

NOTICE

If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the *Government Code*. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

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RECORDING REQUESTED BY, AND WHEN
RECORDED, RETURN TO:

Cowell Homeowners Association, Inc.
c/o Abend, Jacobson & Hughes
2173 Ygnacio Valley Road
P.O. Box 9355
Walnut Creek, CA 94598-0955

RECORDED AT REQUEST OF

Attorney

NOV - 9 1989

AT 10 O'CLOCK M.
CONTRA COSTA COUNTY RECORDS
STEPHEN L. WEIR
COUNTY RECORDER

FEE \$

47.00

COWELL HOMEOWNERS ASSOCIATION, INC.

AMENDED DECLARATION OF

COVENANTS, CONDITIONS, AND RESTRICTIONS

This Amendment to the COWELL HOMEOWNERS ASSOCIATION, Amended Declaration of Restrictions (hereinafter "Declaration"), is made this 6th of November, 1989, by the COWELL HOMEOWNERS ASSOCIATION INC. ("Association"), a California non-profit mutual benefit corporation, successor by merger of WALNUT COUNTRY-EAST HOMEOWNERS ASSOCIATION and WALNUT COUNTRY-WEST HOMEOWNERS ASSOCIATION.

RECITALS

A. The Association and its owners (as the term is defined herein) own all that certain real property located in Contra Costa County, State of California, shown on the map attached as Exhibit "A" and made part hereof, excepting therefrom roadways dedicated to the City of Concord, California, and as more particularly described in the Cowell Declaration and Exhibit "B" hereto.

B. There has heretofore been recorded a Declaration of Covenants, Conditions, and Restrictions of COWELL HOMEOWNERS ASSOCIATION, INC., on the fourth day of October, 1972, in Book 6766, p. 205, et seq., in the Official Records of the Office of the Contra Costa County Recorder, State of California, affecting the properties described in Paragraph A. above.

C. There has heretofore been recorded a Declaration of Covenants, Conditions, and Restrictions of WALNUT COUNTRY-WEST HOMEOWNERS ASSOCIATION as supplemented and amended on the fourth day of October, 1972 in Book 6766, p. 186, et seq., in the Official Records of the Office of the Contra Costa County Recorder, State of California, affecting a portion of the properties described in Paragraph A. above.

D. There has heretofore been recorded a Declaration of Covenants, Conditions, and Restrictions of WALNUT COUNTRY-EAST ASSOCIATION on the 31st day of July, 1973, in Book 7009, p. 359, et seq., in the Official Records of the Office of the Contra Costa County Recorder, State of California, affecting a portion of the properties described in Paragraph A. above.

E. Pursuant to the terms and conditions of the Restrictions set forth above and by the By-Laws of the respective Associations, a Special Meeting of the Members of each Association was duly held on June 27, 1977, pursuant to notice duly given, at which meeting, not less than 2/3 of the

Owners of Lots located within the properties acting in person or by proxy adopted a resolution approving an amended Declaration and the recordation thereof and, further, adopted the resolution stating the act of recordation of the Amended Declaration would constitute a merger of the "East" and "West" restrictions into the Amended Declaration which amendment and merger would be effective upon its recordation. Thereafter, said Amended Declaration was recorded the 5th day of October, 1978, in Book 9040, p. 516, et seq., in the Official Records of the Office of the Contra Costa County Recorder, State of California.

F. At the time meeting described in Paragraph E. above, not less than 2/3 of the Owners of the Lots located within the properties acting in person or by proxy also adopted the resolution approving the merger of WALNUT COUNTRY-EAST HOMEOWNERS ASSOCIATION and WALNUT COUNTRY-WEST HOMEOWNERS ASSOCIATION into COWELL HOMEOWNERS ASSOCIATION, INC.

G. On April 12, 1978, WALNUT COUNTRY-EAST HOMEOWNERS ASSOCIATION and WALNUT COUNTRY-WEST HOMEOWNERS ASSOCIATION were merged into COWELL HOMEOWNERS ASSOCIATION, INC., creating a single Homeowners Association and, thus, eliminating the necessity of having three (3) separate sets of restrictions as set forth above.

H. In furtherance of their combined desire that all of the Development described herein shall be held, sold, and conveyed subject to a single instrument describing easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of and which shall run with the real property and be binding upon all parties having any right, title, or interest in the described properties or any part thereof, their Association and its Owners, their heirs, successors, and assigns, shall inure to the benefit of each Owner adopted and recorded the COWELL HOMEOWNERS ASSOCIATION, INC.'S Amended Declaration of Restrictions on October 5, 1978, in Book 9040, p. 516, et seq., of the Contra Costa County Official Records.

I. The Association duly adopted a further amendment of Article X, Section 1 of said Declaration which was recorded on March 10, 1983, in Book 11157 at p. 862 of the Contra Costa County Official Records.

J. It is hereby declared that all of the real property described herein constitutes a Planned Development within the meaning of Section 1351(k) of the California Civil Code.

K. It is further hereby declared that all of the real property described herein is held and shall be held, 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 and preserving the value and desirability of the said real property and every part thereof and of fostering the development, improvement, enjoyment, and sale of said real property and any part thereof. All former declarations of restrictions and amendments thereto are hereby repealed.

