common Area. In no event shall an easement of encroachment exceed three (3) feet, as measured from any point on the common boundary between each Lot and the Common Area adjacent thereto or between adjacent Lots.

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

3.10 Slope Control Easements. Slope control areas are reserved in accordance with the grading established within the Development. No structure, planting or other material shall be placed or permitted to remain, or other activities undertaken, within these slope control areas which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction or flow of drainage channels. The slope control areas of each Lot and all improvements therein shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

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

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

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

## ARTICLE 4

### USE RESTRICTIONS

4.1 Residential Use. Lots shall be occupied and used for residential purposes only.

4.2 Rental of Lots. The rental or lease of any Lot within the Development shall be subject to the provisions of the Governing Documents and Article 5 of this Declaration.

4.3 Restriction on Businesses. No business of any kind shall be established, maintained, operated, permitted, or conducted within the Development except such professional and administrative professions as may be permitted by applicable governmental ordinances. Copies of any licenses or permits issued or required for such businesses allowed by this Article must be provided to the Association at all times that such businesses are operated.

4.4 Child Care Facilities. Child care facilities may be maintained on any Lot within the Development so long as they comply with all governmental requirements. The owner/operator of any permitted day care facility shall provide the Association with prior written notice as to its operation and comply with all local and state laws regarding the licensing and operation of a day care center and, in addition, shall:

(a) Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of the day care center, as provided under *Health and Safety Code* section 1597.531. This Section 4.4(a) is intended to be and shall be conclusively deemed to be the written request to the operator or owner from the Association as specified in *Health and Safety Code* section 1597.531;

(b) Defend, indemnify and hold the Association harmless from any claim, demand, loss, liability, action or cause of action arising out of the existence and operation of the day care center;

(c) Abide by and comply with all of the Association's Governing Documents, including all Rules;

(d) Supervise and be completely responsible at all times for children for whom day care services are provided while they are within the Development; and

(e) Cooperate with the Association if the Association's insurance agent or carrier requires proof of insurance, proof of the agreement of the owner or operator of the center to these conditions, or other reasonable requests.

4.5 Residential Care and Treatment Facilities. Residential care facilities, including those for the care of seniors, and treatment facilities shall be permitted within the Development so long as they comply with all governmental requirements, including but not limited to City ordinances and the applicable provisions of the *Health and Safety Code*.

4.6 Offensive Conduct, Nuisances, Noise. No harmful or offensive activities shall be conducted upon or within any part of the Development, nor shall anything be done thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to any Residents of the Development, or which shall in any way interfere with their use of the Common Area or the use and enjoyment of their Lots. Without limiting any of the foregoing, no Resident shall permit noise, including but not limited to the barking of dogs, to emanate from the Resident's Lot, which would unreasonably disturb another Resident's enjoyment of his or her Lot or of the Common Area.

4.7 Use of the Common Area. All use of Common Area is subject to the Governing Documents and no modifications of any type shall be made to the Common Area without the express written permission of the Board. The Common Area shall be kept free of rubbish, debris, and other unsightly or unsanitary materials. Each Owner shall avoid causing any damage to the Common Area. No portion of the Common Area shall be monopolized by any Owner, group of Owners, or tenants without the prior written approval of the Board of Directors.

4.8 Hazards. There shall be no obstruction of any part of the Common Area. Nothing shall be done, placed, or kept within the Development that will increase the rate of insurance or result in the cancellation of insurance under any insurance policy obtained by the Association, or which will be in violation of any governmental statute, ordinance, rule, or regulation. Nothing shall be stored in the Common Area without the prior consent of the Board. Each Owner and Resident shall comply with all requirements of all federal, state, and local governmental authorities and all laws, ordinances, rules and regulations applicable to his or her Lot.

4.9 Requirement of Architectural Approval. As addressed in greater detail in Article 7, construction, installation, modification, or alteration of buildings, outdoor structures, landscaping, and outdoor lighting are subject to approval of the Architectural Review Committee or, in the event the ARC is not in existence, the Board.

4.10 Sports Apparatus. Fixed basketball standards and other sports apparatus are prohibited within the Development. Portable basketball standards and other sport apparatus are permitted provided they are removed from the street, curb and/or sidewalk when not in use. Portable sports apparatus may not be visible from the street when stored on the Owner's Lot.

4.11 Mailboxes and Exterior Newspaper Tubes. Mailboxes shall comply with all applicable postal regulations and Architectural Review Guidelines, if any. There shall be no free-standing newspaper tubes within the Development.

4.12 Outside Drying and Laundering. No outside clothesline or other outside clothes washing, drying, or airing facilities shall be maintained in the Development except in enclosed backyards on Lots.

4.13 Satellite Dishes and Antennas. The Board may adopt Rules regarding the installation and maintenance of antennas and satellite dishes and related wiring for all telecommunications devices.

4.14 Solar Energy Systems. An individually-owned solar energy system constructed, installed, or maintained in the Development is subject to reasonable standards regarding maintenance and indemnity obligations, as set forth in the Rules.

4.15 Animals.

4.15.1 Limitation on Pets. No animals shall be kept, bred, or maintained within the Development for commercial purposes. A reasonable number of common domestic household pets (i.e., dogs, cats and birds) may be kept on each Lot. While in Common Area each dog must be restrained on a leash held by a responsible person capable of controlling it. Dogs are prohibited within the clubhouse/cabana, pool, park and tennis areas. All Pet Rules are subject to the laws and regulations of the City of San Ramon and the County of Contra Costa.

4.15.2 Owner's Responsibility for Pets. The owner of each pet shall be responsible for immediately removing and disposing of any waste introduced to any portion of the Development by such pet. Each Owner, Resident, and any person bringing or keeping an animal within the Development shall be absolutely liable to the Association and all other persons for any injury or damage to persons or property caused by the animal. The Owner shall

indemnify the Association and its officers, Directors, and agents against any and all claims, damages, losses, demands, liabilities and expenses, including but not limited to attorneys' fees, arising out of or resulting from the presence or conduct of any animal brought upon or kept within the Development by the Owner, members of his or her household, guests, tenants, or invitees.

