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**THIRD RESTATED**

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

**FOR**

**ASPEN GROVE CONDOMINIUM ASSOCIATION**

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## Table of Contents

<b>RECITALS .....</b>	<b>9</b>
<b>ARTICLE 1 – DEFINITIONS AND STATUTORY REFERENCES.....</b>	<b>10</b>
Section 1.1 – Definitions. ....	10
Section 1.2 – Reference to Statutes and Law. ....	14
<b>ARTICLE 2 – OWNERSHIP RIGHTS, TRANSFERS OF UNITS, AND EASEMENTS .....</b>	<b>14</b>
Section 2.1 – Property Subject to this Declaration. ....	14
Section 2.2 – Common Area. ....	15
Section 2.3 – Units. ....	15
Section 2.4 – Exclusive Use Common Area. ....	17
Section 2.5 – Restriction on Partition of Common Area. ....	17
Section 2.6 – Nonexclusive Easements of Enjoyment Over Common Area. ....	17
Section 2.7 – Transfer of Units. ....	18
Section 2.8 – Transfer Disclosure and Fees. ....	18
Section 2.9 – Certain Specified Obligations of Owners.....	19
Section 2.10 – Easements.....	20
Section 2.11 – No Right to Light, View, or Air Current.....	21
Section 2.12 – Safety, Security, and Privacy.....	21
Section 2.13 – No Public Rights in the Development.....	22
Section 2.14 – Liens for Labor and Materials. ....	22
Section 2.15 – Notice of Lien. ....	22
Section 2.16 – Northstar Property Owners Association. ....	22
<b>ARTICLE 3 – THE ASSOCIATION.....</b>	<b>23</b>
Section 3.1 – Association Membership.....	23
Section 3.2 – One Class of Membership.....	23

Section 3.3 – Voting Rights of Members.....	23
Section 3.4 – Transfer of Memberships.....	23
Section 3.5 – Powers and Authority of the Association.....	23
Section 3.6 – Limitation on Liability of Directors and Officers.....	26
Section 3.7 – Limitation on Liability of Owners with Respect to Common Area.....	27
<b>ARTICLE 4 – ASSESSMENTS.....</b>	<b>27</b>
Section 4.1 – Establishment and Imposition of Assessments.....	27
Section 4.2 – Assessment Payment and Delinquency.....	30
Section 4.3 – Assessment Collection.....	33
Section 4.4 – Maintenance of Assessment Funds.....	35
Section 4.5 – Use of Reserve Funds.....	36
Section 4.6 – Assignment or Pledge of Future Assessment Obligations.....	37
Section 4.7 – Transfer of Unit by Sale or Foreclosure.....	37
Section 4.8 – Priorities.....	38
Section 4.9 – Unallocated Taxes for Common Area.....	38
Section 4.10 – Taxes and Utilities for Units.....	38
Section 4.11 – Waiver of Exemptions.....	39
Section 4.12 – Units Owned by Association.....	39
<b>ARTICLE 5 – ARCHITECTURAL CONTROL.....</b>	<b>39</b>
Section 5.1 – Association Approval Required for Improvements.....	39
Section 5.2 – Body to Review Construction and Improvement Projects.....	40
Section 5.3 – Architectural Committee.....	41
Section 5.4 – Architectural Rules.....	41
Section 5.5 – Application for Approval of Proposed Improvements.....	42
Section 5.6 – Architectural Review and Procedure for Review.....	42
Section 5.7 – Considerations for Approval of Improvements.....	43

Section 5.8 – Proceeding with Work.....	45
Section 5.9 – Failure to Obtain Approval for Work; Non-Compliant Work. ....	46
Section 5.10 – Inspection of Work.....	46
Section 5.11 – Enforcement of Architectural Review and Approval Requirements.....	47
Section 5.12 – Variances. ....	48
Section 5.13 – Limitation on Liability.....	48
Section 5.14 – Compliance with Governmental Regulations. ....	48
Section 5.15 – Architectural Agreement. ....	48
<b>ARTICLE 6 – PROTECTED USES.....</b>	<b>49</b>
Section 6.1 – Display of United States Flag. ....	49
Section 6.2 – Display of Noncommercial Signs or Flags. ....	50
Section 6.3 – Antenna and Satellite Restrictions.....	50
Section 6.4 – Electric Vehicle Charging Stations and Dedicated TOU Meters.....	50
Section 6.5 – Clotheslines.....	52
Section 6.6 – Real Estate Signs. ....	52
Section 6.7 – Solar Energy Systems. ....	53
Section 6.8 – Modifications to Facilitate Access for the Disabled.....	54
Section 6.9 – Display of Religious Items on Doors.....	54
<b>ARTICLE 7 – ASSOCIATION AND OWNER MAINTENANCE RESPONSIBILITIES .....</b>	<b>55</b>
Section 7.1 – Common Area Maintenance.....	55
Section 7.2 – Owner Maintenance Responsibilities. ....	55
Section 7.3 – Association’s Recovery of Costs of Certain Maintenance and Repairs.....	57
Section 7.4 – Cooperative Maintenance Obligations. ....	57
Section 7.5 – Eradication of Pests.....	57
Section 7.6 – Damage to Units and Personal Property.....	58

**ARTICLE 8 – USE OF DEVELOPMENT AND RELATED RESTRICTIONS..... 59**

Section 8.1 – Residential Use. .... 59

Section 8.2 – Use of Common Area. .... 59

Section 8.3 – Modification of Unit..... 60

Section 8.4 – Prohibition of Nuisance Activities..... 60

Section 8.5 – Prohibition of Certain Other Activities..... 61

Section 8.6 – Animals..... 61

Section 8.7 – Trash Disposal. .... 63

Section 8.8 – Balconies..... 63

Section 8.9 – Fires; Barbecues. .... 64

Section 8.10 – Machinery and Equipment. .... 65

Section 8.11 – Diseases and Pests. .... 65

Section 8.12 – Parking and Vehicle Restrictions..... 65

Section 8.13 – Roof Access. .... 66

Section 8.14 – Noise and Sound Reduction..... 67

Section 8.15 – Unit Floor Coverings in Tower Units. .... 67

Section 8.16 – Smoking. .... 68

Section 8.17 – Flammable, Toxic, and Hazardous Substances. .... 69

Section 8.18 – Fireworks and Firearms. .... 69

Section 8.19 – Use of Common Area Laundry Rooms in Tower Buildings. .... 69

Section 8.20 – Window Coverings. .... 70

Section 8.21 – Conduct of Guests and Occupants ..... 70

Section 8.22 – Restriction on Further Subdivision and Severability..... 70

Section 8.23 – Unit Mergers. .... 70

Section 8.24 – Grandfathering of Pre-Existing Unit Conditions. .... 70

**ARTICLE 9 – RIGHT TO LEASE ..... 71**

<b>ARTICLE 10 – INSURANCE .....</b>	<b>71</b>
Section 10.1 – General Liability Insurance. ....	71
Section 10.2 – Directors’ and Officers’ Liability Insurance.....	71
Section 10.3 – Fire and Casualty Insurance. ....	71
Section 10.4 – Other Insurance. ....	72
Section 10.5 – General Policy Provisions. ....	72
Section 10.6 – Insurance Rating.....	72
Section 10.7 – Review of Insurance Policies.....	72
Section 10.8 – Notice of Change in Insurance Coverage.....	72
Section 10.9 – Inability to Obtain Insurance. ....	73
Section 10.10 – Owner’s Insurance.....	73
Section 10.11 – Casualty Insurance Deductibles and Proceeds. ....	73
 <b>ARTICLE 11 – CATASTROPHIC DAMAGE AND CONDEMNATION .....</b>	 <b>73</b>
Section 11.1 – Catastrophic Damage. ....	73
Section 11.2 – Condemnation. ....	75
Section 11.3 – Distributions. ....	75
 <b>ARTICLE 12 – ENFORCEMENT OF GOVERNING DOCUMENTS .....</b>	 <b>75</b>
Section 12.1 – Remedy at Law Inadequate. ....	75
Section 12.2 – Attorney’s Fees. ....	76
Section 12.3 – Cumulative Remedies.....	76
Section 12.4 – Failure Not a Waiver.....	76
Section 12.5 – Rights and Remedies of the Association. ....	76
Section 12.6 – Internal Dispute Resolution. ....	78
Section 12.7 – Enforcement Actions; Alternative Dispute Resolution. ....	78
Section 12.8 – Assessment Collection Actions. ....	79

**ARTICLE 13 – MORTGAGEE PROTECTION..... 79**

Section 13.1 – Subordination. .... 79

Section 13.2 – First Refusal Inapplicable to Mortgagee..... 79

Section 13.3 – Mortgagee Right to Furnish Information. .... 79

Section 13.4 – Former Owner in Possession Following Foreclosure. .... 80

Section 13.5 – Mortgagee Priority in Distribution of Proceeds..... 80

Section 13.6 – Mortgagee Approval Requirements..... 80

Section 13.7 – Mortgagee Notice Rights..... 81

Section 13.8 – Mortgagee Information Rights. .... 81

Section 13.9 – Mortgagee Right to Appear at Meetings..... 81

**ARTICLE 14 – AMENDMENT OF DECLARATION..... 81**

Section 14.1 – Amendment Approval. .... 81

Section 14.2 – Procedural Requirements..... 82

**ARTICLE 15 – GENERAL PROVISIONS ..... 82**

Section 15.1 – Term. .... 82

Section 15.2 – Construction..... 83

Section 15.3 – Controlling Authority..... 83

Section 15.4 – Delivery of Documents. .... 83

Section 15.5 – No Discrimination..... 83

Section 15.6 – Amendment or Revocation of Condominium Plan. .... 84

Section 15.7 – Notice of Airport in Vicinity. .... 84

**EXHIBIT A – LEGAL DESCRIPTION OF PROPERTY ..... 85**

**EXHIBIT B – COMMON AREA OWNERSHIP INTERESTS..... 86**

**EXHIBIT C – MAINTENANCE RESPONSIBILITY CHART..... 92**

**CERTIFICATE OF AMENDMENT ..... 99**



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**THIRD RESTATED  
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
ASPEN GROVE CONDOMINIUM ASSOCIATION**

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This Third Restated Declaration of Covenants, Conditions, and Restrictions for Aspen Grove Condominium Association (this "**Declaration**") is made by Aspen Grove Condominium Association, a California nonprofit mutual benefit corporation (the "**Association**") with reference to the following recitals.

**RECITALS**

A. The Association was formed to manage the common interest development located on that certain real property situated in the Town of Truckee, County of Placer, State of California which is more particularly described in **Exhibit A** attached hereto and incorporated herein by reference (the "**Property**").

B. The Property has been developed as a condominium project, containing common area and 180 separate interest units; the term "condominium project" shall have the meaning given to it under Section 4125 of the California *Civil Code*.

C. The Property, and the structures and improvements thereon, are subject to certain easements, protective covenants, conditions, restrictions, reservations, liens, and charges as set forth in the *Aspen Grove Second Restated Declaration of Covenants, Conditions and Restrictions* recorded on December 12, 2007 as document number 116621 in the official records of the County of Placer, State of California (the "**Prior Declaration**").

D. This Declaration is intended to and shall amend and restate, in its entirety, the Prior Declaration.

E. The easements, covenants, restrictions, and conditions set forth in this Declaration shall constitute equitable servitudes and covenants that run with the land comprising the Development, and shall be binding on and inure to the benefit of all persons and entities having or acquiring any right, title, or interest in the Development or any portion thereof.

F. The protective covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges, and equitable servitudes set forth in this Declaration are intended to be in furtherance of a general plan for the use of the real property

comprising the Development as a condominium project, and are intended for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property and improvements comprising the Development.

