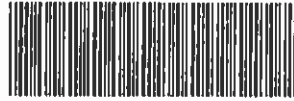


When recorded please return to:

FOUNTAINGROVE II EAST
3936 Mayette Avenue
Santa Rosa, CA 95405



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AMENDMENT
to the
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOUNTAINGROVE II EAST

Recorded: Sonoma County June 6, 1996 1996 0056711

This amendment is made on the date hereinafter set forth by Board of Directors President, Tom Rutledge. The amendment was passed by one hundred seventy-three of the three hundred forty-two members (51%) approved this change.

The following Sections (1.2.5 & 1.5.5) are hereby added to the Article 1 of the Declarations:

1.2.5 Assessments. Any regular, Special or Special Individual Assessment made or assessed by the Architectural Review Committee ("Committee") against an Owner and his or her Lot in accordance with the provisions of Article 6, Section 6.9 of this Declaration.

1.5.5 Governing Documents. This Declaration and any rules duly enacted by the Committee.

The first full paragraph of Article 4, Section 4.1 is hereby deleted and replaced in its entirety by the following; provided that all other provisions of Article 4, Section 4.1 shall remain in full force and effect:

4.1 Architectural Review Committee. The Architectural Review Committee shall be composed of 5 members who shall be an Owner. The Committee may delegate to one or more of its members of a third party agent of representatives the right and duty to grant or withhold any necessary or appropriate consents or approvals hereunder, except for the granting of variances pursuant to this Article. If one or more members of the Committee or a third party agent or representative has been delegated such right and duty, all relevant correspondence from the Committee shall set forth such designation. The Committee may engage the services of an architect or other qualified professional to assist in reviewing plans and specifications

Section 6.9 is hereby deleted and replaced in its entirety by the following:

6.9 Enforcement. The limitations, restrictions, conditions and covenants set forth in this Declaration constitute a general scheme for (i) the maintenance, protection and enhancement of the value of the Lots within the Project; and (ii) the benefit of all Owners. Said limitations, restrictions, conditions, and covenants are and shall be covenants running with the land or equitable servitudes, as the case may be. The Committee shall have the same powers, authority and limitations in enforcing the provisions of the Governing Documents as an association, as defined in *California Civil Code* § 1351 (a).

- (a) **Rule-Making Power.** The Committee may, from time to time, propose, enact and amend rules and regulations of general application to the Owners of Lots within the Project. Such rules may concern, but need not be limited to (i) architectural review under Article 4; (ii) the conduct of disciplinary proceedings in accordance with the Governing Documents and applicable law; (iv) regulation of parking, pet ownership and other matters subject to regulation and restriction under the Governing Documents; (v) collection and disposal of refuse; (vi) minimum standards for the maintenance of landscaping or other improvements on any Lot and (vii) any other subject or matter within the jurisdiction of the Committee. Committee Rules shall be consistent with and shall not materially alter any provisions of the other Governing Documents or the rights, preferences and privileges of Owners. In the event of any material conflict between any Committee Rule and any provision of the other Governing Documents, the provisions contained in the other Governing Documents shall prevail.
- (b) **Remedy at Law Inadequate.** Except for nonpayment of any Assessment, it is hereby expressly declared and agreed that the remedy at law to recover damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, right-of-ways, liens, charges or equitable servitudes contained in this Declaration are inadequate and that the failure of any Owner, Tenant, occupant or user of any Lot to comply with any provision of the provisions of this Declaration may be enjoined by appropriate legal proceedings instituted by any Owner or Committee.
- (c) **Costs and Attorney's Fees.** In any action brought because of any alleged breach or default of any Owner or other party hereto under this Declaration, the court shall award to the prevailing party in any such action the reasonable attorney's fees and other costs incurred by that party.
- (d) **Schedule of Fines.** The Committee may implement a schedule of reasonable fines and penalties for particular offenses that are common or recurring in nature and for which a uniform fine schedule is appropriate. Once imposed, a fine or penalty may be collected as a Special Individual Assessment.
- (e) **Definition of "Violation".** A violation of any provision of Governing Documents shall be defined as a single act or omission occurring on a single day. If the detrimental effect of a violation continues for additional days, discipline imposed by the Committee may include one component for the violation and, according to the Committee's discretion, a per diem component for so long as the detrimental effect continues. Similar violations on

different days shall justify cumulative imposition of disciplinary measures. The Committee may take reasonable action to repair or avoid the continuing damaging effects of a violation or nuisance occurring within the Project at the cost of the responsible Owner.