4.15.3 Pet Rules. The Board may adopt and enforce Pet Rules in addition to the provisions of this Section. Such Pet Rules may include limitations on the number and size of pets permitted per Lot. Additionally, the Association shall have the right to prohibit the keeping of any animal which constitutes, in the sole and exclusive opinion of the Board, a nuisance to any other person.

4.16 Trash Disposal. Trash, garbage, accumulated waste plant material, or other waste and refuse shall be deposited only in covered sanitary containers. Such containers shall be located in an appropriate area upon each Lot and concealed from view except when placed at the curb no more than 24 hours before scheduled pickup and remain at the curb or visible no more than 24 hours after scheduled pickup. No Owner or Resident shall permit or cause any garbage, trash, or other waste or refuse to be visible upon any portion of the Development, except in such containers.

4.17 Construction Materials, Construction Debris. No portion of the Development shall be used for the storage of building materials, machinery and equipment where visible from the street other than in connection with approved construction. All construction debris shall be picked up and deposited daily in an appropriate container.

4.18 Machinery and Equipment. Except as approved by the Board, no machinery or equipment of any kind shall be maintained, operated or parked within the Development except as is customary and necessary in connection with approved construction.

4.19 Signs, Banners, Flags. No sign of any kind shall be displayed to the public view from any portion of the Development except:

- (a) Signs required by legal proceedings;
- (b) Noncommercial signs or posters no larger than nine (9) square feet in size and noncommercial flags or banners no larger than 15 square feet in size, displayed upon an Owner's Lot, and limited to the fullest extent permitted by *Civil Code* section 1353.6;
- (c) A single sign of customary and reasonable dimension and design complying with the Association or Architectural Review Guidelines and reasonably located on a Lot advertising a Lot for sale or rent;

- (d) Other signs which by law cannot be prohibited;
- (e) A flag of the United States, subject to any city or county restrictions as to size and as to time, place, and manner of display;
- (f) A single identification sign which has been approved by the Architectural Review Committee located on a Lot identifying the number or address of the Lot and/or the names of the occupants;
- (g) Signs approved by the Board located at or near any entrance to the Development identifying the Development;
- (h) Signs required for traffic control and regulation of streets or open areas within the Development; and
- (i) Signs on the Common Area as approved by the Architectural Review Committee for a purpose reasonably related to the affairs of the Association.

4.20 Vehicles and Parking. The Board may adopt reasonable Rules, regulations and penalties regarding parking in and towing from the Development. In addition to any such Rules, the following restrictions shall apply.

4.20.1 Commercial and Recreational Vehicles. The following vehicles may not be parked within the Development unless the vehicle is present because of service being provided to a Residence. For the purposes of this Section 4.19.1, the term "Development" shall not include public streets; parking on public streets is subject to local parking ordinances.

(a) Any vehicle with commercial signage or logos which identify a business where such signage and/or logos are clearly visible from the street.

(b) Any vehicle with visible external ladders, cargo, equipment, side racks and/or tools.

(c) Any vehicle with a weight rating greater than one (1) ton.

(d) Any boat, watercraft, camper, trailer, recreational vehicle (as defined by the California Department of Motor Vehicles) or other towables.

4.20.2 Inoperable Vehicles. No inoperable or unregistered vehicle may be parked or stored in a driveway or on any street within the Development.

4.20.3 Residence Parking. Any vehicle parked in front of a Residence may be parked only on the street or on a driveway surface.

4.21 Parking Enforcement. In addition to the provisions of Section 4.20, above, the Board shall have the power and authority to adopt, promulgate, and enforce parking Rules and shall have the power to impose fines and other sanctions for violations of provisions of the Governing Documents relating to vehicles and parking. Such power shall include the power and authority to cause the towing, at the vehicle owner's expense, of vehicles which are parked within the Development in violation of any of the provisions of the Governing Documents. Costs incurred by the Association relating to the towing and/or storage of any vehicle parked in violation of any provision of the Governing Documents shall be assessed as a Reimbursement Assessment against the Lot Owner responsible or whose household members, tenants, or guests are responsible for the presence of such vehicle.

4.22 Garages. No part of any garage shall be converted to other use, such as living quarters.

4.23 Car Covers. Car covers are permitted, but only if the vehicle owner can establish that the vehicle is operable and has current registration. Car covers must be fitted, a solid neutral color and maintained in good conditions. Tarps or other types of makeshift car covers are strictly prohibited. Structures, canopies or other vehicle covers that are visible from the street and are intended to hide otherwise-restricted vehicles are also prohibited.

4.24 Window Coverings. Drapes, window shades, and other window coverings installed in the windows of any Lot shall comply with any Rules adopted by the Board. In no event shall aluminum foil, newspaper, bed sheets, blankets or similar materials be placed in windows.

4.25 Window Air Conditioners and Window Fans. Window air conditioners and/or window fans visible from the street are prohibited.

4.26 Holiday Decorations. Holiday decorations may be installed no sooner than 30 days before the holiday and must be removed no later than 30 days after the holiday.

4.27 Outbuildings. No outbuilding, tent, shack, trailer, shed, or temporary building of any kind shall be constructed or erected within the Development after the date this Declaration is recorded without the prior written approval of the Architectural Review Committee. Owners shall be responsible for the maintenance, repair and replacement of any outbuilding located on his or her Lot. Under no circumstances may a structure or building of any kind be constructed to provide for an additional Residence on a Lot.

4.28 Fence Requirements. All fences must comply with City codes. A fence, meeting City codes and approved by the Architectural Review Committee, is required between the front yard and the back yard on each Lot. Front fences must be permanently constructed and secured. To obtain access from the front to the side or back yard, an ARC-approved gate and ARC-approved access path must be constructed.

4.29 Fences, Walls, Hedges or Shrubs on Corner Lots. Any fence, wall, hedge or shrub must comply with City codes.

4.30 Subdivision or Merger of Lots. No Lot may be subdivided for any reason, nor may any two Lots be combined or merged.

4.31 Mineral Exploration. No Lot shall be used to explore or remove any water, oil, hydrocarbons, or minerals of any kind without the approval of the Board, and only if permitted by local ordinance.