L. It is further hereby declared that all of the covenants, conditions, and restrictions set forth herein shall constitute enforceable, equitable servitudes as provided in Section 1354 of the California Civil Code,

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shall run with said real property, and shall be binding upon and inure to the benefit of each Owner of the portion of said real property or any interest therein and their heirs, successors, and assigns.

ARTICLE I

DEFINITIONS

Section 1. "Articles" shall mean the Articles of Incorporation of COWELL HOMEOWNERS ASSOCIATION, INC., as they may be amended from time to time and as filed with the Office of the California Secretary of State.

Section 2. "Association" shall mean and refer to COWELL HOMEOWNERS ASSOCIATION, INC., its predecessors, successors, and assigns.

Section 3. "Common Area" shall mean all the real property owned by the Association for the common use and enjoyment of the Owners together with the recreational facility located thereon, if any, which common area is more particularly described in Exhibit "B" which is attached and made a part hereof.

Section 4. "Declaration" shall mean the Declaration of Covenants, Conditions, and Restrictions of COWELL HOMEOWNERS ASSOCIATION, INC., because said Declaration may, from time to time, be amended and recorded in the Offices of the Recorder of Contra Costa County, California.

Section 5. "Development" shall mean all the real property hereinbefore described and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 6. "Exclusive Use Common Area" shall mean those portions of the Common Area which are designated for the exclusive use of the Owners of a particular Lot.

Section 7. "Governing Documents" shall mean the Articles, By-Laws, Declaration, and Rules of the Association.

Section 8. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Development with the exception of the Common Area.

Section 9. "Maintenance" shall mean the act of caring for property and keeping it in its existing state, preserving it from failure or deterioration, including painting, caulking, cleaning and minor non-structural upkeep.

Section 10. "Member" shall mean and refer to every person or entity who holds Membership in the Association.

ARTICLE II

USE RESTRICTIONS PERTAINING TO RESIDENTIAL LOTS

Section 1. The properties described herein, except the Common Area, shall be known and described as Residential Lots or Residence Lots. No

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structure shall be erected, altered, placed or permitted to remain on any Residential Lot other than One (1) single-family dwelling not to exceed Two (2) stories in height, and private garage for not more than Three (3) cars and other out-buildings incidental to Residential use of the Lots.

No residence shall contain internal partitions and duplication of facilities, separate entrances or other incidents of a duplex or multiple family dwelling.

Section 2. All buildings erected or constructed on any Lot shall conform to the ordinances and statutes pertaining thereto.

Section 3. No building shall be located on any Lot near the front Lot line or side street line, nor nearer to the side or rear yard line of such Lot than shall be permitted by the ordinances and regulations of the applicable governmental agency governing the same, nor in any event closer to the front and side yard lines then established by the original construction of such building yard set-back shall be required for a garage or other permitted accessory building located Thirty (30) feet or more from the front Lot line. For the purposes of this Covenant, eaves, steps and open porches shall not be constructed so as to permit any portion of a building on a Lot to encroach upon any other Lot.

Section 4. No noxious or offensive trade, commercial activity, or other activity shall be carried on upon any Lot described herein, nor shall anything be done therein which may be or become an annoyance to the neighborhood.

Section 5. No trailer, basement, tent, shack, garage, bar, or other out-building erected on any Lot described herein, including "granny units" or in-law quarters shall at any time be used as a residence, temporarily or permanently, nor shall any structure of any temporary character be used as a residence.

Section 6. No residence shall be erected or permitted on any Lot or building plot in said tract containing less than Nine Hundred (900) square feet of floor area. Such area shall be exclusive of attached garage and open entries, porches, patio or basement. The minimum required floor area shall be deemed to include the total enclosed floor area of the residence, building measurements to be taken for this purpose from the outer facing of exterior walls.

Section 7. No derrick or other structure designed for use in boring, mining or quarrying for oil or natural gas, or precious minerals, shall be erected, maintained or permitted upon any Lot in said tract, provided that nothing in this Declaration shall be construed to restrict a public utility from erecting, maintaining and operating upon any Lot owned by it in said tract, a well, housing and equipment for the purpose of extracting water from the subsurface and/or for the treatment, storage and distribution of water through the system of such public utility.

Section 8. No sign, billboard or other advertising device of any character shall be erected or maintained upon any part of said tract or any Lot therein; excepting, however, One (1) sign for each Lot (with dimensions of not

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more than Eighteen (18) inches by Twenty-Four (24) inches) advertising such Lot for sale or rent.

Section 9. No trailers, non-operable vehicles, boats, motor homes or other recreational vehicles are to be parked in the driveway or front yard of a Lot or in the street for more than seventy-two consecutive hours pursuant to Concord Municipal Code Sections 10813, 3217 and California Vehicle Code Sections 22651(k) and 22702. Nor shall vehicles being repaired be left in the driveway of a Lot or in the street for over twenty-four hours. The Board of Directors may adopt reasonable rules imposing penalties and/or towing of violating vehicles after affording a resident notice and opportunity to be heard by the Board of Directors.