## ARTICLE 1 – DEFINITIONS AND STATUTORY REFERENCES

### Section 1.1 – Definitions.

The following capitalized terms when used in this Declaration shall have the meanings given to them below.

**“Annual Budget Report”** means the annual budget report that the Association is required to distribute to the Members 30 to 90 days before the end of its fiscal year, as described in the Davis-Stirling Act.

**“Architectural Committee”** means the committee which may be appointed by the Board pursuant to Article 5 of this Declaration to review and approve certain types of construction and improvement projects proposed to be undertaken by Owners within the Development.

**“Articles”** means the articles of incorporation of the Association, including any amendments and restatements thereof; the Association was registered as a corporation with the Secretary of State of the State of California on February 11, 1991.

**“Assessment”** means any Regular Assessment, Special Assessment, or Reimbursement Assessment made or assessed by the Association against an Owner and his or her Unit in accordance with the provisions of Article 4 of this Declaration.

**“Association”** means Aspen Grove Condominium Association, a California nonprofit mutual benefit corporation.

**“Block”** means a portion of the Development containing certain Units and Common Area; there are six Blocks in the Development, which are identified on the Condominium Plan as Blocks 1, 2, 3, 4, 5 and 6.

**“Board”** or **“Board of Directors”** means the board of directors of the Association.

**“Bylaws”** means the bylaws of the Association, as may be supplemented, amended, or modified from time to time.

**“Civil Code”** means the California *Civil Code*.

**“Common Area”** means the entire Development except the Units; the Common Area is intended for the general use and enjoyment of the Owners and Occupants of the Units, and is further described in Section 2.2 of this Declaration. Unless the context clearly indicates a contrary

intent, any reference in this Declaration to the "Common Area" shall also include any common facilities located thereon or therein. As more particularly described in Section 2.4 of this Declaration, portions of the Common Area are designated as Exclusive Use Common Area, the use and enjoyment of which is restricted to the Owners and Occupants of the Unit(s) served by each such Exclusive Use Common Area.

**"Condominium"** means an estate in real property comprised of an undivided interest in common in the Common Area coupled with a separate interest in a Unit, and any Exclusive Use Common Areas designated for the use of the Owner of such Unit.

**"Condominium Plan"** means and includes the following three documents recorded in the official records of the County: (i) the map entitled "Tract No. 223, Northstar Unit 1-B, a Condominium Development", recorded on December 1, 1971 in Book J of Maps, on page 40; (ii) paragraph 3, titled "Descriptive Notes", of the "Condominium Certificate and Declaration of Annexation" recorded on December 1, 1971 as document number 26405 (with the capitalized term "Plat" in such paragraph 3 meaning and referring to the map entitled "Tract No. 223, Northstar Unit 1-B, a Condominium Development"); and (iii) the "Certificate Amending Condominium Plan" recorded on November 28, 1972 as document number 30327. The Condominium Plan contains, among other things, a description or survey map of the Development and a three-dimensional description of the Development that identifies the Common Area and each Unit.

**"Corporations Code"** means the California *Corporations Code*.

**"County"** means the County of Placer in the State of California, and its various departments, divisions, employees, and representatives.

**"Davis-Stirling Act"** means the Davis-Stirling Common Interest Development Act, codified as Section 4000 et seq. of the Civil Code as of the date of recordation of this Declaration, as may be amended from time to time.

**"Declaration"** means this *Third Restated Declaration of Covenants, Conditions, and Restrictions for Aspen Grove Condominium Association*, as may be supplemented, amended, or modified from time to time by a duly recorded amendment hereto.

**"Development"** means the "Aspen Grove" condominium project which the Association was formed to manage, which is located at the Property and which includes both the Common Area and the Units.

**"Director"** means a natural person who serves on the Board.

**"Exclusive Use Common Area"** means a portion of the Common Area designated by this Declaration for the exclusive use of one or more, but fewer than all, of the Owners of Units and

which is appurtenant to a Unit or Units; see Section 2.4 of this Declaration for information relating to Exclusive Use Common Areas.

**“First Mortgage”** means a Mortgage that has priority over all other Mortgages, if any, that encumber the same Condominium.

**“First Mortgagee”** means any Mortgagee who is the beneficiary of a First Mortgage.

**“General Notice”** means the delivery of a document to the Members by the Association by “general notice” or “general delivery”, as such terms are defined and described in the Davis-Stirling Act.

**“Governing Documents”** means this Declaration and any other documents, such as the Articles, the Bylaws, and any Operating Rules, which govern the operation of the Development or the Association.

**“Guest”** means any social guest or other licensee, or any invitee, of an Owner or Occupant who enters the Development.

**“Individual Notice”** means the delivery of a document to a Member by the Association by “individual notice” or “individual delivery”, as such terms are defined and described in the Davis-Stirling Act.

**“Maintenance Responsibility Chart”** means the chart contained in **Exhibit C** attached to this Declaration and incorporated herein by this reference which details certain specific maintenance, repair, upkeep, and replacement responsibilities of the Association and the Owners.

**“Managing Agent”** means a Person who, for compensation or in expectation of compensation, exercises control over the assets of the Association and/or the Development. A “Managing Agent” does not include: a regulated financial institution operating within the normal course of its regulated business practice; or an attorney at law acting within the scope of the attorney's license.

**“Member”** means a member of the Association, each of whom shall be an Owner.

**“Mortgage”** means any security device encumbering all or any portion of a Condominium, including any deed of trust.

**“Mortgagee”** means a Person, including any beneficiary under a deed of trust, holding a Mortgage that encumbers a Condominium.

**“NCSD”** means the Northstar Community Services District, a local government entity formed and operated to serve the Northstar region with governmental services; among other things, the NCSD may provide water, sewer collection, solid waste management, recycling

services, fire protection, fuels management, snow removal, road surface maintenance, and/or trail construction and maintenance services for the Development and/or Unit Owners and Occupants.

**“Nonprofit Mutual Benefit Corporation Law”** means the California Nonprofit Mutual Benefit Corporation Law, codified as Section 7110 et seq. of the Corporations Code as of the date of adoption of this Declaration, as may be amended from time to time.

**“Occupant”** means an Owner, resident, tenant, lessee, or other person occupying a Unit; when the term “resident” (capitalized or not) is used in any Governing Document, that term shall have the same meaning as Occupant.

**“Operating Rule”** means a regulation adopted by the Board that applies generally to the management and operation of the Development or the conduct of the business and affairs of the Association.

**“Prior Declaration”** means the declaration, including any supplements, amendments, and modifications thereto, recorded against the Property prior to the recordation of this Declaration, which this Declaration amends and restates as described in the recitals at the beginning of this Declaration.

**“Owner”** means a record owner of a Unit; when the term “Owner” is used in this Declaration, it shall mean and include, collectively, all Persons on record title to an individual Unit.

**“Person”** means a natural person, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, association, or other entity; when the term “person” (not capitalized) is used in this Declaration, it shall mean a natural person.

**“Property”** means all parcels of real property (Common Area and Units) described in **Exhibit A** attached to this Declaration, together with all buildings, structures, utilities, common facilities, and other improvements located thereon and all appurtenances thereto.

**“Regular Assessment”** means any assessment levied against an Owner and his or her Unit based upon the funding needs projected in the Association’s pro forma operating budget included in the most recent Annual Budget Report.

**“Reimbursement Assessment”** means any assessment levied against an Owner and his or her Unit to reimburse the Association for costs incurred by the Association to repair Common Area damage or correct Governing Document violations caused by the Owner or an Occupant of the Owner’s Unit, or a Guest of either.

**“Reserve Account Requirements”** means the estimated funds that the Board has determined are required to be available at a specified point in time to repair, replace, or restore those major components that the Association is obligated to maintain.

**“Reserve Accounts”** means and includes: (i) moneys that the Board has identified for use to defray the future repair or replacement of, or additions to, those major components that the Association is obligated to maintain; and (ii) the funds received, and not yet expended or disposed of, from either a compensatory damage award or settlement to the Association from any Person for injuries to property, real or personal, arising from any construction or design defects, which are to be separately itemized from the funds described in (i).

**“Special Assessment”** means any assessment levied against an Owner and his or her Unit for an Association expense that was under-budgeted or not budgeted in the Association’s pro forma operating budget included in the most recent Annual Budget Report.

**“Town”** means the Town of Truckee in the County of Placer in the State of California, and its various departments, divisions, employees, and representatives.

**“Tower Building”** means a three floor building within the Development that contains 12 Units situated among three floors; there are four Tower Buildings.

**“Tower Unit”** means a Unit located within one of the four Tower Buildings; there are 48 Tower Units, known as Units 133 to 180, which are located in Blocks 5 and 6.

**“Townhouse Unit”** means a townhouse style Unit located within the Development; there are 132 Townhouse Units, known as Units 1 to 132, which are located in Blocks 1, 2, 3 and 4.

**“Unit”** means a separately owned unit, as further described in Section 2.3 of this Declaration; there are 180 Units, including 48 Tower Units and 132 Townhouse Units.

## **Section 1.2 – Reference to Statutes and Law.**

Wherever reference is made in this Declaration to a statute or law, such reference shall mean and refer to a State of California statute or law, unless the context clearly indicates otherwise. Any reference to a statute in this Declaration shall include any successor statute to such referenced statute.

## **ARTICLE 2 – OWNERSHIP RIGHTS, TRANSFERS OF UNITS, AND EASEMENTS**

### **Section 2.1 – Property Subject to this Declaration.**

The Property shall be held, conveyed, divided, encumbered, hypothecated, leased, rented, used, occupied, and improved only in compliance with and subject to the provisions of this Declaration. Each conveyance, transfer, sale, assignment, or lease made by any Owner of a

Unit in the Development shall be deemed to incorporate by reference all of the provisions of this Declaration. All present and future Owners and Occupants shall be subject to, and shall comply with, the provisions of the Governing Documents, as the same may be amended from time to time. The acceptance of a deed to any Unit, the execution of a lease or contract of sale with respect to any Unit, or the entering into occupancy of any Unit shall make the provisions of this Declaration binding on the Persons who are a party to such transaction, and such Persons shall thereafter be obligated to observe and comply with this Declaration and all other Governing Documents.

### **Section 2.2 – Common Area.**

(a) Ownership of Common Area. The Common Area located within each Block is owned by the Owners of Units within such Block as tenants in common, in undivided shares per Unit. The percentage ownership of the Common Area in each Block is shown on **Exhibit B** attached hereto and incorporated herein by reference.

(b) Common Area Items and Things. The Common Area includes, without limitation, the following items and areas: all land; exterior staircases and enclosures; roof covers and structures; foundations; pipes, ducts, flues, chutes, conduits, wires and other utility installations to the outlets thereof located within Units; bearing walls, columns and girders to the unfinished surface thereof, regardless of location; private drives; balconies; storage areas not located within any Unit; parking stalls; and all portions of the Property not included within any Unit.

(c) Common Area Rights and Easements. There are appurtenant to each Unit nonexclusive rights of ingress, egress, and support, if necessary, through the Common Area, and the Common Area is subject to these rights. The interest of each Unit Owner in and to the use and enjoyment of the Common Area shall be appurtenant to the Unit owned by the Owner and shall not be sold, conveyed, or otherwise transferred by the Owner separately from the ownership interest in his or her Unit. Any sale, transfer, or conveyance of a Unit, whether by deed, gift, devise, or operation of law, shall transfer the appurtenant right to use and enjoy the Common Area.