(f) **Limitations of Disciplinary Rights**

(1) **Loss of Rights: Forfeitures.** The Committee shall have no power to cause a forfeiture or abridgement of an Owner's right to full use and enjoyment of his or her Lot due to the failure by the Owner (or his family members, Tenants, guests or invitees) to comply with any provision of the Governing Documents except where the loss or forfeiture is the result of the judgment of a court of competent jurisdiction, a decision arising out of arbitration or a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments levied by the Committee, or where the loss or forfeiture is limited to a temporary suspension of an Owner's rights under this Declaration or the imposition of monetary penalties for failure to pay Assessments or otherwise comply with the Governing Documents so long as the Committee's actions satisfy due process requirements and the provisions of Civil Code § 1354 (b)

(2) **Hearings.** No penalty or temporary suspension of rights shall be imposed pursuant to this section unless the Owner alleged to be in violation is given at least fifteen (15) days prior notice of the proposed penalty or temporary suspension and is given an opportunity to be heard before the Committee or appropriate committee established by the Committee with respect to the alleged violation(s) at a hearing or Alternative Dispute Resolution proceeding pursuant to Section 6.9 (k) below. Notwithstanding the foregoing, under circumstances involving conduct that constitutes: (1) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of neighboring Owners; (2) a traffic or fire hazard; or (3) a threat of material damage to, or destruction, the Committee or its duly authorized agents may undertake immediate corrective or disciplinary action and, upon request of the offending Owner, or its own initiative, conduct a hearing within (5) five days following the corrective or disciplinary action.

(3) **Notice.** When the Committee is to meet to consider or impose discipline upon an Owner, the Committee shall notify the Owner in writing, either by personal delivery or first-class mail, at least 15 days prior to the meeting. The notification shall contain, at a minimum, the date, time and place of the meeting, the nature of the alleged violation for which an Owner may be disciplined, and a statement that the Owner has a right to attend and may address the board at the meeting. If the Committee imposes discipline on an Owner, the Committee shall provide notification of the disciplinary action by either personal delivery or first-class mail to the Owner within 10 days following the action. A disciplinary action shall not be effective against an Owner unless the Committee fulfills the requirements of this subdivision.

(4) **Rules Regarding Disciplinary Proceedings.** The Committee, or a Committee appointed by the Committee to conduct and administer disciplinary hearings and related proceedings shall be entitled to adopt rules that further elaborate and refine the procedures for conducting disciplinary proceeding. Decisions of the Committee shall be final. Procedures for appeal and the hearing of appeals shall be set forth in the Committee Rules.

The following provisions are hereby added to and made part of the Declaration:

6.16 Assessments.

(a) **Covenant to Pay Assessments.** Each Owner of one or more Lots, by acceptance of a deed or other conveyance therefor (whether or not it shall be so expressed in such deed or conveyance), covenants and agrees to pay to the Committee (i) Regular Assessments, (ii) Special Assessments, and (iii) Special Individual Assessments. Each such Assessment shall be established and collected as hereinafter provided.

(b) **Extent of Owner's Personal Obligation for Assessment.** All Assessments, together with late charges, interest and reasonable costs (including reasonable attorney's fees) for the collection therefor, shall be a debt and a personal obligation of the Owner of the Lot at the time the Assessment was levied. Each Owner who acquires title to a Lot (whether at judicial sale, trustees' sale or otherwise) shall be personally liable only for Assessments attributable to the Lot so purchased which become due and payable after the date of such sale, and shall not be personally liable for delinquent Assessments of prior Owners unless the new Owner expressly assumes the personal liability. Any unpaid Assessment of a previous Owner shall remain the debt of such previous Owner against whom assessed.

(c) **Creation of Assessment Lien.** All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorney's fees) for the collection thereof, shall be charged on the Lot and shall be a continuing lien upon the Lot against which such Assessment is made. Any lien for unpaid Assessments created pursuant to the provisions of this article may be subject to judicial or nonjudicial foreclosure.