Section 10. No radio or television receiving or transmitting antennae or external apparatus shall be installed on any Lot. Normal radio and television installations wholly within a building are excepted.

Section 11. Easements for installation and maintenance of the utilities, sewer pipelines and facilities and drainage facilities over each of said Lots, and all pipelines and other facilities located and to be located in said easements are reserved as shown on the recorded subdivision maps. Within these easements no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. In addition, all sewer pipelines and other sewer facilities located and to be located within public roads, streets and highways abutting each of said Lots are reserved.

Section 12. Breach of any of the covenants in this Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to said Lots or property, or any part thereof, but such provisions, restrictions or covenants shall be binding and effective against any Owner of said property whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

Section 13. Certain of the Lots located within the Development have been and will be conveyed with easements over adjacent property or subject to easements for benefit of adjacent property or both, and the right to create, grant and reserve such easements is hereby reserved. Said easements, the uses and purposes of which are set out below, shall be granted or reserved by reference to this Section 13 and shall be designated by applicable Lot number within the Development. The following rules describe the terms, conditions and uses of such easements, both by the dominant tenement holder and the Owner of the fee underlying the easement:

- (a) Allowable uses are restricted to landscaping (flowers, plants, lawn, sprinklers, hose bibs and so forth), swimming pool decking and use as a general recreation and garden area or any other use at ground level that will allow the Owner of the land (servient tenement) access to any underground construction and to the walls and roof of his or her home for maintenance and repair and further does

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not impede surface drainage in the area. All such improvements in the easement area must be submitted to the Architectural Control Committee for approval prior to installation;

(b) All other uses are not allowed, including without limiting the foregoing, permanent installations of swimming pool heating and filtering equipment; barbecue equipment and facilities; and recreational sports equipment and facilities;

(c) The Owner (servient tenement) of the fee under the easement shall have the right at all reasonable times to enter the easement area, including crossing over the dominant tenement property for such entry, in order to perform work related to the usage of the servient tenement property;

(d) The Owner (servient tenement) of the fee under the easement shall have the right of drainage over, across and upon the easement for water resulting from the normal usage of servient tenement and the dominant tenement shall maintain the easement area in such a manner as will not interfere such drainage;

(e) The Owner (dominant tenement) of the easement shall not attach any object to a wall or a building belonging to the Owner (servient tenement) of the fee under the easement;

(f) The Owner (dominant tenement) of the easement, except as otherwise provided in this Section 14, shall have the exclusive use of the surface of the easement area subject to the rights of other easement holders (utilities, sewers, etc.), if any, and subject to minor encroachments, if any, existing at the time of the creation of the easement or arising through subsidence of buildings, or fireplaces or walls in existence at the time of the creation of the easement.

(g) The Owner (servient tenement) of the fee underlying the easement shall have such right to use the subsurface underlying the easement area as shall not unreasonably interfere with the rights granted to the Owner (dominant tenement) of the easement described herein.

Section 14. (a) The respective Residential Lots shall not be rented or leased by the Owners thereof for transient or hotel purposes, which shall be defined as (1) rentals for any period less than Six (6) months; or (2) any rental if the occupants of the Residential Lot are provided customary hotel services, such as room service for food and beverage, maid service and furnishing laundry and linen. Other than the foregoing obligations, the Owners of the respective Lot shall have the right to lease their Lots subject to the provisions contained in this Declaration and, in particular, this Section 14.

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(b) The right to lease a Lot shall be restricted to a maximum of Twenty-Five Percent (25%) of the Lots in the Development at any time.

(c) The right to lease a Lot shall be granted in the order written applications are received by the Board. In the event the Board receives two or more applications on the same day, the right of a Owner to lease his or her Lot within the Twenty-Five Percent (25%) allowable under subsection (b) shall be determined by priority on the basis of record ownership date; and the Owner first in record ownership shall have the priority and right to lease his or her Lot over an Owner of subsequent recorded ownership; provided, however, that should an Owner of lower priority already be leasing his or her Lot, an Owner prior in record ownership shall not have the right to supersede or supplant such current lease, but must await the next available vacancy within the allowable Twenty-Five Percent (25%).

(d) The provisions of this Section 14 shall not be binding upon any Owner of record title as of, or Residence Lot lease existing on, the recordation date of this amended Declaration.

(e) Any Owner shall have the right, on good cause evidenced in writing to the satisfaction of the Board of Directors, to lease his or her Lot for a limited term subject to the provisions of subsection (a) of this Section 14, if such Owner represents that he or she shall return to the Lot within a reasonable time and again take possession as resident Owner; and such limited lease shall be permitted by the Board without regard to the Twenty-Five Percent (25%) maximum set forth in subsection (b) of this Section 14; provided, however, that the Board of Directors must have first approved of such lease in writing, as described in subsection (f) of this Section 14, in order to verify the representations made by the requesting Owner.

(f) Leasing procedures shall be as follows:

(1) Each Owner shall have the right, upon written application (notice) delivered to the Secretary of the Association, to appear before the Board of Directors and request the right to lease his or her Lot.