### **Section 2.3 – Units.**

(a) Boundaries of the Units. Each of the Units, as separately shown, numbered, and designated on the Condominium Plan, is bounded by and contained within the following boundaries: the interior unfinished surface (exclusive of paint, paper, wax, tile, enamel or other finishings) of the perimeter walls, bearing walls, floors, fireplaces, ceilings, windows and window frames, doors and door frames and trim of the Unit. Each Unit consists of those boundaries and the portions of the building contained and airspace encompassed within such boundaries.

(b) Elevations. The elevations of the unfinished floors and the highest point of the unfinished ceilings of each Unit are shown on the following documents:

(1) *Block 1 Unit Elevations.* See Exhibit "A" attached to the *Condominium Certificate, Declaration of Annexation, Declaration of Merger of Increments into Condominium Project* recorded on June 28, 1973 as document number 16985 in the official records of the County.

(2) *Block 2 Unit Elevations.* See Exhibit "A" attached to the *Condominium Certificate, Declaration of Annexation, Declaration of Merger of Increments into Condominium Project* recorded on March 1, 1973 as document number 5221 in the official records of the County.

(3) *Block 3 Unit Elevations.* See Exhibit "A" attached to the *Condominium Certificate, Declaration of Annexation, Declaration of Merger of Increments into Condominium Project* recorded on June 28, 1973 as document number 16986 in the official records of the County.

(4) *Block 4 Unit Elevations.* See the *Certificate of Elevations: Certificate Supplementing the Description of the Condominiums* recorded on November 20, 1973 as document number 30328 in the official records of the County.

(5) *Block 5 Unit Elevations.* See Exhibit "A" attached to the *Condominium Certificate, Declaration of Annexation, Declaration of Merger of Increments into Condominium Project* recorded on March 1, 1973 as document number 5222 in the official records of the County.

(6) *Block 6 Unit Elevations.* See Exhibit "A" attached to the *Condominium Certificate, Declaration of Annexation, Declaration of Merger of Increments into Condominium Project* recorded on December 22, 1972 as document number 32980 in the official records of the County.

(c) Areas and Things Not a Part of a Unit. Notwithstanding the provisions of paragraph (a) of this Section 2.3, a Unit does not include any areas and things which are defined in Section 2.2(b) of this Declaration as "Common Area".

(d) Existing Physical Boundaries. In interpreting deeds and the Condominium Plan, the existing physical boundaries of a Unit, or of a Unit reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in the deed or Condominium Plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the Condominium Plan or in the deed and those of the building.

(d) Access to Owners' Units. Except as otherwise provided in law, an order of the court, or an order pursuant to a final and binding arbitration decision, the Association may not deny an Owner or Occupant of a Unit physical access to the Owner's or Occupant's Unit, either



by restricting access through the Common Area to the Unit, or by restricting access solely to the Unit.

#### **Section 2.4 – Exclusive Use Common Area.**

(a) Existing Exclusive Use Common Areas. Exclusive Use Common Areas within the Development include the following: (1) balconies, as shown on the Condominium Plan; (2) storage and stairs areas, as shown on the Condominium Plan; (3) any shutters, awnings, window boxes, doorsteps, stoops, porches, patios, exterior doors, doorframes, and hardware incident thereto, screens and windows or other fixtures designed to serve a single Unit, but located outside the boundaries of the Unit; (4) internal and external telephone wiring designed to serve a single Unit, but located outside the boundaries of the Unit; and (5) cabling, wiring, electrical wiring, outside electrical outlets, and outside hose bibs designed to serve a single Unit or an Exclusive Use Common Area balcony serving a single Unit, but located outside the boundaries of the Unit.

(b) Grant of New Exclusive Use Common Area. The affirmative vote of Members owning at least 75 percent of the Units in the Development shall be required before the Board may grant exclusive use of any portion of the Common Area to a Member, except with respect to those actions exempted from Member approval under the Davis-Stirling Act. Any measure placed before the Members requesting that the Board grant exclusive use of any portion of the Common Area shall specify whether the Association will receive any monetary consideration for the grant and whether the Association or the transferee will be responsible for providing any insurance coverage for exclusive use of the Common Area.

#### **Section 2.5 – Restriction on Partition of Common Area.**

Except as provided in the Davis-Stirling Act, the Common Area shall remain undivided, and there shall be no judicial partition thereof. Nothing in this section shall be deemed to prohibit partition of a cotenancy in a Condominium.

#### **Section 2.6 – Nonexclusive Easements of Enjoyment Over Common Area.**

Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Area, including ingress and egress to and from his or her Unit, which shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions. An Owner's right to use and enjoy the Common Area shall be delegable to the Occupants of the Owner's Unit.

(a) Operating Rules. The Association shall have the right to adopt Operating Rules regulating the use and enjoyment of the Common Area for the benefit and well-being of the Owners in common and, in the event of the breach of such Operating Rules or any provision of any other Governing Document by any Owner, Occupant, or Guest, to initiate disciplinary action against the responsible Owner in accordance with the provisions of this Declaration and the other

Governing Documents. Such action may include, among other things, the levying of fines against a Member.

(b) Maintenance and Repair of Common Area. The Association shall have the right, in accordance with this Declaration and the other Governing Documents, to maintain, repair, and replace the Common Area and make improvements thereto.

(c) Rental and Licensing of Common Area. The Association shall have the right to assign, rent, license, lease, and grant easements over the Common Area to third parties for any lawful purpose not inconsistent with the provisions of this Declaration and the other Governing Documents which do not materially impair the ingress and egress to any Unit or Exclusive Use Common Area.

(d) Rights to Use of Exclusive Use Common Area. Each Owner shall have the right to use the Exclusive Use Common Areas appurtenant to his or her Unit.

(e) Easements over Common Area. All easement rights affecting the Common Area that are described in Section 2.10 of this Declaration shall be binding on each Owner.

#### **Section 2.7 – Transfer of Units.**

(a) Inclusion of Property Interests in Transfer. Any conveyance, judicial sale, or other voluntary or involuntary transfer of a Unit includes the undivided interest in the Common Area coupled with that Unit, the right to use any Exclusive Use Common Areas appurtenant to the Unit, and the Owner's membership interest in the Association.

(b) Notice of Transfer. As soon as practicable after the conveyance, sale, assignment, or other transfer of a Unit to a new Owner, but not later than seven (7) days after such event, the new Owner shall be required to notify the secretary of the Association or the Association's Managing Agent, if any, in writing of his or her assumption of title to the Unit, and provide the Association a copy of the duly recorded grant deed evidencing such conveyance, sale, assignment, or other transfer. That notification shall include, at a minimum, the following information: (1) the address or addresses to which notices from the Association are to be delivered to the new Owner; (2) any alternate or secondary address to which notices from the Association are to be delivered; and (3) the name and address of the new Owner's legal representative, if any, including any person with power of attorney or other person who can be contacted in the event of the new Owner's extended absence from his or her Unit.

#### **Section 2.8 – Transfer Disclosure and Fees.**

(a) Owner Disclosure of Specified Items to Prospective Purchasers. The Owner of a Unit shall provide to a prospective purchaser of his or her Unit, as soon as practicable before the transfer of title for the Unit, those documents required by the Davis-Stirling Act to be given to prospective purchasers of Units (the "**Escrow Documents**").

(b) Copies of Escrow Documents to Owners. Upon written request by an Owner, the Association shall, within 10 days of the mailing or delivery of the request, provide the Owner of a Unit, or any other recipient authorized by the Owner, with a copy of all Escrow Documents requested. The Association may collect a reasonable fee from the selling Owner based upon the Association's actual cost for the procurement, reproduction, and delivery of the Escrow Documents requested; provided, however, an additional fee may not be charged for electronic delivery in lieu of hard copy delivery of the Escrow Documents requested. Upon receipt of a written request, the Association shall provide an Owner, on the statutory billing disclosure form described in the Davis-Stirling Act, a written or electronic estimate of the fees that will be assessed for providing requested Escrow Documents prior to processing the request; the Association shall also provide a recipient authorized by the Owner of a Unit with a copy of the completed form at the time the requested Escrow Documents are delivered. The Association may contract with any person or entity to facilitate compliance with this paragraph on behalf of the Association.

(c) Transfer Fees. Except as provided in the Davis-Stirling Act, the Association shall not impose or collect any Assessment, penalty, or fee in connection with a transfer of title or any other interest in a Unit, other than an amount not to exceed the Association's actual costs to change its records to reflect such transfer.

#### **Section 2.9 – Certain Specified Obligations of Owners.**

(a) Owner's Duty to Notify Association of Contract Purchasers and Tenants. Each Owner shall notify the secretary of the Association or the Association's Managing Agent, if any, of the names of any contract purchaser or tenant residing in the Owner's Unit. Each Owner, contract purchaser, or tenant shall also notify the secretary of the Association or the Association's Managing Agent, if any, of the names of all persons to whom such Owner, contract purchaser, or tenant has delegated any rights to use and enjoy the Common Area of the Development and the relationship that each such person bears to the Owner, contract purchaser, or tenant.

(b) Contract Purchasers. A contract seller of a Unit (*i.e.*, an Owner who contracts to sell his or her Unit under an agreement that transfers title to the buyer only on payment in full) must delegate his or her right to use and enjoy the Common Area to any contract purchaser in possession of the Unit that is the subject of the contract of sale. The contract seller shall remain liable for any default in the payment of Assessments by the contract purchaser, and the contract seller shall retain voting rights as a Member with respect to the Unit, until title to the Unit sold has been transferred to the purchaser.

(c) Compliance with Operating Rules. Each Owner shall observe, comply with, and abide by any and all Operating Rules promulgated by the Association for the purpose of protecting the interests of all Owners or protecting the Common Area.

(d) Joint Ownership of Units. In the event of joint ownership of any Unit, the obligations and liabilities of the multiple Owners under the Governing Documents shall be joint

and several. Without limiting the foregoing, this paragraph (d) shall apply to all obligations, duties, and responsibilities of Owners as set forth in this Declaration, including, without limitation, the payment of all Assessments.

(e) Termination of Obligations. On the conveyance, sale, assignment, or other transfer of a Unit to a new Owner, the transferor-Owner shall not be liable for any Assessments levied with respect to such Unit that become due after the date of recordation of the deed evidencing the transfer, and on such recordation all Association membership rights possessed by the transferor by virtue of ownership of the Unit shall automatically cease.

#### **Section 2.10 – Easements.**

(a) Encroachment Easements. Each Unit is hereby declared to possess an easement over adjoining Units and the Common Area for the purpose of accommodating any encroachment caused by engineering errors, errors in original construction, settlement or shifting of the building, or similar causes. There shall be easements for the maintenance of these encroachments for as long as they shall exist, and the rights and obligations of an Owner shall not be altered in any way by the encroachment, settlement, or shifting; provided, however, in no event shall a valid easement for encroachment be created in favor of an Owner if the encroachment is caused by the willful misconduct of the Owner or a prior owner of the Owner's Unit. In the event a Unit is partially or totally destroyed and is repaired or rebuilt, the Owners of each adjoining Unit agree that minor encroachments over adjoining Units shall be permitted and that there shall be easements for the maintenance of the encroachments for as long as they shall exist.