## ARTICLE 5

### RENTING OR LEASING

5.1 Requirements for Renting. An Owner renting his or her Lot and Residence shall:

(a) Do so pursuant to a written lease or rental agreement. The lease or rental agreement shall be for a minimum term of at least six (6) months and shall expressly provide that its terms are subject to all the provisions of the Governing Documents and that failure of the tenant, members of the tenant's household, invitees or guests to comply with applicable provisions of the Governing Documents shall constitute a breach of the terms of such lease or rental agreement.

(b) File a copy of the signed lease or rental agreement with the Board within five (5) days after the lease becomes effective. The Owner may redact or blackout the financial terms (i.e., the amount of rent and security deposit) from the copy of the lease or agreement provided to the Board.

(c) Provide the tenant(s) with a copy of the Governing Documents and any subsequent changes thereto.

(d) Notify the Board of the name of each tenant and of the members of the tenant's household.

5.2 Rental of Entire Lot and Residence. No Owner shall rent or lease less than the entire Lot and Residence. The preceding sentence is intended to prohibit the operation of a rooming house or similar operation within the

Development. No garage, accessory building, or other facility shall be rented, leased, or hired to anyone who does not have the right of possession of the entirety of the Lot. This Section is not intended to prohibit a Resident Owner from sharing his or her Lot with a roommate or other person(s) with whom the Owner maintains a common household.

5.3 Implementation. Upon request from the Board after this Declaration is recorded, each Owner renting or leasing a Lot and Residence shall provide such information as the Board may reasonably require to implement the provisions of this Article 5, including but not limited to the names of the tenants and the members of the tenants' household and the duration of the lease. The Board shall maintain a list of all Owners currently leasing or renting a Lot and Residence, which list shall include: (i) the Owner's name and mailing address; (ii) the address of the rented Lot and the Owner's record date of ownership; and (iii) term of the lease. Such list shall be made available to any Owner upon payment of a reasonable administrative charge to be set by the Board.

5.4 Subletting. No subletting shall be permitted unless the requirements set forth in this Article are met.

5.5 Association as Third Party Beneficiary. The Owner and the tenant(s) of any Lots subject to this Declaration shall be conclusively deemed to have agreed that the Association is an intended third party beneficiary to the contract between the Owner and the tenant(s); that failure of the tenant, members of the tenant's household, or guests to comply with the Governing Documents shall constitute a breach of the terms of the contract between the Owner and the tenant(s); and that the Association shall have the right but not the obligation to enforce the contract and to pursue every remedy available under the contract, under the Declaration, including but not limited to the rights granted pursuant to Section 5.6 below, or under the law, including eviction, to the same extent as the Owner of the Lot. The Association's right to maintain an eviction action shall arise only in the event that: (i) the Association has given notice to the Owner detailing the nature of the infraction and the Owner has had a reasonable opportunity to take corrective action or to appear before the Board to present arguments against eviction by the Association, and (ii) the Owner has not taken action to prevent and/or correct the actions of the tenant giving rise to the damage or nuisance.

5.6 Assignment of Rents as Security for Payment of Liens. As security for the payment of all liens provided for under the Declaration, including those described in Section 8.2, each Owner hereby gives to and confers upon the Association the right, power, and authority during the continuance of such ownership to collect the rents, issues, and profits of the Owner's Lot, reserving unto the Owner the right, prior to any default by such Owner in performance of that Owner's obligations under the Governing Documents in payment of any

indebtedness to the Association or in performance of any agreement thereunder including but not limited to those set forth in Section 8.2, to collect and retain such rents, issues, and profits as they may become due and payable. Upon any such default, the Association may at any time, upon ten (10) days written notice to such Owner, then (either in person, by agent, or by a receiver to be security for such indebtedness) enter upon and take possession of such Owner's Lot or any part thereof, in its own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any such indebtedness, and in such order as the Association may determine or as required by applicable law. The entering upon and taking possession of said property, the collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not cure or waive any default under the Governing Documents or invalidate any act done pursuant to this Declaration, including but not limited to imposition of a Reimbursement Assessment and any Additional Charges. The assignment of rents and powers described in this Section shall not affect, but shall in all respects be subordinate to, the rights and power of the holder of any first Mortgage on any Lot, or any part thereof, to do the same or similar acts.

5.7 Owner Responsible for Tenant's Actions; Indemnification of Association. Each Owner leasing or renting a Lot shall be responsible and strictly liable to the Association for the action of such Owner's tenant(s) in or about all Lots and Common Area and for each tenant's compliance with the provisions of the Governing Documents. To the fullest extent permitted by law, every Owner of a Lot that is occupied by persons other than the Owner pursuant to a rental agreement or lease or otherwise, agrees to and shall indemnify and defend the Association, its Directors and agents and shall hold them harmless from and against any cost, loss, claim or damages of any kind, arising out of the conduct or presence of the occupants of the Lot, including but not limited to attorneys' fees, any claims for consequential damages, and any claims arising or alleged to arise out of the enforcement or non-enforcement by the Association of the Governing Document with respect to such occupants. Any amounts owed pursuant to this Section may be assessed as a Reimbursement Assessment.

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

5.9 Time-Share Arrangements Prohibited. No Lot or Lots shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time-sharing agreement, plan, program or arrangement, including, without limitation, any so-called "vacation license," "travel club," "extended vacation," or other membership or time interval ownership arrangement. The term "time-

sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess any Lot or Lots in the Development rotates among various persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like-kind use privileges, according to a fixed or floating interval or period of time. This Section shall not be construed to limit the personal use of any Lot in the Development by any Owner or his or her or its social or familial guests.

## ARTICLE 6

### MAINTENANCE OF PROPERTY

#### 6.1 Association Responsibility.

6.1.1 Common Area. The Association shall provide maintenance, repair, and replacement of the Common Area and all facilities, improvements, and landscaping thereon including: the Common Area landscape water systems and electrical systems; Common Area sidewalks, walkways, curbs, street gutters, and paved areas; grass, shrubs and trees (including the roots of such trees) planted in the Common Area; perimeter fencing located in the Common Area, surrounding the pool, park and tennis court areas, at the main entrances at Morgan and Paddock; perimeter sound walls; and utility facilities (except for those utility facilities which are maintained by public or private utility companies or agencies), keeping such property in good condition and repair.