(2) The Board of Directors shall prepare a list of all Owners currently leasing their Lots, which list shall include the Owner's name, mailing address, Lot number or address, record date of ownership, and lease term; and such list shall be made available to all Owners upon request.

(3) The Board shall also prepare a "waiting list" of those Owners who have applied for approval to lease their Lots, which list shall include the Owner's name, mailing address, Lot number, date of application and record date of ownership.

(4) Any Owner desiring to lease his or her Lot shall submit such application in writing to the Board of Directors, which application shall contain the following information: Owner's name, mailing address, Lot number or address, and record ownership date; proposed lease term; identity of tenants intended; and any other information

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which the Board of Directors may reasonably require from time to time, by written notice to the Owners.

(5) Within Thirty (30) days of receipt of such application to lease, the Board of Directors shall review such application, and approve or disapprove of the request in writing delivered to the requesting Owner, which, if the request is disapproved, shall specify the exact reason or reasons therefore.

(6) If the lease requested is disapproved, the Owner concerned shall have the right of rehearing, upon written notice to the Board of Directors, at its next regular meeting, or as otherwise agreed upon between the parties. The Owner shall have the right to appear at the rehearing and present his or her case; and on termination of such rehearing, the Board shall deliver its written findings to the applying Owner within Ten (10) days thereafter; and if the application is again disapproved, the Board shall specify the reasons for such disapproval.

(7) The decision of the Board of Directors in approving or disapproving an application of Owner to lease his Lot shall be absolute and binding, unless in clear violation of this Section 14.

(8) Each Owner leasing a Lot pursuant to this Section 14 shall be strictly responsible and liable to the Association for the actions of such Owner's tenants in or about all Residence Lots and the Common Area and for the tenant's compliance with the provisions of the Governing Documents.

ARTICLE III

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have the right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with title to every Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) The right of the Association to suspend the voting rights and the right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed Ninety (90) days for any infraction of its published rules and regulations after hearing by the Board of Directors of the Association, which shall be noticed and heard in accordance with By-Laws, Article VII, Section 1(b);

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any person, firm, corporation, public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless Members entitled to cast Two-Thirds (2/3) of the votes of the membership agree to such dedication or a transfer, and unless written notice of the proposed action is sent to every Member not less than Thirty (30) nor more than Sixty (60) days in advance;

(d) The right of the Association to limit the number of guests of Members;

(e) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area and the recreational facilities located thereon;

(f) The right the Association, in accordance with its Amended Articles and Amended By-Laws, to borrow money for the purpose of improving or reconstructing the Common Area and facilities thereof and in aid thereof, to mortgage said property, provided that the rights of such Mortgagee shall be subordinated to the rights of the Member.

Section 2 - Delegation of Use. Any Member may delegate, in accordance with the Amended By-Laws of the Association, his right of enjoyment to the Common Area to the members of his family, his tenants, or contract purchasers who reside on the property. In the case of tenants or contract purchasers, such delegation shall be in writing and a copy filed with the Association.

A non-resident Owner shall have no right to use the Common Area facilities while his or her Lot is occupied by someone other than said Owner.

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Section 3. Waiver of Use. No Member may exempt himself from personal liability for assessment duly levied by the Association, nor release the Lot owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area or by abandonment of his Lot.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of any Lot which is subject to assessment.

Section 2. Transfer. The membership held by any Owner of a Lot shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Lot, and then only to the purchaser or mortgagee of said Lot. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. On notification by the purchaser of such Lot, the Association shall have the right to record the transfer upon the books of the Association. Purchaser shall pay transfer charge in the amount of Twenty-Five Dollars (\$25.00) to the Association for the transfer of a Lot on the Association records.

Section 3. Voting. The Association has One (1) class of voting membership. All such members shall be Owners and shall be entitled to One (1) vote for each Lot owned. When more than One (1) person holds an interest in any lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than One (1) vote be cast with any respect to any Lot. Cumulative voting shall be in effect at all director elections.

ARTICLE V

COMMON AREA

Section 1. Use of the Common Area. The Common Area shall be used and maintained as a private park and recreational area for purposes incidental thereto. The Common Area shall be for the exclusive use and enjoyment of the Owners of Lots within the Development, except as determined by the Board of Directors.

ARTICLE VI

MAINTENANCE OF COMMON AREA AND LOTS

Section 1. Association Responsibility. The Association shall have the obligation to Maintain, Repair, and Replace the Common Area and all improvements located thereon; provided, however, that the expense of any extraordinary maintenance, repair or replacement of the Common Area which is caused by the intentional or negligent act or omission of an Owner or a member

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of a Owner's family or an Owner's tenants, guests or pets, shall be paid by such Owner and the Board may charge the full amount of such costs to such Owner as a reimbursement assessment as provided in Article VII of this Declaration. The Association's obligation to maintain, repair and replace the Common Area shall include the obligation to maintain, repair and replace underground water, sewer and storm drain laterals, even though such laterals may be located beneath the Residence Lots.

Section 2. Owner Responsibility. Each Owner shall have the obligation at his or her expense to maintain, and in the case of damage or construction to repair and/or replace his or her Residence Lot and all improvements thereon. Any maintenance, repair or replacement by an Owner shall be subject to the approval of the Architectural Control Committee as provided in Article XI of this Declaration.