(b) Utility Easements. There is hereby reserved and granted to the Owners, for their Units and the benefit of the Occupants of their Units, and to the Association, for its benefit and the benefit of the Common Area, reciprocal non-exclusive easements over, under, across, and through the Development for the maintenance, repair, and replacement of the utility facilities and systems which such Owner or the Association is obligated to maintain pursuant to this Declaration. For purposes of the foregoing, "utility facilities and systems" include, without limitation, overhead or underground lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone and other communication purposes, storm and sanitary sewer systems, drainage systems and pollution control devices, domestic water systems, natural gas systems, heating and air conditioning systems, and all other utility systems. By virtue of these easements, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment and underground facilities on the Common Area. Notwithstanding the foregoing, no sewers, electrical lines, water lines, or other utilities may be installed or relocated within the Development except as initially designed, unless otherwise approved by the Board. Further, no Owner, Occupant, or Guest shall undertake any action that would unreasonably interfere with the use of any utility facilities or systems or any utility service within the Development. The easements provided for in this paragraph shall in no way affect any other recorded easement on or over the Development.

(c) Maintenance Easements. An easement is hereby granted to the Association and its officers, agents, and employees, and to any Managing Agent or contractor selected by the Association, to enter in or to cross over the Common Area and any Unit to perform the Association's duties of maintenance and repair of the Common Area and, as applicable, the Units; provided, however, any entry by the Association or such Persons onto any Unit shall only be undertaken in strict compliance with the Association's rights of entry established in Section 3.5(c)(2) of this Declaration.

(d) Easements Shown on Subdivision Map. Each Unit and its Owner, and the Association as to the Common Area, are hereby declared to be subject to all of the easements, dedications, and rights-of-way granted or reserved in, on, over, and under the Development as shown on the recorded subdivision map(s) for the Development.

(e) Street Easements. Each Owner and the Association shall have and are hereby granted a nonexclusive easement for street, roadway, and vehicular traffic purposes over and along any private streets and paved parking areas designated as such within the Development.

#### **Section 2.11 – No Right to Light, View, or Air Current.**

There is no protected light, view, or air current in the Development, and no Unit is assured the existence or unobstructed continuation of any particular light, view, or air current. Any construction within the vicinity of the Development, the growth of landscaping, or the installation of improvements within the Development may impair the light, view, or air current to or through any Unit, and each Owner shall be deemed to have consented to any such light, view, or air current impairment.

#### **Section 2.12 – Safety, Security, and Privacy.**

(a) General Disclaimer. The Association does not undertake to provide security for the Property, the Owners, the Occupants, any Guests, or any persons or property located within the Development, nor does the Association make any representations or warranties concerning security, safety, or privacy within the Development, irrespective of whether there are any access control devices installed and operated in the Common Area or patrol personnel employed or engaged by the Association. Each Owner, Occupant, and Guest is solely responsible for the safety, security, and privacy of himself/herself and his/her family members, Guests, Unit, animals, and personal property in the Development.

(b) Common Area Vehicle Gates. Gates may be installed from time to time at entrances to the Development to control vehicle access into the Development and to deter the general public from parking their vehicles within the Development. The operation of such vehicle gates shall be subject to such Operating Rules as the Board may adopt from time to time; such Operating Rules may regulate, among other things, issues such as the number of gate clickers/fobs to be provided to each Unit and the fee to be charged to Owners for such clickers/fobs.

### **Section 2.13 – No Public Rights in the Development.**

Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any portion of the Development to the general public or for any public use or purpose whatsoever.

### **Section 2.14 – Liens for Labor and Materials.**

(a) No labor performed or services or materials furnished with the consent of, or at the request of, an Owner in the Development or the Owner's agent or contractor shall be the basis for the filing of a lien against any portion of the Common Area under any circumstances, or against any other property of another Owner in the Development unless that other Owner has expressly consented to or requested the performance of the labor or furnishing of the materials or services. However, express consent shall be deemed to have been given by the Owner of any Unit in the case of emergency repairs thereto.

(b) Labor performed or services or materials furnished for the Common Area, if duly authorized by the Association, shall be deemed to be performed or furnished with the express consent of each Unit Owner.

(c) The Owner of any Unit may remove that Owner's Unit from a lien against two or more Units or any part thereof by doing either of the following: (1) pay to the holder of the lien the fraction of the total sum secured by the lien that is attributable to the Owner's Unit; or (2) record a lien release bond, pursuant to Section 8424 of the Civil Code, in an amount equal to 125 percent of the sum secured by the lien that is attributable to the Owner's Unit.

### **Section 2.15 – Notice of Lien.**

If the Association is served with a claim of lien for a work of improvement on the Common Area, the Association shall, within 60 days of service of such lien, give Individual Notice of the lien to the Members.

### **Section 2.16 – Northstar Property Owners Association.**

The Development is a part of the "Northstar California" resort. Northstar Property Owners Association ("**NPOA**") is the original master association at Northstar California, and each Owner of a Unit in the Development also holds a membership in NPOA and is separately obligated for assessments owed directly to NPOA. The use, occupancy, design, improvement, and maintenance of the Units and the Common Area are subject to various provisions of NPOA's governing documents, including, without limitation, the *Third Restated Declaration of Covenants, Conditions and Restrictions for Northstar* recorded on June 17, 2014 as document number 2014-0040239-00 in the official records of the County of Placer, State of California (as may be amended, the "**Northstar Declaration**"). The rights and obligations set forth in this Declaration are subject and subordinate to the Northstar Declaration.

## ARTICLE 3 – THE ASSOCIATION

### Section 3.1 – Association Membership.

The Association has been formed to manage the Development and to perform the other duties and obligations set forth in this Declaration and the other Governing Documents. Every Owner of a Unit in the Development shall be a Member of the Association, and such membership shall be appurtenant to, and may not be separated from, ownership of the Owner's Unit or Units. Sole or joint ownership of a Unit shall be the sole qualification for membership in the Association. Each Owner shall remain a Member until his or her ownership in all Units ceases, at which time his or her membership in the Association shall automatically cease. Persons who hold an interest in a Unit merely as security for performance of an obligation are not Members until such time as the security holder comes into title to the Unit through foreclosure or receipt of a deed in lieu thereof.

### Section 3.2 – One Class of Membership.

The Association shall have one class of membership, and the rights, duties, obligations, and privileges of the Members shall be as set forth in the Governing Documents.

### Section 3.3 – Voting Rights of Members.

Each Member shall be entitled to one vote for each Unit owned by that Member. When more than one Person holds an interest in any Unit, all such persons shall be Members, although in no event shall more than one vote be cast with respect to any Unit. The voting rights of a Member may be suspended by the Association for violations of the Governing Documents as set forth therein.

### Section 3.4 – Transfer of Memberships.

Membership in the Association shall not be transferred, encumbered, pledged, or alienated in any way, except on the sale of the Unit to which it is appurtenant, and then only to the purchaser. In the case of a sale, the membership appurtenant to the transferred Unit shall pass automatically to the purchaser on the recordation of a deed evidencing the transfer of title. In the case of an encumbrance of a Unit, a Mortgagee does not have membership rights until he or she becomes an Owner by foreclosure or deed in lieu thereof.

### Section 3.5 – Powers and Authority of the Association.

(a) Powers of the Association. The Association shall have the responsibility for managing the Development and discharging the other duties and responsibilities imposed on the Association by the Governing Documents. In the discharge of such responsibilities and duties, the Association shall have all of the powers of a nonprofit mutual benefit corporation organized under the laws of the State of California in the exercise of those duties and responsibilities, subject only to such limitations on the exercise of said powers as expressly set forth in the

Governing Documents. Certain specific powers of the Association and the limitations thereon are set forth in the Bylaws.

(b) Board of Directors. With the exception of those matters requiring approval of the Members under the Governing Documents or California law, the affairs of the Association shall be conducted, and all corporate powers shall be exercised, by the Board of Directors and such officers and agents as the Board may elect, hire, or appoint. The Association, through the Board of Directors, shall have the power to do any and all lawful things that may be authorized, required, or permitted to be done under and by virtue of the Governing Documents and to do and perform any and all acts that may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association for the peace, health, comfort, safety, or general welfare of the Owners.

(c) Specific Powers. Without limiting any of the foregoing provisions of this Section 3.5, following is a description of certain specific powers of the Association.

(1) *Assessments*. The Association shall have the power to establish, fix, and levy Assessments against the Owners of Units within the Development and to enforce payment of such Assessments in accordance with Article 4 of this Declaration.

(2) *Right of Entry*. The Association and its agents shall have the right and power to enter any Unit or Exclusive Use Common Area to: (A) perform the Association's maintenance and repair obligations under this Declaration; (B) inspect a Unit or Exclusive Use Common Area for compliance with the Governing Documents (including, but not limited to, Owner maintenance and repair obligations); (C) enforce the provisions of the Governing Documents with respect to such Unit or Exclusive Use Common Area; or (D) exercise any other rights the Association has at law or under the Governing Documents. This right of entry shall be subject to the following limitations:

(A) The right of entry may be exercised immediately and without prior notice to the Owner or Occupants of a Unit in case of an emergency originating in or threatening the Unit, other Units, or the Common Area. The Association's work may be performed under such circumstances whether or not the Owner or Occupants are present.

(B) In all nonemergency situations involving maintenance and/or repair activities by the Association, the Association, or its agents, shall furnish the Owner of a Unit with at least 48 hours' prior written notice of the Association's intent to enter the Unit, specifying the purpose and scheduled time of such entry, and the Association shall make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the Occupants of the Unit.

(C) In all nonemergency situations involving access by the Association for purposes of enforcing the Governing Documents against an Owner in default, the



Association's entry shall be subject to observance of the notice and hearing requirements imposed by the Governing Documents for disciplinary actions.

(3) *Rule-Making Power.* The Board may, from time to time, subject to the provisions of this Declaration and the Bylaws and the requirements of the Davis-Stirling Act, adopt, amend, and repeal Operating Rules that regulate the management and operation of the Development or the conduct of the business and affairs of the Association. Notwithstanding the foregoing grant of authority, any Operating Rules adopted by the Board shall not be inconsistent with or materially alter any provision of the other Governing Documents or the rights, preferences, and privileges of Members thereunder. In the event of any material conflict between any Operating Rule and any provision of the other Governing Documents, the conflicting provisions contained in the other Governing Documents shall prevail, unless the Operating Rule was adopted to comply with prevailing law.

(4) *Enforcement of Governing Documents.* The Association shall have the right to enforce the provisions of the Governing Documents consistent with the requirements of the Governing Documents and the requirements of the Davis-Stirling Act.

(5) *Utility Service.* The Association shall obtain utility service for the Common Area. In addition, when a particular utility cannot reasonably be obtained by a Unit independently, the Association shall obtain the utility and, to the extent possible, equitably allocate any associated cost according to usage.

(d) Water Submeters. Subject to the provisions of this Declaration and the Bylaws regarding expenditures for capital improvements, the Association may, but is not obligated to, purchase and install water submeters and related components for each Unit, so that the Association can measure the actual water usage within each Unit. If such water submeters are purchased and installed by the Association, the following provisions shall apply.

(1) *Installation.* The installation of the water submeters may require the temporary shut off of water service to some or all of the Units, and the Owners and Occupants of Units shall be required to timely cooperate with the Association in the installation process as needed.

(2) *Maintenance and Repair.* The Association shall be responsible for the maintenance, repair, and replacement of the water submeter and related components serving each Unit, once installed by the Association. The costs and expenses for such maintenance, repair, and replacement costs shall be budgeted for in the Association's annual pro-forma operating budget and reserve study, as the Board determines to be appropriate. In addition, the Association shall be required to insure the water submeters under its master fire and casualty insurance policy.

(3) *Reading.* The Association shall read, or cause to be read by a third party, each installed water submeter on a monthly, bimonthly, or quarterly basis, in the Board's discretion, and the Association shall keep a record of such readings for at least two fiscal years.