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

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

#### 6.2 Owner Responsibility.

6.2.1 Maintenance of Lots. Each Owner shall be responsible for the maintenance, repair and replacement of his or her Lot and all improvements thereon, including but not limited to: the driveway; private walkways providing

ingress and egress to each Lot and Residence: wood and stone walls and fences within or around each Lot; all landscaping, including grass, shrubs and trees (and the roots of any trees planted on the Lot); and external lighting fixtures controlled by electricity from each Residence and not by the Association Common Area wiring. Materials stored behind fences on Lots shall be stored in such a way that they are not visible from the street.

6.2.2 Landscaping Standards. Each Owner shall be responsible for all landscape and hardscape located within his or her Lot. Landscaping on portions of a Lot visible from the streets adjacent to the Lot shall be maintained in a neat, orderly and well-kept condition. The Architectural Review Committee may adopt, revise and enforce minimum landscaping standards.

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

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

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

6.2.6 Owner Liability. In the event the need for any maintenance, repair, or replacement of a component which is otherwise the Association's

responsibility is caused by the willful or negligent act or omission of an Owner or members of an Owner's household, tenants, guests, invitees, or household pets, the cost of such maintenance, repair, or replacement, including the cost of materials, labor, supplies, and services, shall be charged to, and paid by, such Owner in the form of a Reimbursement Assessment. Owners shall be further responsible for any damage to Common Area or the Lot and improvements of another Owner which emanates from an Owner's Lot. The cost of any maintenance, repair or replacement of damaged components, including the cost of materials, labor, supplies, and services, shall be charged to, and paid by, the Owner responsible in the form of a Reimbursement Assessment. This provision shall apply regardless of the applicability of coverage provided by Association-maintained policies of insurance.

6.3 Responsibility for Walls and Fences. The maintenance, repair and replacement of walls and fences which form the boundary between a Lot and Common Area are the sole responsibility of the Owners of Lots on which the walls and/or fences are located. The maintenance, repair and replacement of walls and fences in the following limited areas are the sole responsibility of the Association: (i) concrete sound walls along Bollinger Canyon Boulevard and San Ramon Valley Boulevard; and (ii) fences in the cabana/pool/park area. Owners (and tenants, guests and/or pets thereof) that cause damage to the walls and/or fences for which the Association is responsible, as identified herein, will be responsible for the costs to repair and/or replace such damage, which costs may be levied as a Reimbursement Assessment. Damage for which Owners will be held responsible includes, but is not limited to, damage caused by tree roots located on a Lot and damage caused by soil or dirt placed against the wall or fence.

## ARTICLE 7

### ARCHITECTURAL REVIEW COMMITTEE

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

7.2 Establishment of Architectural Review Committee.

7.2.1 Members. The ARC shall be composed of three (3) Members in Good Standing appointed by the Board of Directors. The Board

shall also appoint one alternate member who may be designated by the ARC to act as a member of the ARC in the absence or incapacity of any ARC member. All ARC members may be members of the Board of Directors. ARC members shall serve two-year terms subject to the Board's power to remove any ARC member and to appoint his or her successor. Neither the members of the ARC nor its designated representatives shall be entitled to any compensation for service performed pursuant hereto.

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

7.3 Duties. It shall be the duty of the ARC to consider and act upon proposals or plans submitted to it pursuant to the terms of this Article 7 and the Association's Architectural Review Guidelines, to perform other duties delegated to it by the Board, to carry out all other duties imposed upon it by this Declaration and act in accordance with *Civil Code* section 1378. If the ARC is unsure about whether to approve or disapprove of a proposal or plan or how to apply the Architectural Review Guidelines, the ARC may make recommendations to the Board and the Board shall decide to approve or disapprove of the proposal or plan. Additionally, the Board may, at any time, modify the duties of the ARC such that the ARC serves in an advisory capacity only and all proposals and plans submitted pursuant to this Article 7 shall be decided on by the Board.

7.4 Meetings, Minutes, Reimbursement. The ARC shall meet as necessary to properly perform its duties hereunder. The vote or written consent of a majority of the members of the ARC shall constitute an act by the ARC. The ARC shall keep and maintain a record of all actions taken by it at such meetings or otherwise. The ARC and its members shall be entitled only to reimbursement for reasonable out-of-pocket expenses incurred by them in the performance of any ARC function.

7.5 Architectural Review Guidelines. Subject to the Board's approval and the requirements of *Civil Code* sections 1357.100 *et seq.*, the ARC may adopt, amend and repeal Rules to be known as "Architectural Review Guidelines." The Architectural Review Guidelines may interpret and implement the provisions hereof by providing for any or all of the following:

(a) The standards and procedures for ARC and/or Board review, including the required content of application and procedures for obtaining preliminary approval of plans.

(b) Guidelines for architectural design, placement of any work of Improvement or color schemes, exterior finishes and materials and similar

features which are recommended or required for use in connection with particular improvement projects within the Development.

(c) The criteria and procedures for requesting variances from any property use restrictions or minimum construction standards that would otherwise apply to the proposed improvement under the Governing Documents. All variances shall be reviewed on a case by case basis with no precedent being established if a variance is granted in a particular instance and must be approved by a majority of the affirmative votes of the ARC and/or Board.

(d) Lists of repair projects and minor improvement projects, if any, that can receive final review and approval by the Architectural Review Committee without approval by the Board, so long as the project is undertaken in accordance with plans and specifications that are consistent with the Architectural Review Guidelines or the project involves use of an identical color or external material to the existing color or material and the new materials/colors are submitted to and reviewed by the ARC.

(e) Notwithstanding the foregoing, no Architectural Review Guidelines shall be in derogation of the minimum standards required by this Declaration. In the event of any conflict between the Architectural Review Guidelines and this Declaration, the provisions of the Declaration shall prevail.

7.6 Application. Any Owner proposing to perform any work of any kind whatsoever, which requires prior approval pursuant to this Article 7, shall apply for approval by notifying the ARC and/or, in writing, of the nature of the proposed work and furnishing such information and documentation as the ARC and/or Board may require.

7.7 Fees. The ARC and/or Board may charge a reasonable fee or fees for its review of architectural or landscaping applications, drawings, plans, and specifications which may include the cost of retaining outside consultants including but not limited to architects, engineers, soils experts, or contractors.