Section 3. Owner's Liability. The Architectural Control Committee and/or the Board of Directors shall have the absolute discretion to determine that any maintenance, repair or replacement of the exterior of any residence or landscaping located upon a Residence Lot is necessary. If maintenance, repair or replacement work is required to be performed on any Residence Lot and if the Owner's failure to accomplish such work is detrimental to the exterior appearance of such Residence Lot, or interferes in any way with the enjoyment by any other Owners of their Residence Lot or of the Common Area, the Architectural Control Committee or the Board shall give written notice to the Owner of the Residence Lot needing such work specifying the work which must be accomplished. If the Owner has not commenced such work within Thirty (30) days of delivery of such written notice, or if the work, once commenced, is not diligently pursued to completion, the Association may, by further written notice to the Owner involved penalize the Owner, suspend the Owner's voting rights and right to use Common Area facilities and/or commence legal action to enforce the Owner's duties.

Section 4. Party Walls (Fences).

(a) Each wall or fence which is built as part of the original construction within the project and placed on the dividing line between the Lots shall constitute a Party Wall, and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply between adjacent lot owners. The cost of reasonable repair and maintenance of a Party Wall shall be shared by the owners of the adjacent Lots in equal proportions. If a Party Wall is destroyed or damaged by fire or other casualty, either owner may restore it, and the other Lot owner or owners shall contribute to the cost of the restoration thereof in proportion to the relative length of the Party Wall bounding each Lot without prejudice, subject, however, to the right of any such Owners to call for a larger contribution from the others and under any rule of law regarding liability for negligent or willful acts or omissions. Notwithstanding any other provision of this Section, any Owner who by his negligence or willful act causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements. The right of any owner to contribution from any other owner under this Section shall be appurtenant to the land and shall pass to Owner's successors in title.

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(b) Any Party Wall (Fence) which is built on the property line between a Lot and the Common Area will be maintained, restored, and replaced as necessary entirely by the Lot Owner, unless damaged or destroyed by the Association during upkeep and maintenance of the Common Area.

Section 5. Right of Appeal by Effected Owner. Any Owner who receives from the Association a notice requiring such Owner to perform any maintenance, repair or replacement work pursuant to Section 3 of this Article may submit his or her objections to the Board of Directors. Upon receipt of such objections, the Board shall notify the Owner, and at its discretion, and any other interested person of the date and time when a hearing will be held on the objections. At the hearing, the objecting Owner and any other interested person may present any relevant information or evidence. After the conclusion of the hearing, the Board shall notify the objecting Owner of its decision in writing and the decision of the Board will be final.

Section 6. Improvements Subject to This Article. Each Lot must be properly landscaped and all planting shall be trimmed, cultivated and weeded and maintained continuously so as to provide a safe, clean and groomed appearance. Trees and shrubs which over hang public sidewalks or streets shall be trimmed or a minimum clearance of seven (7) feet above the traveling surface. Open strips of land between fences and sidewalks must be maintained and kept neat and free of weeds by each Lot Owner.

Re-painting of the residences shall be in the colors identical to that provided by the Developer or other color approved by the Architectural Control Committee in accordance with the rules and guidelines of said committee.

ARTICLE VII

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 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 covenant and agree to pay to the Association: (a) annual assessments, and (b) special assessments, levied by the Association as hereinafter provided, together with interest, late charges, costs of suit and/or collection, and reasonable attorneys' fees, and shall thereby be deemed to vest in the Association the right and power to initiate all actions and procedures for the collection of such assessments and charges and for the enforcement of the liens hereinafter provided for. Each assessment levied by the Association under this Article, together with interest, late charges, costs of suit and/or collection, and reasonable attorneys' fees, 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. Such obligations 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 charges assessed during the time he or she is Record Owner of such Lot. After a Record Owner transfers, of record, 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

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applicable charges accruing until time of collection. A contract seller of any Lot shall continue to be liable for all assessments and charges until a conveyance by deed of such Lot is recorded in the Office of the County Recorder of the County in which the Development is located.

Section 2. Creation of Lien. Each assessment levied by the Association pursuant to this Article, together with interest, late charges, costs of suit and/or collection, and reasonable attorneys' fees, shall be a charge upon the land, and shall be a continuing lien upon the property against which such assessment is made. The Association shall have a separate lien and a separate lien is hereby created upon each Lot against which an assessment is levied to secure the payment of any such assessments and charges levied under this Article. The priority of all such liens on each Lot shall be inverse order, so that, upon the foreclosure of the lien for any particular month's charge on any Lot, any sale of such Lot, pursuant to foreclosure of the lien, will be made subject to all liens securing the respective monthly assessments and charges on such Lot for succeeding months.