(4) *Billing.* The Owner(s) of each Unit shall be billed for and responsible to pay the water usage within his or her Unit, based on the readings of the water submeter serving the Owner's Unit; if the Association engages a third party to read a water submeter serving an Owner's Unit and/or collect charges for the water usage within the Owner's Unit, the Owner shall also be billed for and responsible to pay any fees charged by that third party for such reading and collection. Each such billing shall be considered a Reimbursement Assessment collectible from the Owner(s) of the applicable Unit. The cost for water usage for the benefit of any Common Area amenities and facilities shall be considered a common expense to be included in Regular Assessments.

### **Section 3.6 – Limitation on Liability of Directors and Officers.**

(a) No volunteer Director or volunteer officer of the Association shall be personally liable to any Member, Occupant, Guest, or other Person who suffers injury, including, but not limited to, bodily injury, emotional distress, wrongful death, or property damage or loss, as a result of the tortious act or omission of the volunteer Director or volunteer officer, if all of the following criteria are met:

(1) The act or omission was performed within the scope of the Director's or officer's Association duties;

(2) The act or omission was performed in good faith.

(3) The act or omission was not willful, wanton, or grossly negligent; and

(4) The Association maintained and had in effect at the time the act or omission occurred and at the time a claim is made one or more policies of insurance that include coverage for (A) general liability of the Association and (B) individual liability of Directors and officers of the Association for negligent acts or omissions in that capacity, provided that both types of coverage are in the minimum amounts prescribed by the Davis-Stirling Act for the number of Units contained within the Development.

(b) The payment of actual expenses incurred by a Director or officer in the execution of the duties of that position does not affect the Director's or officer's status as a volunteer within the meaning of this Section 3.6.

(c) This Section 3.6 shall only apply to a volunteer Director or volunteer officer who is an owner of no more than two Units in the Development.

(d) This Section 3.6 is intended to clarify the scope of Association duties to which the protections against the personal liability of Directors and officers apply. It is not the intent of this Section 3.6 to expand, or limit, the fiduciary duties owed by the Association's Directors or officers.

**Section 3.7 – Limitation on Liability of Owners with Respect to Common Area.**

Any cause of action in tort against any Owner of a Unit arising solely by reason of an ownership interest as a tenant-in-common in the Common Area shall be brought only against the Association and not against the individual Owner of any Unit, if the Association maintained and has in effect for this cause of action one or more policies of insurance that include coverage for general liability of the Association in the minimum amount prescribed by the Davis-Stirling Act for the number of Units contained within the Development.

**ARTICLE 4 – ASSESSMENTS**

**Section 4.1 – Establishment and Imposition of Assessments.**

(a) Levy of Assessments. The Association shall levy Regular Assessments and Special Assessments sufficient to perform its obligations under the Governing Documents and the Davis-Stirling Act. The Association shall not impose or collect an Assessment or fee that exceeds the amount necessary to defray the costs for which it is levied.

(b) Types of Assessments.

(1) *Regular Assessments.*

(A) Regular Assessments include assessments levied against the Owners and their Units based upon the funding needs projected in the Association's pro forma operating budget included in the most recent Annual Budget Report.

(B) Regular Assessments levied against each Owner and his or her Unit shall be due and payable in advance to the Association in equal monthly installments on the first day of each calendar month during the fiscal year for which such Regular Assessments have been levied.

(C) If the Board fails to distribute an Annual Budget Report for any fiscal year within 30 to 90 days before the end of the prior fiscal year, the Regular Assessments for that fiscal year shall be the same as in the prior fiscal year, unless and until the Board increases Regular Assessments in accordance with the requirements of this Declaration and the Davis-Stirling Act.

(2) *Special Assessments.* Special Assessments include assessments levied against the Owners and their Units for Association expenses that are under-budgeted or not

budgeted in the Association's pro forma operating budget included in the most recent Annual Budget Report.

(3) *Reimbursement Assessments.*

(A) A Reimbursement Assessment is any assessment levied against an individual Owner and his or her Unit to reimburse the Association for costs incurred by the Association to repair Common Area damage, or address or correct Governing Document violations, caused by the Owner or an Occupant of the Owner's Unit, or a Guest of either. A Reimbursement Assessment may also be levied against an Owner and his or her Unit for payment or reimbursement of sub-metered Unit water use, as described in Section 3.5(d) of this Declaration.

(B) The costs and expenses that can be included in a Reimbursement Assessment include, without limitation, the following: construction and repair work; NCSD, Town and County fines and penalties; accounting fees; court costs; reasonable attorney's fees; and sub-metered Unit water use. If an insurance policy maintained by the Association provides coverage for the repair of Common Area damage for which an Owner is responsible, the Owner responsible for the Common Area damage shall be liable for the payment of any applicable insurance deductible and/or uninsured costs.

(C) No Reimbursement Assessment may be imposed against an Owner until the Owner has been afforded the notice and hearing rights to which the Owner is entitled under the Governing Documents and the Davis-Stirling Act; provided, however, this notice and hearing requirement shall not apply to any Reimbursement Assessment imposed against an Owner and his or her Unit for payment or reimbursement of sub-metered Unit water use.

(D) The right of the Association to levy a Reimbursement Assessment against an Owner shall not obligate the Association to take actions or expend funds to actually perform any repair, maintenance, or replacement work to any portion of a Unit or Exclusive Use Common Area that an Owner is responsible to maintain under this Declaration but has failed to undertake or complete in a timely fashion, or to bring an Owner's Unit or Exclusive Use Common Area into compliance with the provisions of the Governing Documents.

(c) Division of Assessments. Regular Assessments and Special Assessments shall be divided among the Owners as follows:

(1) The estimated cost of gas and electricity consumed by the Tower Units (i.e., Units 133 through 180) shall be assessed against the Owners of the Tower Units, allocated among them according to the relative size of their floor area.

(2) Costs associated with the water and sewer usage, groundskeeping (including, without limitation, Common Area landscaping and irrigation), insurance, custodial service, refuse service, and maintenance, repair and replacement (including associated reserves)

of all building components and systems, shall be allocated among all Units according to the relative size of their floor area. Notwithstanding the foregoing, if submeters are installed to measure and track Unit water usage, the Owner of each Unit shall be obligated to pay for such water use as described in Section 3.5(d) of this Declaration and Section 4.1(b)(3) of this Article 4.

(3) Costs associated with conducting meetings, legal and accounting services, management and administrative services and expenses, snow removal from roads and parking areas, and Common Area lighting, shall be allocated among all Units equally.

(4) In the event an expense arises that is not within the categories listed in this paragraph (c), the Board shall, in its sole discretion, allocate it either (A) among all Units according to the relative size of their floor area, or (B) among all Units equally.

(d) Limit on Increases in Assessments.

(1) Annual increases in Regular Assessments for any fiscal year shall not be imposed unless the Board has: (A) complied with the Annual Budget Report requirements imposed by the Davis-Stirling Act that must be met before the Board can increase Regular Assessments with respect to that fiscal year; or (B) has obtained the approval of a majority of a quorum of the Members for such increase by a secret ballot vote conducted in accordance with the requirements of the Davis-Stirling Act.

(2) The Board may not impose a Regular Assessment that is more than 20 percent greater than the Regular Assessment for the Association's preceding fiscal year, or impose Special Assessments which in the aggregate exceed 5 percent of the budgeted gross expenses of the Association for that fiscal year, without obtaining the approval of a majority of a quorum of the Members by a secret ballot vote conducted in accordance with the requirements of the Davis-Stirling Act.

(3) For the purposes of the foregoing, "quorum" means more than 50 percent of the Members.

(e) Emergency Assessments. Paragraph (d) of this Section 4.1 does not limit increases in Regular Assessments or the imposition of Special Assessments necessary for emergency situations. For purposes of the foregoing, an emergency situation is any one of the following:

(1) An extraordinary expense required by an order of a court.

(2) An extraordinary expense necessary to repair or maintain the Development or any part of it for which the Association is responsible where a threat to personal safety on the Property is discovered.

(3) An extraordinary expense necessary to repair or maintain the Development or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the most recent Annual Budget

Report. Prior to the imposition or collection of an Assessment under this subparagraph, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members with the notice of Assessment.

(f) Notice of Assessment. The Association shall provide Individual Notice to the Members of any increase in Regular Assessments or the imposition of a Special Assessment not less than 30 days nor more than 60 days prior to the Assessment becoming due. The foregoing notice requirement shall also apply to the levy of any Reimbursement Assessment.

#### **Section 4.2 – Assessment Payment and Delinquency.**

(a) Covenant to Pay Assessments. Each Owner of a Unit, by acceptance of a deed or other conveyance for such Unit (whether or not it shall be so expressed in such deed or conveyance), covenants and agrees to pay to the Association all Regular Assessments, Special Assessments, and Reimbursement Assessments duly levied by the Association in accordance with this Article 4.

(b) Personal Obligation of Owners. All Assessments and any late charges, reasonable fees and costs of collection, if any, and interest, if any, shall be a debt and a personal obligation of the Person who is the Owner of a Unit at the time the Assessment or other sums are levied against such Unit. Each Owner who acquires title to a Unit (whether by conventional conveyance, judicial sale, trustee sale, or otherwise) shall be personally liable only for Assessments attributable to the Unit that become due and payable after the date that the Person acquires title. Accordingly, when a Person acquires title to a Unit, the new Owner shall not be personally liable for delinquent Assessments of prior Owners of the same Unit, unless the new Owner expressly assumes the personal liability of a prior Owner. However, if the acquired Unit is conveyed subject to a valid lien for delinquent Assessments (*i.e.*, the lien is not removed from record before close of escrow in the sale of the Unit), then, subject to the rights of Mortgagees provided in Article 13 of this Declaration, the Association may continue to exercise its foreclosure remedies against the Unit, regardless of the change of ownership, and/or the Association may pursue its collection remedies against the prior Owner individually.

(c) No Avoidance of Assessment Obligations. No Owner may exempt himself or herself from personal liability for Assessments duly levied by the Association, nor release his or her Unit from the liens and charges authorized by this Article 4, by waiver of the use and enjoyment of the Common Area or any facilities thereon or therein or by abandonment or nonuse of his or her Unit or any other portion of the Development.

(d) Assessment Due Date. All Assessments levied pursuant to this Declaration shall become delinquent if unpaid 15 days after they become due.

(e) Fees, Costs, and Interest. If an Assessment is delinquent, the Association may recover all of the following: (1) reasonable costs incurred in collecting the delinquent Assessment, including reasonable attorney's fees; (2) a late charge not exceeding 10 percent of the delinquent Assessment or ten dollars (\$10), whichever is greater (or such higher amount that may be permitted by the Davis-Stirling Act); and (3) interest on all sums imposed, including the delinquent Assessments, reasonable fees and costs of collection, and reasonable attorney's fees, at an annual interest rate not to exceed 12 percent (or such higher amount as may be permitted by the Davis-Stirling Act), commencing 30 days after the assessment becomes due.

(f) Payments of Delinquent Assessments. Except as may otherwise be permitted by law, any payments made by the Owner of a Unit toward a debt described in paragraph (b) of this Section 4.2 shall first be applied to the Assessments owed, and only after the Assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorney's fees, late charges, or interest. When an Owner makes a payment, the Owner may request a receipt and the Association shall provide it; the receipt shall indicate the date of payment and the Person who received it. The Association shall provide a mailing address for overnight payment of Assessments.

(g) Payment Under Protest. If a dispute exists between an Owner and the Association regarding any charge or sum levied by the Association, including, but not limited to, an Assessment, fine, penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure, and the amount in dispute does not exceed the jurisdictional limits of the small claims court stated in Sections 116.220 and 116.221 of the Code of Civil Procedure, the Owner may, in addition to pursuing alternative dispute resolution pursuant to this Declaration and the Davis-Stirling Act, pay under protest the disputed amount and all other amounts levied, including any fees and reasonable costs of collection, reasonable attorney's fees, late charges, and interest, if any, and commence an action in small claims court. Nothing in this paragraph shall impede the Association's ability to collect delinquent Assessments as provided in Section 4.3 of this Declaration.