7.8 Grant of Approval. The ARC and/or Board shall approve the application only if all the following conditions are met:

(a) The Owner shall have complied with the provisions of Section 7.6 above.

(b) The ARC and/or Board shall find that the plans and specifications conform to this Declaration and to the Architectural Review Guidelines in effect at the time such plans were submitted to the ARC and/or Board.

(c) The ARC and/or Board shall determine that the proposed improvements would be consistent with the standards and aesthetics of the Development and the purposes of this Declaration as to quality of workmanship, design and materials, as to harmony of exterior design with the existing structures, and as to location with respect to topography and finished grade elevations, with consideration given to preserving views and light.

7.9 Form of Approval. All approvals and rejections of requests for approval shall be in writing and shall be issued by the ARC and/or Board within sixty (60) days from the date of submission of a complete application to the ARC and/or Board. Oral approvals will be of no force and effect. If an application is rejected, the decision shall include an explanation of the Committee's decision and a notice describing the Owner's right to request reconsideration by the Board.

7.10 Appeals. The Rules shall contain procedures to process appeals pursuant to this Article; however, denial decisions rendered by the Board may not be appealed.

7.11 Commencement. Within ninety (90) days of receipt of approval pursuant to Sections 7.8 and 7.9 above, the Owner shall satisfy all conditions thereof and diligently proceed with the commencement and completion of all work pursuant to said approval. If the Owner shall fail to comply with this Section, any approval previously given shall be deemed revoked unless the Board, upon written request of the Owner made prior to the expiration of said ninety (90) day period, extends the time for such commencement. No such extension shall be granted except upon a finding by the Board that there has been no change in the circumstances upon which the original approval was granted.

7.12 Completion. Unless shorter time is specified in the approval by the Association, the Owner shall complete the approved work within six (6) months after receipt of approval, except and for as long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities, or other supervening forces beyond the control of the Owner or his agents. If an Owner fails to comply with this Section, the ARC shall notify the Board of such failure, and the Board shall proceed in accordance with the provisions of Section 7.13, below, as though the failure to complete the improvements was a non-compliance with approved plans.

7.13 Inspection of Completed Work; Non-Compliance. Inspection of work and correction of defects therein shall proceed as follows:

(a) Upon the completion of any installation, construction, reconstruction, alteration, or refinishing of the exterior of any improvements, or

upon the completion of any other work for which approved plans are required under this Article 7, the Owner shall give written notice thereof to the ARC and/or Board.

(b) Within sixty (60) days thereafter, the ARC and/or Board, or its duly authorized representative, may inspect such improvement to determine whether it was installed, constructed, reconstructed, altered, or refinished to substantial compliance with the approved plans. If the ARC and/or Board finds that such installation, construction, reconstruction, alteration, or refinishing was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance within such sixty (60) day period, specifying the particulars of non-compliance, and shall require the Owner to remedy such non-compliance.

(c) If the Owner shall have failed to remedy such non-compliance upon the expiration of thirty (30) days from the date of such notification, the ARC shall notify the Board in writing of such failure. The Board shall then set a date on which a hearing before the Board shall be held regarding the alleged non-compliance. The hearing date shall be not more than thirty (30) nor less than fifteen (15) days after notice of the non-compliance is given to the Board by the ARC. Notice of the hearing date shall be given at least ten (10) days in advance thereof by the Board to the Owner, to the ARC and, in the discretion of the Board, to any other interested party.

(d) At the hearing, the Owner, the ARC and, in the Board's discretion, any other interested persons, may present information relevant to the question of the alleged non-compliance. After considering all such information, the Board shall determine whether there is non-compliance, and, if so, the nature thereof and the estimated cost of correcting or removing the same. If non-compliance exists, the Board shall require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board's ruling. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board, at its option, may either remove the non-complying improvement or remedy the non-compliance and all expenses incurred in connection therewith shall be assessed against the Owner as a Reimbursement Assessment.

(e) If, for any reason, the ARC and/or Board fails to notify the Owner of any non-compliance within sixty (60) days after receipt of a notice of completion from the Owner, the improvement shall be deemed to be in accordance with the approved plans.

7.14 Non-Waiver. The approval by the ARC and/or Board of any plans, drawings, or specifications for any work done or proposed, or for any other

matter requiring the approval of the ARC and/or Board under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification, or matter subsequently submitted for approval.

7.15 Estoppel Certificate. Within thirty (30) days after written demand is delivered to the Association by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Board), the Board shall cause to be recorded an estoppel certificate, certifying (with respect to any Lot of said Owner) that as of the date thereof, either: (i) all improvements made and other work completed by said Owner comply with this Declaration, or (ii) such improvements or work do not so comply, in which event the certificate shall also identify the non-complying improvements or work and set forth with particularity the basis of such non-compliance. Any Owner, or anyone deriving any interest in a Lot through him or her, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association and all Owners and such persons deriving any interest through them.

7.16 Liability. Neither the Board nor the ARC (or any member thereof) shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of: (i) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (iii) the development of any property within the Development; or (iv) the execution and filing of an estoppel certificate pursuant to Section 7.15, whether or not the facts therein are correct; provided, however, that the ARC and/or Board (or any member thereof) has acted in good faith on the basis of such information as may be possessed by it (or such ARC and/or Board member). Without in any way limiting the generality of the foregoing, the ARC and/or Board (or any member thereof) may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the ARC and/or Board. Every purchaser, by acquiring title to a Lot, agrees not to bring any action or suit against the ARC and/or Board (or any member thereof) seeking to recover any such damages.

7.17 Compliance With Governmental Requirements. The application to the Association and the review and approval of any proposals, plans, or other submittals shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements, the responsibility for which lies solely with the respective Owner, nor shall it constitute the assumption of any responsibility by or impose any liability on the Board, the ARC, or their members as to the accuracy, efficacy, or sufficiency thereof. The obtaining of a permit or other approval of a government agency

shall not be a substitute for nor constitute compliance with the requirements of this Article 7.

## ARTICLE 8

### ASSESSMENTS AND LIENS

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

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

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

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

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

8.2 Creation of Lien. Each Assessment levied by the Association pursuant to this Declaration, together with all Additional Charges, shall be a charge upon the land and upon levy shall be secured by a continuing lien upon the property against which such Assessment is levied. The Association shall

have a separate lien and a separate lien is hereby created upon each Lot to secure the payment of any such Assessments and Additional Charges as may be levied under this Declaration.