(d) **Notice of Increased Assessments** The Committee shall provide notice of any increase in Assessments by first-class mail to the Owners not less than thirty (30) nor more than sixty (60) days prior to the increase becoming due.

(e) **Regular Assessments**

(1) **Establishment.** Not less than forty-five (45) nor more than sixty (60) days prior to the beginning of each calendar year, unless otherwise provided by law, the Committee shall estimate the total amount required to fund the Committee's anticipated expenses related to or in any way connected with enforcement of the Governing Documents for the next succeeding fiscal year (including legal fees and costs) by preparing and distributing to all Owners a budget for such anticipated expenses. The total annual expenses estimated in the Committee's budget shall become the aggregate Regular Assessment for the next succeeding year, provided that, the Committee may not impose a Regular Assessment that is more than twenty percent (20%) greater than the Regular Assessment for the Committee immediately preceding fiscal year without the vote or written assent of Owners, constituting a quorum, casting a majority of the votes by written ballot or at a meeting of the Owners.

(2) **Allocation and Payment.** The total estimated Regular Assessments, above, shall be allocated among, assessed against, and charged to each Owner {according to the ratio of the number of Lots within the Properties owners owned by the assessed Owner to the total number of Lots subject to Assessments} so that each lot bears an equal share of

the total Regular Assessment. Regular Assessments levied against each Owner and his or her Lot shall be due and payable in advance to the Committee on the first day of the fiscal year or on such other date or dates as may be established from time to time by the Committee. Installments of Regular Assessments shall be delinquent if not paid by the fifteenth (15th) day after the due date.

(f) **Special Assessments.** Subject to the Owners' approval requirements set forth in *California Civil Coded* § 1366(b), the Committee shall have the authority to levy Special Assessments against the Owners and their Lots, not to exceed five percent (5%) of the Committee's budgeted gross expenses for the current fiscal year, if at any time the Regular Assessment for any fiscal year is insufficient in amount due to extraordinary expenses not contemplated in the budget prepared for said fiscal year.

(g) **Allocation and Payment of Special Assessments.** When levied by the Committee, the Special Assessment shall be divided among, assessed against and charged to each Owner and his or her Lot in the same manner prescribed for the allocation of Regular Assessments. Special Assessments shall be due as a separate debt of the Owner and a lien against his or her lot, and shall be payable to the Committee in a lump sum within thirty (30) days after the mailing of such notice or within such extended period as the Committee shall determine to be appropriate under the circumstances giving rise to the Special Assessment.

(h) **Special Individual Assessments.** The Committee may impose Special Individual Assessments against an Owner in any of the circumstances described in subparagraphs (i) through (iii) below, provided that no Special Individual Assessment may be imposed against an Owner until the Owner has been afforded the notice and hearing rights to which the Owner is entitled and has been given a reasonable opportunity to comply voluntarily with the Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Special Individual Assessments include the following:

(1) **Expenses Incurred in Gaining Owner Compliance.** In the event that the Committee incurs any costs or expenses related to:

- (i) the collection of delinquent Assessments;
- (ii) otherwise bring the Owner and/or his or her or into compliance with any provision of the Governing Documents
- (iii) the amount incurred by the Committee (including reasonable fines and penalties duly imposed hereunder, title company fees, accounting fees, management fees, court costs and reasonable attorney's fees) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(2) **Levy of Special Individual Assessments and Payment.** Notice of any Special Individual Assessment shall be mailed to the affected Owner and the Special Individual Assessment shall thereafter be due as a separate debt of the Owner payable in full to the Committee within thirty (30) days after the mailing of notice of the assessment.

(3) **Reasonable.** Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment, and to constitute a separate, distinct and personal obligation (with respect to which a separate lien may be created hereby) of the

Owner of the Lot against which the Assessment is imposed that shall be binding on the Owner for delinquent successors and assigns, provided that the personal obligation of each Owner for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

6.16 Maintenance of Assessment Funds:

(a) **Bank Accounts.** All sums received or collected by the Committee from Assessments, together with any interest or late charges thereon, shall be promptly deposited in one or more insured checking, savings, money market accounts in a bank or savings and loan Committee selected by the Committee which has offices located within the County of Sonoma.