(h) Notice of Intent to Lien. At least 30 days prior to recording a lien upon the Unit of an Owner to collect a debt that is past due, the Association shall notify the Owner in writing by certified mail of the Association's intent to record a lien and provide the Owner related information required by the Davis-Stirling Act (the "**Notice of Intent to Lien**").

(i) Payment Plans. An Owner may submit a written request to meet with the Board to discuss a payment plan for the debt noticed pursuant to a Notice of Intent to Lien, and the Association shall provide the Owner the standards for Member payment plans, if any exist. The Board shall meet with the Owner in executive session within 45 days of the postmark of the request, if the request is mailed within 15 days of the date of the postmark of the Notice of Intent to Lien, unless there is no regularly scheduled Board meeting within that period, in which case the Board may designate a committee of one or more Directors to meet with the Owner. Payment plans may incorporate any Assessments that accrue during the payment plan period; additional late fees shall not accrue during the payment plan period if the Owner is in compliance

with the terms of the payment plan. Payment plans shall not impede the Association's ability to record a lien on the Owner's Unit to secure payment of delinquent Assessments. In the event of a default on any payment plan, the Association may resume its efforts to collect the delinquent Assessments from the time prior to entering into the payment plan.

(j) Dispute Resolution Offer Prior to Recording Lien. Prior to recording a lien for delinquent Assessments, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's "meet and confer" program required by the Davis-Stirling Act.

(k) Board Approval Required to Record Lien. The decision to record a lien for delinquent Assessments shall be made only by the Board and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Directors in an open meeting. The Board shall record the vote in the minutes of that meeting.

(l) Lien; Notice of Delinquent Assessment. The amount of the Assessment, plus any costs of collection, late charges, and interest assessed, shall be a continuing lien on the Owner's Unit from and after the time the Association causes a notice of delinquent Assessment to be recorded with the County recorder (a "**Notice of Delinquent Assessment**"), which shall state the amount of the Assessment and other sums imposed, a legal description of the Unit against which the Assessment and other sums are levied, and the name of the Owner. The itemized statement of the charges owed by the Owner shall be recorded together with the Notice of Delinquent Assessment in the manner prescribed by the Davis-Stirling Act. In order for the lien to be enforced by nonjudicial foreclosure as provided in the Davis-Stirling Act, the Notice of Delinquent Assessment shall state the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Delinquent Assessment shall be signed by the person designated by the Association for that purpose; if no one is designated, by the president of the Association. A copy of the recorded Notice of Delinquent Assessment shall be mailed by certified mail to every Person whose name is shown as an Owner of the Unit in the Association's records, and shall be mailed no later than 10 calendar days after recordation.

(m) Priority of Lien. A lien created pursuant to a Notice of Delinquent Assessment shall be prior to all other liens recorded subsequent to the Notice of Delinquent Assessment, except to the extent that this Declaration provides for the subordination thereof to any other liens and encumbrances.

(n) Recording of Lien; Release of Lien; Notice of Rescission.

(1) Within 21 days of the payment of the sums specified in the Notice of Delinquent Assessment, the Association shall record or cause to be recorded in the office of the County recorder a lien release or notice of rescission and provide the Owner of the Unit a copy of the lien release or notice that the delinquent Assessment has been satisfied.



(2) If it is determined that a lien previously recorded against a Unit was recorded in error, the party who recorded the lien shall, within 21 calendar days, record or cause to be recorded in the office of the County recorder a lien release or notice of rescission and provide the Owner of the Unit with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission.

(3) If it is determined that the Association has recorded a lien for a delinquent Assessment in error, the Association shall promptly reverse all late charges, fees, interest, attorney's fees, costs of collection, costs imposed for the Notice of Intent to Lien, and costs of recordation and release of the lien, and pay all costs related to any related dispute resolution or alternative dispute resolution.

### **Section 4.3 – Assessment Collection.**

(a) Enforcement of Lien. Except as otherwise provided in the Davis-Stirling Act, after the expiration of 30 days following the recording of a lien created pursuant to a Notice of Delinquent Assessment, the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent Assessment, or sale by a trustee substituted pursuant to Section 2934a of the Civil Code. Nothing in Section 4.2 of this Article 4 or in subdivision (a) of Section 726 of the California *Code of Civil Procedure* prohibits actions against the Owner of a Unit to recover sums for which a lien is created pursuant to Section 4.2 or prohibits the Association from taking a deed in lieu of foreclosure.

(b) Pre-Foreclosure Requirements; Offer to Meet and Confer; Approval by Board.

(1) Prior to initiating a foreclosure on an Owner's Unit, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's "meet and confer" program or alternative dispute resolution pursuant to the Davis-Stirling Act. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(2) The decision to initiate foreclosure of a lien for delinquent Assessments that has been validly recorded shall be made only by the Board and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Directors in an executive session meeting. The Board shall record the vote in the minutes of the next meeting of the Board open to all Members. The Board shall maintain the confidentiality of the Owner of the Unit by identifying the matter in the minutes by the parcel number of the property, rather than the name of the Owner. A Board vote to approve foreclosure of a lien shall take place at least 30 days prior to any public sale.

(3) If the Board votes to foreclose upon a Unit, the Board shall provide notice of such decision to the Owner of the Unit who occupies the Unit or to the Owner's legal representative by personal service in accordance with the manner of service of summons

required by the Davis-Stirling Act. The Board shall provide written foreclosure notice to an Owner of a Unit who does not occupy the Unit by first-class mail, postage prepaid, at the most current address shown on the books of the Association. In the absence of written notification by the Owner to the Association, the address of the Owner's Unit may be treated as the Owner's mailing address.

(c) Sale by Trustee. Any sale by the trustee shall be conducted in accordance with Sections 2924, 2924b, and 2924c of the Civil Code applicable to the exercise of powers of sale in mortgages and deeds of trust. In addition to the requirements of Section 2924 of the Civil Code, the Association shall serve a notice of default on the Person named as the Owner of the Unit in the Association's records or, if that Person has designated a legal representative, on that Owner's legal representative. Service shall be in accordance with the manner of service of summons required by the Davis-Stirling Act. An Owner may designate a legal representative in a writing that is mailed to the Association in a manner that indicates that the Association has received it. The fees of a trustee may not exceed the amounts prescribed in Sections 2924c and 2924d of the Civil Code, plus the cost of service allowed by the Davis-Stirling Act.

(d) Right of Redemption. A nonjudicial foreclosure by the Association to collect upon a debt for delinquent Assessments shall be subject to a right of redemption. The redemption period within which the Unit may be redeemed from a foreclosure sale ends 90 days after the sale. In addition to the requirements of Section 2924f of the Civil Code, a notice of sale in connection with the Association's foreclosure of a Unit shall include a statement that the property is being sold subject to the right of redemption created in this paragraph.

(e) Assessment Collection Through Foreclosure. If the Association seeks to collect delinquent Assessments of an amount less than one thousand eight hundred dollars (\$1,800) (or such other amount as may be prescribed by the Davis-Stirling Act), not including any accelerated Assessments, late charges, fees and costs of collection, attorney's fees, or interest, the Association may not collect that debt through judicial or nonjudicial foreclosure, but may attempt to collect or secure that debt in any of the following ways:

(1) By a civil action in small claims court, as provided in the Davis-Stirling Act. If the Association chooses to proceed by an action in small claims court and prevails, the Association may enforce the judgment as permitted under the Davis-Stirling Act. The amount that may be recovered in small claims court to collect upon a debt for delinquent Assessments may not exceed the jurisdictional limits of the small claims court and shall be the sum of the following: (A) the amount owed as of the date of filing the complaint in the small claims court proceeding; and (B) in the discretion of the court, an additional amount equal to the amount owed for the period from the date the complaint is filed until satisfaction of the judgment, which total amount may include accruing unpaid Assessments and any reasonable late charges, fees and costs of collection, attorney's fees, and interest, up to the jurisdictional limits of the small claims court.

(2) By recording a lien on the Owner's Unit upon which the Association may not foreclose until the amount of the delinquent Assessments secured by the lien, exclusive of any accelerated Assessments, late charges, fees and costs of collection, attorney's fees, or interest, equals or exceeds one thousand eight hundred dollars (\$1,800) (or such other amount as may be prescribed by the Davis-Stirling Act) or the Assessments secured by the lien are more than 12 months delinquent. If the Association chooses to record a lien under these provisions, prior to recording the lien, the Association shall offer the owner and, if so requested by the owner, participate in dispute resolution as required by the Davis-Stirling Act.

(f) Distinction Between Monetary Charge and Monetary Penalty.

(1) A Reimbursement Assessment or other monetary charge imposed by the Association as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Area and facilities caused by a Member or an Occupant of the Member's Unit, or a Guest of either, or for the benefit of the Member and his or her Unit, may become a lien against the Member's Unit enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c of the Civil Code.

(2) A monetary penalty imposed by the Association as a disciplinary measure for failure of a Member or an Occupant of the Member's Unit, or a Guest of either, to comply with the Governing Documents, except for the late payments, may not be characterized nor treated as an Assessment that may become a lien against the Member's Unit enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c of the Civil Code.

**Section 4.4 – Maintenance of Assessment Funds.**

(a) Association Bank Accounts. All sums received or collected by the Association from Assessments, together with any interest or late charges thereon, shall be promptly deposited in one or more insured checking or savings accounts in a bank or other financial institution selected by the Board of Directors. In addition, the Board shall be entitled to make prudent investment of reserve funds in: (1) FDIC or FSLIC-insured bank savings accounts, certificates of deposit or money market deposit accounts; (2) U.S. treasury bills and other accounts and deposits backed by the full faith and credit of the United States government; and/or (3) other investment opportunities the Board believes will properly preserve the reserve funds. The Board and such officers or agents of the Association as the Board may 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.

(b) Expenditure of Assessment Funds. The proceeds of each Assessment shall be used only for the purpose for which such Assessment was made, and such funds shall be received and held in trust by the Association for such purpose. Notwithstanding the foregoing, the Board, in its discretion, may make appropriate adjustments among the various line items in the Board's approved pro forma operating budget if the Board determines that it is prudent and in the best interest of the Association and its Members to make such adjustments.

(c) Operating Account. There shall be established and maintained one or more cash deposit accounts, each to be known as an “operating account”, into which shall be deposited the operating portion of all Assessments as fixed and determined for all Members. Disbursements from the operating account(s) shall be for general operational needs, including, but not limited to, wages, repairs, betterments, maintenance, and other operating expenses of the Development. The operating account(s) shall be kept separate and apart from the Reserve Accounts.

(d) Reserve Funds. The Board shall maintain Reserve Accounts for the repair and replacement of those major components that the Association is obligated to maintain pursuant to the Declaration.

(e) Excess Special Assessment Funds. If the proceeds of any Special Assessment exceed the funding requirement for which such Special Assessment was levied, that surplus may, in the Board’s discretion, be: (1) returned proportionately to the Owners contributing thereto; (2) reallocated among the Reserve Accounts if any such accounts are, in the Board’s opinion, underfunded; or (3) credited proportionately on account of the Owners’ future Regular Assessment obligations.