Section 3. Purpose of Annual Assessments. The annual assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Development and for the improvement, maintenance and restoration of the Common Area, and maintenance of the homes situated within the Development, as hereinafter provided. Said annual assessments shall include, without limitation, and the Association shall acquire and pay for out of the funds derived from said annual assessments, the following:

A. Water, sewer, garbage, electrical, lighting, telephone, and gas and other necessary utility service for the Common Area;

B. Maintenance and repair of storm drains, and sanitary sewers lying within the Common Area;

C. The cost of insurance premiums, exclusive of deductibles, for any insurance policies obtained by the Association as provided in this Declaration;

D. The cost of painting, maintenance, repair, replacement and all landscaping of the Common Area, and the structures and improvements thereon, and such furnishings and equipment for the Common Area as the Association shall deem necessary and proper, including without limitation, all equipment, furnishings, and personnel as may be necessary or proper for the use and maintenance of the Common Area, and the facilities thereon, provided that the Association shall have the exclusive right and duty to acquire the same;

E. Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Association is required to secure or pay for pursuant to the terms of this Declaration or by law or which, in the opinion of the Board of Directors, shall be necessary or proper for the operation of the Common Area, or for the benefit of the Lot Owners, or for the enforcement of the Articles, By-Laws, Declaration, or Rules.

Section 4. Annual Assessments.

A. Not later than forty-five (45) days prior to the beginning of each fiscal year, the Board shall estimate the net funds required by the Association for such fiscal year (including a reasonable reserve for contingencies and replacement) to manage, operate, and maintain the Development and to perform all of its duties in accordance with this Declaration. The Board shall allocate and assess the amount of said estimated funds equally among the Lots, by dividing the said estimate by the number of Lots within the Development. All sums levied by the Association as annual assessments shall be budgeted, allocated, assessed, and collected for current maintenance, operation, and management of the Development, contingencies, deferred maintenance, and replacement of capital improvements and shall be designated for those specific purposes, and the funds collected shall be used solely for the specific purposes for which they have been designated.

B. Within one hundred twenty (120) days after the end of each fiscal year, the Board shall send all Lot Owners an accounting of assessment receipts and disbursements for the last ended fiscal year. If such accounting shows that a surplus of cash results in the Association's current maintenance and operation account, such surplus shall be applied to reserves unless some other disposition of such surplus funds is determined by the vote of fifty-one percent (51%) of the Membership.

C. The Board shall not increase the annual assessment for any fiscal year exceeding twenty percent (20%) above the annual assessment for the preceding fiscal year, the maximum amount permitted by law, except upon the affirmative vote or written consent of a majority of Members present in person or proxy at a meeting in which a quorum of at least fifty-one percent (51%) of the total membership is present.

D. Annual assessments shall be paid in equal quarterly installments during the fiscal year and each installment shall be due and payable on the first day of each quarter, unless the Board shall designate otherwise. Assessments are delinquent if not paid within 30 days of the due date.

Section 5. 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 on the Common Area or on Lots as to which the Association has responsibility, 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, which amount shall be allocated and assessed equally among the Lots; provided, however, that in any fiscal year the Board may not levy such 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 or written consent of a majority of Members present in person or by proxy at a meeting in which a quorum of at least fifty-one percent (51%) of the Membership is present.

Section 6. Emergency Assessments. The Board may assess an emergency assessment not subject to the limitations in Sections 4 and 5 above in the following situations:

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- (a) An extraordinary expense required by an order of a Court;
- (b) An extraordinary expense required for maintenance or repair of the Development where there is a threat to personal safety; or
- (c) An extraordinary expense required to repair or maintain the Development that could not have been foreseen in preparing the pro forma budget, provided the Board shall disseminate to each Member an appropriate resolution containing written findings as to the necessity of the emergency assessment.

Section 7. Notice and Quorum for Any Action Authorized Under Sections 4 and 5. Any action requiring the consent of the Members under Sections 4 and 5 shall be taken at a meeting called for that purpose or by written ballot, written notice of which shall be sent to all Members not less than ten (10) nor more than sixty (60) days in advance of the meeting or ballot deadline. A majority of the Members shall constitute a quorum for the Meeting. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite fifty-one percent (51%) of the Members, Members who were not present in person or by proxy may give their consent in writing, provided the same is obtained by the appropriate officers of the Association not later than thirty (30) days after the date of such meeting.

Section 8. 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 year, for that year or the next year, shall not be deemed either a waiver or a modification in any respect of the provisions of this Declaration, or a release of the Owner from the obligation to pay assessments or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is levied.

Section 9. 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.

Section 10. Delinquent Assessments. Any 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, plus costs of collection, including attorneys' fees. The Board, on behalf of the Association, may enforce the payment of any delinquent assessment by bringing an action at law against the Owner personally obligated to pay the same, or by foreclosing the Lien against the Property. No action shall be initiated to foreclose the Lien securing any assessment levied under this Article until at least thirty (30) days following the mailing of a Notice of Delinquent Assessment, duly signed by a designated officer or agent of the Association, to the Owner or Owners of the subject Lot, and the recording of such Notice in the Office of the Recorder of the County in which the Development is located. Said Notice of Delinquent Assessment shall state the amount of the assessment, together with accrued interest, late charges, costs, reasonable attorneys' fees, and other applicable charges; a description of the Lot against which the same has been assessed; the name or names and mailing addresses of the Record Owner or Owners thereof; and the name and address of the Trustee authorized by the Association to enforce the Lien by sale. Upon the levying of an

assessment and the recording of the Notice referred to above, the Association may, at its option, declare the entire balance of all sums, then due or to become due from the Lot 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 costs, charges, and attorneys' fees.