The Committee, and such officers or agents of the Committee as the Committee shall designate, shall have exclusive control of said account(s) and investments and shall be responsible to the Owners for the maintenance at all times of accurate records thereof. The withdrawal of funds from Committee accounts shall be subject to the minimum signature requirements imposed by *California Civil Code* § 1365.5 and the Bylaws.

(b) **Commingling of Funds.** To preclude a multiplicity of bank accounts, the proceeds of all Assessments may be commingled in one or more accounts and need not be deposited in separate accounts so long as the separate accounting records described herein are maintained. Any interest received on such deposits shall be credited proportionately to the balances of the various Assessment fund accounts maintained on the books of the Committee as provided in subparagraph (c), below.

6.17 Collection of Assessments; Enforcement of Liens.

(a) **Delinquent Assessments.** If any payment of a Regular Assessment, Special Assessment or Special Individual Assessment assessed to any Owner is not paid within fifteen (15) days after the same becomes due, such payment shall be delinquent and the amount thereof shall bear interest at the maximum rate allowed by law from and after the due date until the same is paid. In addition to the accrual of interest, the Committee of Directors is authorized and empowered to promulgate a schedule of reasonable late charges for any delinquent Assessments, subject to the limitations imposed by *California Civil Code* § § 1366 and 1366.1 or comparable superseding statutes.

(b) **Effect of Nonpayment of Assessments.**

(i) **Creation and Imposition of a Lien for Delinquent Assessments.** As more particularly provided in *California Civil Code* § 1367 or comparable superseding statute, the amount of any delinquent Regular or Special, or Special Individual Assessment, together with any late charges, interest and costs (including reasonable attorney's fees) attributable thereto or incurred in the collection thereof, shall become a lien upon the Lot of the Owner so assessed only when the Committee causes to be recorded in the Office of the County Recorder of the County, a Notice of Delinquent Assessment executed by an authorized representative of the Committee, setting forth:

(1) The amount of the delinquent Assessment(s) and other sums duly imposed pursuant to Section 4 and *California Civil Code* § 1366;

(2) A legally sufficient description of the Owner's Lot against which the Assessments and other sums are levied;
(3) The name of the Owner of Record of such lot;
(4) The name and address of the Committee; and
(5) The name and address of the trustee authorized by the Committee to enforce the lien by sale.

(c) **Satisfaction.** Upon payment in full of the sums specified in the Notice of Delinquent Assessments, the Committee shall cause to be recorded a further notice stating the satisfaction of the lien.

(d) **Limits on Lien Rights.** The Committee's right to impose a lien for Special Individual Assessments shall be subject to the limitations imposed by Civil Code S 1367(c).

(e) **Notice Required Before Recording Lien.** Before the Committee may place a lien on a Lot for assessments and related collection costs, the Committee shall notify the Owner in writing by certified mail as required by Civil Code § 1367(a), or any superseding statute.

(f) **Remedies Available to the Committee to Collect Assessments.** The Committee may initiate a legal action against the Owner personally obligated to pay the delinquent Assessment, foreclose its lien against the Owner's Lot or both and may accept a deed in lieu of foreclosure. Foreclosure by the Committee of its lien may be judicial or non-judicial foreclosure. A sale of a Lot by a trustee acting pursuant to this section 4.9 shall be conducted in accordance with *California Civil Code* commencing at § 2924 and applicable to the exercise of powers of sale in Mortgages or deeds of trust.

(g) **Actions for Money Judgement.** The Committee, in its name but acting for and on behalf of all other Owners, may initiate legal action, in addition to any other remedy provided herein, or by law, to recover a money judgement or judgements for unpaid Assessments, costs and attorney's fees without foreclosure or waiver of the lien securing same.

(h) **Waiver if Exemptions.** Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to Section 6.16, the benefit of any homestead or exemption law of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed against the Owner's Lot.

Fountaingrove II East Association

CERTIFIED AND ACKNOWLEDGED BY:



Association President

T.F. Rutledge

12/18/01

Date

STATE OF CALIFORNIA

COUNTY OF SONOMA

On this 18th day of December, in the year of 2002, before me, the undersigned, a Notary Public in and for said State LESLIE A. COHEN personally appeared T. F. Rutledge personally known to me or proved 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.

WITNESS my hand and official seal

Leslie A. Cohen