(f) Application of Surplus Funds. If, as of the end of any fiscal year of the Association, there is excess membership income (*i.e.*, Regular Assessments paid by the Members are greater than the Association’s expenses for the fiscal year), and if the Association is qualified to use Internal Revenue Service Revenue Ruling 70-604, the Association’s Members shall vote under Revenue Ruling 70-604 whether to make an election to (1) apply the excess membership income to the following year’s Regular Assessments or (2) refund the excess membership income to the Members, and the Board shall effectuate the approved action. If the Association is not qualified to use Revenue Ruling 70-604, the Association may apply, refund, or use the excess membership income in any manner permitted by applicable law.

#### **Section 4.5 – Use of Reserve Funds.**

(a) Expenditure of Reserve Accounts. The signatures of at least two Directors shall be required for the withdrawal of moneys from the Reserve Accounts. The Board shall not expend funds from the Reserve Accounts for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components that the Association is obligated or permitted to repair, restore, replace, or maintain.

(b) Borrowing from Reserve Accounts. The Board may authorize the temporary transfer of moneys from a reserve fund to the Association's general operating fund to meet short-term cashflow requirements or other expenses, if the Board has provided notice of the intent to consider the transfer in a Board meeting notice given in accordance with the requirements of the Davis-Stirling Act. The notice shall include the reasons the transfer is needed, some of the options for repayment, and whether a Special Assessment may be considered. If the Board authorizes

the transfer, the Board shall issue a written finding, recorded in the Board's meeting minutes, explaining the reasons that the transfer is needed, and describing when and how the moneys will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, except that the Board may, after giving the same notice required for considering a transfer, and, upon making a finding supported by documentation that a temporary delay would be in the best interests of the Development, temporarily delay the restoration. The Board shall exercise prudent fiscal management in maintaining the integrity of the Reserve Accounts, and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limits required by this subparagraph, subject however to the limitations on the Board's authority to levy Special Assessments under these Bylaws and the Davis-Stirling Act.

(c) Reserve Planning. The Board shall comply with the reserve study requirements and reserve funding plan requirements under the Davis-Stirling Act to estimate the Association's Reserve Account Requirements.

#### **Section 4.6 – Assignment or Pledge of Future Assessment Obligations.**

The Association may not voluntarily assign or pledge the Association's right to collect payments or Assessments or to enforce or foreclose a lien to a third party except when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or state law when acting within the scope of that charter or license as security for a loan obtained by the Association. However, the foregoing provision shall not restrict the right or ability of the Association to assign any unpaid obligations of a former Member to a third party for purposes of collection.

#### **Section 4.7 – Transfer of Unit by Sale or Foreclosure.**

The following provisions shall govern the right of the Association to enforce its Assessment collection remedies following the sale or foreclosure of a Unit:

(a) Except as provided in paragraph (b) of this Section 4.7, the sale or transfer of any Unit shall not affect any Assessment lien that has been duly recorded against the Unit before the sale or transfer, and the Association can continue to foreclose its lien despite the change in ownership.

(b) The Association's Assessment lien shall be extinguished as to all delinquent sums, late charges, interest, and costs of collection incurred before the sale or transfer of a Unit under a foreclosure or exercise of a power of sale by the holder of a prior encumbrance (but not under a deed in lieu of foreclosure). A "prior encumbrance" means any First Mortgage or other Mortgage or lien recorded against the Unit at any time before recordation of the Association's Assessment lien.

(c) No sale or transfer of a Unit as the result of foreclosure, exercise of a power of sale, or otherwise shall relieve the new Owner of such Unit (whether it be the former beneficiary of the First Mortgage or other prior encumbrance, or a third party acquiring an interest in the Unit) from liability for any Assessments that thereafter become due with respect to the Unit or from the lien thereof.

(d) Any Assessments, late charges, interest, and associated costs of collection that are lost as a result of a sale or transfer of a Unit shall be deemed to be a common expense collectible from the Owners of all of the Units, including the Person who acquires the Unit and his or her successors and assigns.

(e) No sale or transfer of a Unit as the result of foreclosure, exercise of a power of sale, or otherwise shall affect the Association's right to maintain an action personally against the foreclosed upon previous Owner to collect the delinquent Assessments, late charges, interest, and associated costs of collection incurred before and/or in connection with the sale or transfer.

#### **Section 4.8 – Priorities.**

When a Notice of Delinquent Assessment has been recorded, such notice shall constitute a lien on the Unit prior and superior to all other liens except with respect to the following: (a) all taxes, bonds, assessments, and other levies that by law would be superior thereto; and (b) the lien or charge of any First Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value, provided, however, that such subordination shall apply only to the Assessments that have become due and payable before the transfer of such property under the exercise of a power of sale or a judicial foreclosure involving a default under such First Mortgage or other prior encumbrance.

#### **Section 4.9 – Unallocated Taxes for Common Area.**

If any taxes are assessed against the Common Area or the personal property of the Association rather than being assessed to the Units, such taxes shall be included in the Regular Assessments imposed by the Association, and, if necessary, a Special Assessment may be levied against the Units in an amount equal to such taxes.

#### **Section 4.10 – Taxes and Utilities for Units.**

Each Owner shall be obligated to pay the taxes and assessments assessed by the Town, NCSD, County, and any other municipal authority against the Owner's Unit, interest in the Common Area, and/or personal property. Each Owner shall also be obligated to pay any and all assessments and charges for water, sewage, gas, electricity, and other utilities metered separately to such Owner's Unit.

#### **Section 4.11 – Waiver of Exemptions.**

Each Owner, to the extent permitted by law, waives, to the extent of any liens created under this Article 4, 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.

#### **Section 4.12 – Units Owned by Association.**

The portion of any Assessments attributable to any Unit owned by the Association shall be deemed to be a common expense payable by all of the remaining Unit Owners through Regular Assessments and/or Special Assessments.

### **ARTICLE 5 – ARCHITECTURAL CONTROL**

#### **Section 5.1 – Association Approval Required for Improvements.**

(a) Definition of Improvements. For purposes of this Article 5, “*Improvements*” means the types of construction and improvement projects undertaken by Owners within the Development that are described in paragraph (b) below and which must be approved by the Association prior to commencement.

(b) Improvements Subject to this Article 5.

(1) *Description of Improvements Requiring Approval.* The prior written approval of the Association is required for the following construction, installation, modification, and remodeling activities: (A) any improvement or alteration to any portion of the Common Area (including but not limited to any Exclusive Use Common Area); (B) any improvement or alteration within a Unit that may affect the structural components or structural integrity of the Common Area or another Unit; (C) any improvement or alteration within a Unit that may affect common/central mechanical or utility systems, or increase the burden on such systems; (D) any improvement or alteration within a Unit that may result in an increase in sound transmission between Units; and (E) any improvement or alteration within a Unit that is generally visible from the Common Area or a public street. Notwithstanding the foregoing, no Person shall make any improvement or alteration within the boundaries of a Unit that impairs the structural integrity or mechanical systems or lessens the support of any other Unit or the Common Area.

(2) *Examples of Specific Improvements Requiring Approval.* Examples of Improvements requiring prior Association approval include, among other things, the following: (A) the alteration of existing drainage systems and patterns; (B) the construction of fixtures on any balcony; (C) the installation of skylights; (D) the installation of air conditioning equipment on or through any exterior portion of a building or in any portion of the Common Area; (E) the installation of exterior awnings, ornamental screens, or sunshades; (F) removing, moving, changing, or creating any opening in a perimeter or bearing wall, floor, or ceiling within a Unit; (G) any change in the plumbing, electrical wiring, heating and ventilating ducts, exhaust vents, or



any other system that is part of the Common Area; (H) the installation of satellite dishes; (I) the installation of solar energy systems; (K) any roof penetrations; and (L) the installation, relocation, replacement, or removal of any exterior water heater, furnace, gas fireplace vents, or other vents.

(3) *Interior Decoration of Unit.* Each Owner shall have the exclusive right to paint, plaster, panel, tile, wax, paper or otherwise refinish or decorate the inner surfaces of the walls, ceilings, floors, windows (subject to the provisions of Section 8.20 of this Declaration), and doors bounding his or her Unit. Such refinishing and decoration work shall not require prior written approval of the Association unless the work includes any of the Improvements noted in subparagraph (1) of this paragraph (b).

(c) Surveillance and Security Cameras. Without limiting the generality of paragraph (b) of this Section 5.1, no surveillance, security, or other camera or related components may be installed on the exterior of any Unit entry door, on any Common Area wall, or anywhere else in the Common Area (including, but not limited to, any Exclusive Use Common Area) except with prior written approval of the Association obtained in accordance with the provisions of this Article 5.

(d) Exterior Holiday Decorations. The posting and display of exterior holiday decorations on buildings shall be subject to any applicable Operating Rules. The Operating Rules may, among other things, restrict exterior holiday lights, regulate the time periods during which exterior holiday decorations may be posted or displayed, and/or limit the locations on the exterior of a building where holiday decorations may be posted or displayed.

(e) Protected Uses. Article 6 of this Declaration contains provisions relating to certain protected uses established under the Davis-Stirling Act, including, among other things, provisions relating to satellite dishes, electric vehicle charging stations, solar energy systems, and the display of religious items on Unit entry doors. Any improvements proposed to be made with respect to any of the items discussed in Article 6 shall be subject to the review and approval requirements contained in this Article 5.

(f) Tower Unit Floor Coverings. Section 8.15 of this Declaration contains provisions relating to the installation and maintenance of floor coverings in Tower Units. As described in Section 8.15, prior to the installation of new or replacement hard surface flooring in a portion of a Tower Unit located above another Tower Unit, the Owner of the Tower Unit must submit plans and specifications for such installation to the Association for review and approval in accordance with the provisions of this Article 5.

### **Section 5.2 – Body to Review Construction and Improvement Projects.**

The Board, in its discretion, may appoint an Architectural Committee to review and approve those construction and improvement projects proposed to be undertaken by Owners within the Development which require Association approval pursuant to Section 5.1 of this



Declaration. If the Board does not appoint an Architectural Committee, for any reason, the Board will act as the Architectural Committee in accordance with and pursuant to this Article 5.

### **Section 5.3 – Architectural Committee.**

(a) Composition. The Architectural Committee, if formed by the Board, shall be composed of three or five Members of the Association appointed by the Board of Directors; Architectural Committee members may also be Directors. Architectural Committee members shall serve for one-year terms, subject to the Board’s power to remove any Architectural Committee member at any time and for any reason and to appoint his or her successor. The members of the Architectural Committee shall not be entitled to any compensation for services performed.

(b) Duties. It shall be the duty of the Architectural Committee to consider and act on the proposals and plans for Improvements submitted to the Association, to perform other duties delegated to it by the Board of Directors, and to carry out all other duties imposed on it by this Declaration.

(c) Meetings. The Architectural Committee shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of a majority of the members of the Architectural Committee shall constitute an action of the Architectural Committee. The Architectural Committee shall keep and maintain minutes of its meetings and a written record of all actions taken.

### **Section 5.4 – Architectural Rules.**

The Board may, from time to time, adopt, amend, and repeal Operating Rules regulating architectural and design requirements within the Development (collectively, the “**Architectural Rules**”). The Architectural Rules may interpret and implement the provisions of this Article 5 by setting forth: (a) the standards and procedures for Architectural Committee review, including the required content of Improvement plans and specifications; (b) guidelines for architectural design or placement of any work of Improvement or color schemes, exterior finishes, and materials and similar features recommended or required for use in connection with particular Improvement projects within the Development; and (c) the criteria and procedures for requesting variances from any property use restrictions that would otherwise apply to the proposed Improvement. Notwithstanding the foregoing, no Architectural Rule shall be in derogation of the minimum standards required by this Declaration. In the event of any conflict between the Architectural Rules and this Declaration, the provisions of the Declaration shall prevail. The adoption, amendment, and repeal of Architectural Rules shall be subject to the same requirements relating to the adoption of Operating Rules.