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

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

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

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

8.6 Annual Assessments.

8.6.1 Calculation of Estimated Requirement. Not later than thirty (30) days nor more than ninety (90) days prior to the beginning of each fiscal

year, the Board shall complete and distribute to all Owners an estimate of the net funds required by the Association for such fiscal year, including a reasonable amount allocated to contingencies and to a reserve fund for restoration, repair, and/or replacement of those components for which the Association is responsible and which must be repaired or replaced on a periodic basis; to manage, administer, operate, and maintain the Development; to conduct the affairs of the Association; and to perform all of the Association's duties in accordance with this Declaration.

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

8.6.3 Surplus Funds. If, as of the end of any fiscal year, there is a surplus of cash in the Association's maintenance and operating account, as reflected in the Association's financial statement for such fiscal year, the Members shall vote whether to have the excess applied to the following year's assessments, per Revenue Ruling 70-604.

8.6.4 Increases in Annual Assessment. Pursuant to *Civil Code* section 1366(b), except as otherwise provided by law, the Board shall not increase the Annual Assessment for any fiscal year above the amount of the Annual Assessment for the preceding fiscal year by more than twenty percent (20%) (or such other limitation on the increase as may be imposed by law), except upon the affirmative vote of a majority of Members voting on any such increase in the Annual Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members of the Association (i.e., at least 270 Lots), notwithstanding any lower quorum requirement set forth in the Bylaws.

## 8.7 Special Assessments.

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

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

8.7.3 Approval of Special Assessments. Except in the case of an emergency situation as defined in *Civil Code* section 1366, in any fiscal year the Board may not levy Special Assessments which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, except upon the affirmative vote of a majority of the Members voting on any such Special Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members of the Association (i.e., at least 270 Lots), notwithstanding any lower quorum requirement set forth in the Bylaws.

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

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

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

8.11 No Offsets. All Assessments levied by the Board shall be payable in the full amount specified, including any Additional Charges imposed as provided by the terms of this Declaration, and no offsets against any such amounts shall be permitted for any reason whatsoever, including without

limitation a claim that the Association has failed to properly exercise its duties of maintenance or enforcement.

8.12 Delinquent Assessments. Any installment or other portion of an Assessment not paid within thirty (30) days after its due date shall be delinquent and shall be subject to interest and late charges not to exceed the maximum rate permitted by law, as well as all other Additional Charges. The Board, on behalf of the Association, may enforce the payment of any delinquent Assessment plus Additional Charges by bringing an action at law against any Owner personally obligated to pay the same, or by foreclosing the lien against the Owner's Lot by judicial or non-judicial foreclosure, except as prohibited by law. Prior to recording a Notice of Delinquent Assessment, the Association shall provide notice to the Owner in accordance with *Civil Code* section 1367.1 or successor statute. No procedures shall be initiated to foreclose the lien securing any Assessment levied under this Article 8 except as in accordance with *Civil Code* section 1367.1 or successor statute. Except as prohibited by law, upon the recording of the Notice of Delinquent Assessment referred to above, the Association may, at its option, declare the entire balance of all sums then due or to become due from the Owner, immediately due and payable, which total sum may then be included in any suit, action, or other procedure initiated to collect said sums, including all Additional Charges. Notwithstanding any other provision of this Declaration, the Association must comply with the requirements of *Civil Code* section 1367.1 or successor statute when collecting delinquent Assessments.

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

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

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

8.16 Priority. Except as otherwise expressly provided by law, the lien securing each of the Assessments provided for under this Article 8 shall have priority as of the date of recording of the original Declaration applicable to the Development over all other liens and encumbrances applicable to the Lots; provided, however, that such Assessment lien shall be subordinate to the lien of any first Mortgage or first deed of trust recorded against the Lot; and provided, further, that such subordination shall apply only to the Assessments which have become due and payable prior to the sale of such property pursuant to a decree of foreclosure of any such Mortgage or deed of trust, or pursuant to a power of sale contained in any such Mortgage. Such foreclosure sale shall not relieve such property from liability for any Assessments and Additional Charges thereafter becoming due, nor from the lien of any subsequent Assessment.

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

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

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

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

(c) All Common Area.

## ARTICLE 9

### ENFORCEMENT

9.1 Violations as Nuisance. Every act or omission constituting or resulting in a violation of any of the provisions of the Governing Documents shall be deemed to constitute a nuisance and, in addition to any other remedies which may be available, such nuisance may be abated or enjoined by the Association; provided, however, that the Board shall not be obligated to take action to abate or enjoin a particular violation if, in the exercise of its discretion, the Board determines that acting to abate or enjoin such violation is not likely to foster or be in the best interests of the Association and its Members as a whole.

Notwithstanding the preceding sentence and without limiting its generality, nothing in the Governing Documents shall be deemed to impose upon the Association, the Board, or the officers, employees, or agents of the Association a duty to intervene in any physical dispute or altercation or any criminal or alleged criminal activity other than to notify law enforcement officials.

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

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

9.4 No Avoidance. No Owner may avoid the burdens or obligations imposed by the Governing Documents through non-use of any Common Area facilities or by abandonment of his or her Lot.

9.5 Rights and Remedies of the Association.

9.5.1 Rights and Remedies Are Cumulative. The Association, its Directors, officers, or agents, and any Owner shall have the right to enforce any and all provisions of the Governing Documents by any proceeding at law or in equity, or through the use of such other remedies as are available and deemed appropriate by the Board. Each remedy provided is cumulative and not exclusive.

9.5.2 Imposition of Sanctions. In the event of a breach or infraction of any provision of the Governing Documents by an Owner, members of an Owner's household, or his or her tenants or guests, the Board shall have the power to impose a sanction against the Owner who is responsible as provided in Section 9.3 for such breach or infraction. A sanction may include but shall not be limited to a monetary penalty and/or the suspension of an Owner's rights as a Member of the Association, including an Owner's voting rights or an Owner's right to use the recreational or community facilities on the Common Area. Imposition of a sanction shall be effective only after notice and an opportunity for hearing. Any monetary penalty imposed pursuant to this Section

shall not exceed the amount for each violation, as set forth in the schedule of monetary penalties adopted pursuant to *Civil Code* section 1363(g). Each Owner shall be obligated to pay costs incurred by the Association relating to violation of any provisions of the Governing Documents by such members of Owner's household, tenants, guests, pets, or other invitees. Sanctions may be enforced by the Association in any manner permitted by law.