Section 11. Power of Sale. Each Lot Owner does hereby appoint the Association as Trustee to enforce and to foreclose any Lien, established pursuant to the terms of this Declaration, by private power of sale, as provided in Division III, Part 4, Title 14, Chapter 2, Article 1, of the Civil Code of the State of California, and does further grant to the Board of Directors, on behalf of the Association, the authority and power to sell the Lot of such defaulting Owner, or any part thereof, for lawful money of the United States, to the highest bidder, to satisfy said Lien. Association may collect reasonable attorney fees from the delinquent Member not limited by Civil Code Sections 2924 et seq. during the foreclosure sale. The Board, as Trustee for the remaining Owners, or any other Owner, may purchase the Lot at said sale. The Board may commence any procedure for the collection of delinquent assessments upon its own decision, and it must so proceed upon the written request therefor signed by any five (5) Owners. The remedies provided in this Declaration for collection of delinquent assessments shall be cumulative and not alternative or exclusive.

Section 12. Certificate of Satisfaction. Upon payment in full of a delinquent assessment, including any charges, or the satisfaction thereof, the Board shall cause to be recorded, in the same manner as the Notice of Delinquent Assessment, after payment of Forty (40) dollars to the Association, a further Certificate stating the satisfaction thereof, and the release of the Lien. A failure of the Board to record such Certificate and Release of Lien within thirty (30) days after written demand by Certified Mail, Return Receipt Requested by the Lot Owner shall entitle the Lot Owner to recover a penalty of one hundred dollars (\$100) from the Association, plus actual damages.

Section 13. Subordination. The Lien of each of the assessments provided for under this Article shall be subordinate to the Lien of any first mortgage or mortgages, or first deeds of trust, now or hereafter placed upon any property subject to assessment in accordance with the terms of this Declaration; provided, however, 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 or deed of trust. Such foreclosure sale shall not relieve such property from liability for any assessments and charges thereafter becoming due, nor from the Lien of any such subsequent assessment. The Board may agree to further subordinate the Lien of said assessments to the interests of the Departments of Veterans' Affairs of the State of California, under any Cal Vet Financing Contract, to the same extent as said Liens are made subordinate to Liens of mortgages and deeds of trust, under this provision.

Section 14. Association Funds. The assessments collected by the Association shall be properly deposited into one or more separate accounts with a bank or other federally insured financial institution, or United States Government Treasury Bills, as determined by the Board. The assessments collected by the Association shall be held in trust by the Association for and on behalf of each Lot Owner and shall be used for the operation, care,

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maintenance, restoration of the Development and other expenses as are deemed reasonably necessary by the Board of Directors as provided in this Declaration. 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 be deemed automatically transferred to the successor-transferee of such Owner.

Section 15. Property Exempt From Assessments. The following Property subject to this Declaration shall be exempt from the assessments, charges and Liens created herein:

- A. All property dedicated to and accepted by the County or other local public authority and devoted to public use; and
- B. All Common Area.

ARTICLE VIII

DUTIES AND POWER OF THE ASSOCIATION

Section 1. In addition to the duty and power enumerated in its Amended Articles of Incorporation and Amended By-Laws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

- (a) Own, maintain, improve, construct, re-construct (in the event of deterioration or destruction) and manage all of the Common Areas and all facilities, improvement and landscaping located thereon.
- (b) Pay all real and personal property taxes and other charges assessed against the Common Area.
- (c) Have the authority to obtain, for the benefit of the Common Area, all water, gas and electric services and refuse collection.
- (d) Grant easements where necessary for utilities and sewer facilities over the Common Area to serve the Common Area.
- (e) Maintain such policy or policies of insurance on the Common Area as the Board of Directors of the Association deems necessary or desirable and furthering the purposes of protecting the interests of the Association and its Members.
- (f) Have the authority to employ a manager or other persons and to contract with independent contractors for managing agents to perform all or any part of the duties and responsibilities of the Association, provided that any contract with a person or firm appointed shall not exceed One (1) year in term unless approved by a majority of the Members of the Association with the following exceptions:
 - (1) A management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration.

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

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

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

(5) Agreements for sale or lease of burglar alarm and fire alarm equipment come installation and services not to exceed five (5) years duration.

(g) Applicable provisions of this Amended Declaration and the Amended By-Laws of the Association and to establish and enforce uniform rules and regulations pertaining to the use of the Common Area and the recreational facilities thereon.

Section 2. Annual Report. The Board of Directors shall cause to be prepared, and distributed to the Members:

(a) Pro Forma Operating Statement (Budget), a copy of which shall be distributed to all Lot Owners at least Forty-Five (45) but not more than Sixty (60) days prior to the beginning of each fiscal year, which shall include:

(1) An estimate of revenue and expenses on the accrual basis;

(2) Identification of total cash reserves;

(3) Identification of estimated life remaining in, and the methods of funding used to defray the cost of future repair, replacement or additions to, those major components the Association is required to maintain;

(4) A general statement setting forth the procedures used to calculate and establish the reserves;

(5) A statement describing the Association's policies and practices and enforcing lien rights where other legal remedies for default in payment of assessments; and

(6) A statement as to where the records of the Association and the Members list is kept.