9.5.3 Continuing Violations. In the case of a continuing violation, such as an uncorrected architectural violation, where an Owner, member of an Owner's household, or his or her tenants or guests fails to cease or remedy a violation after notice from the Board to do so, the Board may deem such a continuing violation and may impose separate and successive sanctions for each such violation without holding further hearings for each sanction.

9.6 Inadequacy of Legal Remedy. Except for the non-payment of any Assessment, a remedy at law to recover damages for the breach or violation of the Governing Documents is inadequate and the failure of any Owner or a member of the household of any Owner or an Owner's tenants, guests, or household pets or any other occupant or user of any of the property within the Development to comply with any provision of the Governing Documents may be enjoined in any judicial proceedings initiated by the Association or by any Owner, or by their respective successors in interest.

9.7 Limitation on Disciplinary Rights. The Association shall not have the power to cause a forfeiture or abridgment of a Member's right to the full use and occupancy of his or her Lot as the result of the failure by such Owner, members of such Owner's household, or his or her tenants, guests, invitees or household pets to comply with any provision of the Governing Documents, except where such forfeiture or abridgment is the result of the judgment of a court of competent jurisdiction, a decision arising out of an arbitration proceeding, or a foreclosure or sale under private power of sale for failure of such Owner to pay Assessments. The provisions of this Section shall not affect the Association's right to impose fines or monetary penalties or to suspend an Owner's membership rights, as provided in the Governing Documents.

9.8 Disciplinary Rules. The Board or a committee appointed by the Board for that purpose may adopt Rules and regulations that further elaborate upon and refine procedures for conducting disciplinary proceedings and otherwise imposing sanctions upon Members of the Association for violation of provisions of the Governing Documents. Such Rules, when approved and adopted by the Board subject to *Civil Code* sections 1357.100 *et seq.*, shall be deemed to be a part of the Association Rules provided for, in and constituting a part of the Governing Documents.

9.9 Investigation of Complaints. Upon receipt of a written complaint from an Owner or Resident, the Board shall conduct an investigation of the allegations in the complaint and shall make relevant findings upon which the Board shall base a decision to pursue or not pursue the matter.

9.10 Emergency Situations. The following shall constitute emergency situations: (i) an immediate and unreasonable infringement of or threat to the safety or peaceful enjoyment of Residents of the Development; (ii) a traffic or fire hazard; (iii) a threat of material damage to or destruction of the Development or any portion thereof; and (iv) a violation of any provision of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether the violation has occurred (such as parking violations). Notwithstanding any other provision of the Governing Documents, under circumstances involving conduct that constitutes an emergency, the Board or its duly authorized agents may undertake immediate corrective or disciplinary action and, upon request of the Owner as to whom such corrective or disciplinary action has been taken, or on its own initiative, conduct a hearing as soon thereafter as reasonably possible. If the Association acts on its own initiative to schedule a hearing, notice of the date, time and location of the hearing shall accompany the notice of the disciplinary action which is transmitted to the Owner. If the Board has not scheduled a hearing and the Owner desires a hearing, the Owner's written request for a hearing shall be delivered to the Association no later than five (5) days following the date when the notice of the Board's disciplinary action is transmitted to the Owner. The hearing shall be held not later than fifteen (15) days following the date of the Board's notice of the disciplinary action or fifteen (15) days following the receipt of the Owner's request for a hearing, whichever is later. If a hearing is scheduled or requested, any sanctions imposed or other disciplinary action taken by the Board shall be held in abeyance and shall become effective only if affirmed at the hearing.

9.11 Notices. Any notices required or given under this Article 9 shall, at a minimum, set forth the date, time, and location of any hearing, a brief description of the act or omission constituting the alleged violation of the Governing Documents, a reference to the specific Governing Document provision or provisions alleged to have been violated, and the sanction, disciplinary action, or other enforcement action being contemplated by the Board, if any. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice to the affected Member, provided, however, that if notice is given by mail, it shall be sent by first-class mail, postage prepaid, sent to the most recent address for the affected Member as shown on the records of the Association.

9.12 Dispute Resolution.

9.12.1 Alternative Dispute Resolution. Any dispute other than those listed in *Civil Code* section 1369.520(b) or those related to the power and

duty of the Board of Directors to levy and collect Assessments through lien and foreclosure proceedings shall be submitted to alternative dispute resolution procedures ("ADR") as described *Civil Code* sections 1369.510 *et seq.* In the case of any claim, dispute, or controversy which is not otherwise subject to *Civil Code* sections 1369.510 *et seq.*, involving a sum of money not in excess of the jurisdiction of the Small Claims Court, any party to the dispute shall have the right to file a claim in Small Claims Court and have the matter determined therein in lieu of ADR.

9.12.2 Internal Dispute Resolution. In addition to the ADR provisions of *Civil Code* sections 1369.510 *et seq.*, the Association shall provide for Internal Dispute Resolution in any dispute regarding the rights, duties or liabilities under *Civil Code* sections 1350 *et seq.*, the Nonprofit Mutual Benefit Corporation Law, or the Governing Documents. The procedure may be invoked by any party pursuant to *Civil Code* sections 1363.810 *et seq.*

9.13 Non-Waiver. Failure to enforce any provision of the Governing Documents at any time shall not be deemed a waiver of the right to do so thereafter with respect to the same or any other violation of any provision of the Governing Documents.

9.14 Costs and Attorneys' Fees. In the event the Association shall take any action to enforce any of the provisions of the Governing Documents or shall determine that any Owner or Resident, member of his or her household, tenants, guests, invitees or household pets have violated any provision of the Governing Documents, and whether or not legal or judicial proceedings are initiated, the Association shall be entitled to recover the full amount of all costs including attorneys' fees incurred by the Association in responding to such a violation and/or in enforcing any Governing Document provision. In the event of a court awarding attorneys' fees, the court shall not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses and attorneys' fees paid or incurred in good faith. The remedies of the Association to recover the amount of such costs and attorneys' fees shall include, but shall not necessarily be limited to, the imposition of a Reimbursement Assessment as provided in Article 8.9 of this Declaration.

## ARTICLE 10

### DAMAGE OR DESTRUCTION OF BUILDINGS; CONDEMNATION

10.1 Replacement or Repair of Association Property. In the event of damage to or destruction of Common Area or other property of the Association or any part thereof, the Association shall repair or replace the same from the insurance proceeds payable to it by reason of such damage or destruction. If any such damage or destruction was insured against and the insurance proceeds

are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may levy a Special Assessment against the Members of this Association as provided in this Declaration to cover the additional cost of the repair or replacement not covered by the insurance proceeds. The Members may elect not to cause such replacement or repair by the vote or written consent of two-thirds (2/3) of the Total Voting Power of the Association. If there is an election not to rebuild or repair, the applicable insurance proceeds shall be used in the manner determined by the Board, provided that such use shall not be inconsistent with the purposes of the Association.

10.2 Rebuilding or Repair of Improvements on Lots. If any Lot and/or Residence is damaged or destroyed by fire or other casualty, the Owner(s) of any such Lot shall repair or rebuild the structures upon such Lot and restore such Lot to its condition prior to the damage or destruction, or to such other condition as shall have been approved in advance by the Architectural Review Committee. Repair or rebuilding shall be commenced within a reasonable time, which shall in no event exceed one (1) year after the occurrence of the damage or destruction. The Association shall make available to the Owner(s) of the damaged Lot the proceeds from insurance applicable to the loss, if any. However, the amount of such proceeds shall not limit the obligation of the Owner(s) to repair or rebuild.

10.3 Condemnation.

10.3.1 Condemnation of Common Area. If at any time all or any portion of any Common Area, or any interest therein, shall be taken for any public or quasi-public use, under any statute, by right of eminent domain, or by private purchase in lieu of eminent domain, the entire compensation or award in condemnation, to the extent such award is not apportioned among the Owners by court judgment or by agreement between the condemning authority and each of the affected Owners in the Development, shall be paid to the Association and shall be used in the manner determined by the Board, provided that such use shall not be inconsistent with the purposes of the Association. The Association shall represent the interests of all Owners in any proceedings relating to such condemnation to the extent such Owners have any interest in the Common Area.

10.3.2 Condemnation of Lots. If an entire Residence or Lot, or so much thereof as to render the remainder unfit for use as a residence, is condemned or taken for a public or quasi-public use, pursuant to any statute, by right of eminent domain, or by private purchase in lieu of eminent domain, the Owner's membership in the Association shall terminate as of the last day of the month in which the condemner obtains the right to possession, or upon Owner's vacating the premises, whichever occurs last. If only a portion of such Residence or Lot is taken and the remainder is fit for use as a residence, the Owner shall continue to be a Member of the Association. In any condemnation

action involving an Owner's Residence or Lot, the Association shall have the right to seek compensation for any damages incurred by the Association.

## ARTICLE 11

### AMENDMENT

This Declaration may be amended by the affirmative vote of a Simple Majority of the Members. For purposes of the preceding sentence, quorum shall mean more than fifty percent (50%) of the Total Voting Power of the Association, as set forth in Section 4.6.3 of the Bylaws. Any amendment of the Declaration shall be signed and acknowledged by the duly authorized officer(s) of the Association and recorded in the Office of the Contra Costa County Recorder.

## ARTICLE 12

### GENERAL PROVISIONS

12.1 Headings. The headings used in this Declaration are for convenience only and are not to be used in interpreting the meaning of any of the provisions of this Declaration or otherwise.

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

12.3 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of fostering a plan of community ownership and occupancy and of management of the Development for the benefit of the community.

12.4 Conflict Between Governing Documents. In the case of any conflict between the Articles of Incorporation and this Declaration, the Articles shall control; and in the case of any conflict between this Declaration and the Bylaws, this Declaration shall control.

12.5 Amendment to Referenced Statutes. References in this Declaration to particular statutes, including sections of the *Civil Code*, shall be deemed to include any successor statute and any amendments to existing or successor statutes.

12.6 Number; Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine, and neuter shall each include the masculine, feminine, or neuter, as the context requires.

12.7 Easements Reserved and Granted. Any and all easements referred to herein shall be deemed reserved or granted, or both reserved and granted, as appropriate, by reference to this Declaration in a deed to any Lot.

12.8 Power of Attorney. To the extent necessary to carry out and enforce the provisions of this Declaration, an irrevocable power of attorney coupled with an interest is granted to the Association by the Owners and each of them.

12.9 Term. The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges, and equitable servitudes contained in this Declaration shall run with and shall benefit and burden all of the real property subject to this Declaration, including without limitation the Lots and Common Area, and shall inure to the benefit of and be binding upon the Owners, the Association, its Board of Directors and officers, and their respective agents and successors in interest, for a term of thirty (30) years from the date of recordation of this Declaration. Thereafter the term shall be automatically extended for successive periods of ten (10) years each, unless within the six (6) months prior to the expiration of the initial 30-year term or any 10-year extension period, a written instrument approved by Owners entitled to vote and holding at least a majority of the Total Voting Power of the Association, terminating the effectiveness of this Declaration shall be recorded in the Office of the County Recorder of Contra Costa County, California.

DRAFT

IN WITNESS WHEREOF, we, the Members of Bollinger Hills Homeowner Association, constituting at least a majority of the Members entitled to vote, hereby affirm, approve, and adopt the foregoing Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Bollinger Hills Homeowner Association, in accordance with Article XIII, Section 3 of the 2000 Declaration, by means of the signatures of the President and Corporate Secretary of the Association, duly authorized by the affirmative vote of at least a majority of the Members entitled to vote, which the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions shall be recorded with the County Recorder of Contra Costa County, California.

DATED: \_\_\_\_\_

BOLLINGER HILLS HOMEOWNER  
ASSOCIATION

\_\_\_\_\_  
[insert name as will sign], President

Secretary

\_\_\_\_\_  
[insert name as will sign], Corporate

DRAFT

**ACKNOWLEDGMENT**

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 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)

DRAFT

**ACKNOWLEDGMENT**

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 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)

DRAFT