(b) An annual review of the Association's financial statements, to be distributed to all Lot Owners within One Hundred Twenty (120) days after the close of each fiscal year, consisting of the following:

(1) A balance sheet as of the end of the fiscal year;

(2) An operating (income) statement for the fiscal year;

(3) A statement of changes in financial position for the fiscal year; and

(4) Any information required to be reported under Section 8322 of the California Corporations Code.

The review of the Annual Financial Statement be reviewed by an independent accountant for any fiscal year in which the gross income of the Association exceeds Seventy Five Thousand Dollars (\$75,000.00). If the review is not prepared by an independent accountant, it shall be accompanied by a certificate of an authorized officer of the Association that the review was prepared without audit from the books and records of the Association.

Section 3. Insurance. The Association shall procure and maintain policies of insurance to include general liability and property damage to the Common Areas. Additionally, the Association may procure and maintain a policy or policies insuring the Directors, Officers, and Employees against errors and omissions.

Section 4. Good Faith Actions and Indemnification. Members of the Board of Directors and any committee appointed by the Board shall not be held liable for any error or omission or action taken, provided that he or she has acted in good faith. The Association shall indemnify and hold harmless, through the maximum extent by California Law, each person who shall at any time serve as Director or Officer of the Association or as a Member of any committee appointed by the Board from and against any and all claims and liabilities to which such persons shall become subject by reason of his or her being a Director or Officer of the Association or a Member of a committee or by reason of any action alleged to have been taken or omitted by him or her in such capacity, and the Association shall reimburse each person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided, however, that no such person shall be indemnified with respect to, or reimbursed for any expense incurred in connection with, any claim or liability arising out of actions or omissions not taken in good faith.

ARTICLE IX

ARCHITECTURAL CONTROL

Section 1. No building, fence, wall, or other structure shall be commenced, erected, or maintained upon the Development, nor shall any exterior addition or change or alteration thereon including landscaping be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and locations in relation to surrounding structures and topography by the Architectural Committee provided for in Section 2. of this Article. In the event said Committee fails to approve or disprove such design and location within sixty (60) days after the Committee has acknowledged receipt of plans and specifications, or receipt of any additional information requested by the Committee, approval will not be required, and this Article will be deemed to have fully complied with. No Member of the Board or of the Architectural Committee shall be entitled to any compensation for said services performed pursuant to this Article.

Section 2. Architectural Control Committee. The Architectural Committee shall consist of a minimum of three Members of the Association who shall be appointed from time to time by the Board of Directors of the Association. A Member of the Board of Directors shall be appointed by the Board of Directors to serve as Chairman of the Architectural Committee.

Section 3. Implementing Regulations. The Board of Directors and/or Architectural Committee shall from time to time adopt and publish regulations implementing the Architectural Control Provisions set forth herein. The Board shall provide each Member of the Association with a copy of such regulations.

ARTICLE X

GENERAL PROVISIONS

Section 1. Enforcement. The Association or any Owner shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens, or charges now or hereafter imposed by the provisions of this Declaration. If a Member is in default of any of the requirements of these documents, such Member shall pay all costs and expenses of enforcement, including administrative costs and reasonable attorneys' fees. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Validation of any one of these covenants or restrictions by judgment or Court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Term and Amendment. The covenants and restrictions of this Amended Declaration shall run with and bind the Development and shall inure to the benefit of and be enforceable by the Association, its legal representations, successors, and assigns until December 1, 2001, and after which time, they shall be automatically extended for successive periods of ten (10) years. This Amended Declaration may be amended by the vote or by written ballot without a meeting of not less than fifty-one percent (51%) of the Members. Any amendment must be recorded.

Section 4. Mergers or Consolidations. Upon a merger or a consolidation of the Association with another Association as provided in its Amended Articles of Incorporation, its properties, rights, and obligations may, by operation of law, be transferred to another surviving or consolidated Association or, alternatively, the properties, rights, and obligations of another Association may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidation Association may administer the covenants and restrictions established by this Amended Declaration together with the covenants and restrictions established upon any other properties as one scheme.

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IN WITNESS WHEREOF, the undersigned Association has hereunto set its hand and seal this 6th of November, 1989.

COWELL HOMEOWNERS ASSOCIATION, INC.

By: [Signature]

Its President

By: Robert C. Ripley

Its Secretary

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STATE OF CALIFORNIA

COUNTY OF Contra Costa

On this 6th day of November in the year one thousand nine hundred and eighty-nine, before me, STEPHANIE F. TIMMERMAN a Notary Public, State of California, duly commissioned and sworn, personally appeared Robert C Ripley known to me to be the Secretary of the corporation described in and who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same AMENDED DECLARATION of CCR's.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the City of Walnut Creek County of Contra Costa the day and year in this certificate first above written.

Stephanie F. Timmerman
Notary Public, State of California

My commission expires May 21, 1990