### **Section 5.5 – Application for Approval of Proposed Improvements.**

Before commencing construction or installation of any Improvement within the Development that is subject to Association approval pursuant to Section 5.1 of this Declaration, the Owner planning such Improvement must submit to the Architectural Committee a written request for approval on such form(s) as the Association may require. The Owner's request shall include copies of plans and specifications satisfying the minimum requirements of the Architectural Rules, if any, and this Declaration. No work on a proposed Improvement shall be undertaken unless the Architectural Committee's approval of the proposal is first obtained. The Architectural Committee may require as a part of the Improvement project review process that the applicant submit to the Association a reasonable fee (as established from time to time by the Board) to reimburse the Association for any out-of-pocket costs it may incur to have an architect, engineer, and/or contractor review and report on the proposed Improvement; an Owner's application for such proposed Improvement will not be deemed complete until such fee is paid.

### **Section 5.6 – Architectural Review and Procedure for Review.**

(a) Approval or Disapproval by the Architectural Committee. Within 45 days after submission of complete plans and specifications satisfying the requirements of the Architectural Rules and this Declaration (collectively, "**Plans**"), the Architectural Committee shall return written notice of either approval or disapproval of an Owner's proposed Improvement.

(1) If the proposed Improvement is disapproved, the written decision of the Architectural Committee shall include both an explanation of why the proposed Improvement was disapproved and a description of the procedure for reconsideration of the Architectural Committee's decision by the Board.

(2) If written suggestions of changes required for approval of the proposed Improvement accompany the returned set of Plans, the applicant may implement such changes to the Plans and within 30 days thereafter resubmit Plans incorporating such changes for approval to the Architectural Committee, which shall not unreasonably withhold its approval as long as the Owner has complied in all material respects with the requested changes.

(3) For all proposed Improvements, other than the installation and use of an electric vehicle charging station or an EV-dedicated TOU meter (see Section 6.4(c) of this Declaration), or a solar energy system (see Section 6.7(c) of this Declaration), if no written notice of approval or disapproval is received by the applicant within 45 days after his or her Plans (or revisions thereto) for such proposed Improvement are submitted to the Architectural Committee, the Plans shall be deemed to have been denied as submitted.

(b) Decision-Making Requirements. A decision on a proposed Improvement by the Architectural Committee shall: (1) be made in good faith and may not be unreasonable, arbitrary, or capricious; and (2) not violate any governing provision of law, including, but not limited to, the Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of

Title 2 of the California *Government Code*), or a building code or other applicable law governing land use or public safety.

(c) Right to Attend Meeting. The applicant shall be entitled to appear at any meeting of the Architectural Committee at which his or her proposal has been scheduled for review and consideration. The applicant shall be entitled to be heard on the matter and may be accompanied by his or her architect, engineer, and/or contractor. Reasonable notice of the time, place, and proposed agenda for an Architectural Committee meeting shall be communicated before the date of the meeting to any applicant whose application is scheduled to be heard at that meeting.

(d) Appeal of Decision to Board. If a proposed Improvement is disapproved, the applicant is entitled to reconsideration by the Board, at an open meeting of the Board. The Owner's request for consideration must be submitted to the Board within 30 days of the date of the Architectural Committee's written decision, and the Board shall reconsider the proposed Improvement within 30 days thereafter. This paragraph does not require reconsideration of a decision that is made by the Board, or a body that has the same membership as the Board, at a meeting that satisfies the requirements of the Davis-Stirling Act.

(e) Restriction on Common Area Changes. Nothing in this Section 5.6 authorizes a physical change to the Common Area in a manner that is inconsistent with the Governing Documents, unless the change is required by law.

#### **Section 5.7 – Considerations for Approval of Improvements.**

(a) General Considerations. When a proposed Improvement is submitted to the Architectural Committee for review, the Architectural Committee shall grant the requested approval only if the Architectural Committee, in its sole discretion, exercised in good faith, makes the following findings regarding the proposed Improvement:

(1) The Owner's Plans conform to this Declaration and to the Architectural Rules in effect at the time such Plans are submitted;

(2) The Improvement will be in harmony with the external design of other structures and landscaping within the Development;

(3) The Improvement, as a result of its appearance, location, or anticipated use, will not interfere with the reasonable enjoyment of any other Owner of his or her Unit or Exclusive Use Common Area; and

(4) The proposed Improvement, if approved, will otherwise be consistent with the architectural and aesthetic standards prevailing within the Development and with the overall plan and architectural theme within the Development.

(b) Subjective Criteria Used. It is recognized that the Architectural Committee's determination will, of necessity, be subjective to some degree, and the members of the

Architectural Committee may consider, without limitation, such factors as: (1) the quality of workmanship and materials proposed for the Improvement project; (2) the harmony of its exterior design, finished materials, and color with that of other existing structures, the Common Area and Common Area facilities; (3) the proposed location of the Improvement in relation to Common Area facilities and other existing structures; and (4) the impact, if any, that the Improvement will have or may have on the structural integrity of the Unit or Exclusive Use Common Area or adjacent Units or Exclusive Use Common Areas.

(c) No Binding Effect of Prior Approvals; No Waiver. The Architectural Committee's approval of any plans, drawings, or specifications for any work of Improvement done or proposed, or for any other matter requiring the approval of the Association under this Declaration, or any waiver thereof, 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 by the same or some other Owner. In reviewing a particular submittal, the Architectural Committee may take into consideration different locations for Improvements, the size of the Improvement, proximity to other Units or common facilities, and other factors. Accordingly, the Architectural Committee shall be entitled to determine that a proposed Improvement or component thereof is unacceptable when proposed on a particular Unit, even if the same or a similar Improvement or component has previously been approved for use at another location if factors such as the following mitigate against erection of the Improvement or use of a particular component thereof on the Unit involved in the Owner's submittal: drainage; topography; noise; visibility from other Units, the Common Area, or public streets; or prior adverse experience with the product, the design, or with similar Improvements.

(d) Conditional Approval. In approving a request for construction of an Improvement, the Architectural Committee may condition approval on the adoption of modifications in the Owner's Plans or observance of restrictions as to location, noise abatement, or similar mitigating conditions applicable to the Improvement.

(e) Disproportionate Burden on Common Utility Service; Separate Metering. If an installed Improvement will increase the electrical, water, or other utility usage for an Owner's Unit, and if separate utility meters are not installed for the Owner's Unit, the Board may require that separate metering facilities be installed at the Unit Owner's sole cost and expense, or, if that is not feasible, the Board may allocate such utility costs in a manner the Board determines is reasonable and equitable.

(f) Code Upgrades to Common Area. If an Owner's proposed Improvement would result in the need for the Association to upgrade any Common Area component or system for which the Association is ordinarily otherwise responsible (such upgrade being necessary to comply with changes in code requirements in order for appropriate governmental permits to be issued to the Owner for the Owner's proposed Improvement and where such code upgrade would not be required but for the work proposed by the Owner), the Board may condition approval upon the agreement of the Owner to pay for or contribute to the cost of the Common Area upgrade. In making such a determination, the Board may consider such factors as it deems

appropriate under the circumstances, including, but not limited to, the following: whether the Owner's requested work is discretionary or is required as the result of a casualty, the failure of a component in the Common Area or within a Unit; the age, condition, and remaining useful life of the component or system that would require upgrading; the cost of the upgrade; whether or not the Association has reserved for the replacement or upgrade of the component or system; and whether a feasible alternative to the Owner's proposed Improvement is available that would not necessitate the Common Area code upgrade. Under no circumstances shall the Association be obligated to pay for such code upgrades if the Owner has not applied for and obtained prior architectural approval pursuant to the provisions contained in this Article 5.

#### **Section 5.8 – Proceeding with Work.**

(a) Commencement and Performance of Work. On receipt of approval of a proposed Improvement from the Architectural Committee, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement of construction as approved. In all cases, work on a proposed Improvement shall commence within six months from the date of such approval. If the Owner fails to comply with this paragraph, any approval given for the proposed Improvement shall be deemed revoked, unless the Architectural Committee, on written request of the Owner before the expiration of the foregoing work commencement period, extends the time for commencement. No such extension shall be granted except on a finding by the Architectural Committee that there has been no change in the circumstances on which the original approval was granted and that the Owner has a bona fide intention and ability to complete the Improvement project within the time specified in the extension request.

(b) Modifications to Approved Plans Must Also Be Approved. Once a proposed work of Improvement has been duly approved by the Architectural Committee, no material modifications shall be made in the approved Plans for same and no subsequent alteration, relocation, addition, or modification shall be made to the work of Improvement as approved without a separate submittal to, and review and approval by, the Architectural Committee in accordance with the provisions of this Article 5.

(c) Failure to Complete Work. Unless the Owner has been granted an extension of time to complete an Improvement project by the Architectural Committee, the construction, reconstruction, refinishing, or alteration of any such Improvement must be complete within six months after construction has commenced, except and for so long as such completion is rendered impracticable or would result in great hardship to the Owner because of strikes, fires, national emergencies, natural calamities, an unforeseeable delay in NCSD, Town or County work approvals, or other supervening forces beyond the reasonable control of the Owner or the Owner's agents or contractors. The Architectural Committee shall be entitled to grant longer times for completion of a particular Improvement project as part of the work approval process. If the Owner fails to comply with this paragraph, such failure may, in the Board's discretion, be treated as a noncompliance with approved Plans pursuant to Section 5.9 of this Article 5.

(d) Licensed Contractors Required. All works of Improvement shall be constructed by a contractor licensed under the laws of the State of California and, if considered necessary or appropriate by the Architectural Committee, shall be designed by a licensed architect or engineer. Any contractor engaged to perform work on a Unit or otherwise for an Owner in the Development shall maintain: worker's compensation insurance covering the contractor's employees and independent contractors in at least the minimum amount required by California law; and commercial general liability insurance providing coverage for claims of bodily injury and property damage relating to the contractor's work in an amount no less than one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) aggregate or such other amount(s) as may be required by an Operating Rule or the Board. Evidence of such insurance shall be provided to the Association upon request.

(e) Hours of Construction. Construction activities are prohibited on Saturdays, Sundays and federal holidays. Except to the extent otherwise approved by the Architectural Committee, construction activities in a Unit are permitted from 9:00 AM to 6:00 PM on Monday through Friday, federal holidays excepted.

#### **Section 5.9 – Failure to Obtain Approval for Work; Non-Compliant Work.**

If the Association learns that a proposed work of Improvement, or any modification thereof, is proceeding without approval given in accordance with this Article 5, the Association shall be entitled to exercise the enforcement remedies specified in Section 5.11 of this Article 5, including, without limitation, ordering an immediate cessation and abatement of all aspects of the work of Improvement until such time as proper Architectural Committee review and approval is obtained. If the proposed Improvement will have, or is likely to have, a material effect on other aspects or components of the work, the Board, in its discretion, may order the Owner and his or her contractors and agents to cease working not only on the modified component of the Improvement but also on any other affected components.

#### **Section 5.10 – Inspection of Work.**

Inspection of the work relating to any approved Improvement, and/or correction of defects therein, shall proceed as follows:

(a) Inspection During Construction. During the course of construction, representatives of the Association shall have the right to inspect the jobsite to confirm that the Improvement project is proceeding in accordance with the approved Plans.

(b) Written Notice of Completion. On the completion of any work of Improvement for which Architectural Committee approval is required under this Article, the Owner shall give the Architectural Committee a written notice of completion.

(c) Inspection After Completion of Construction. After receiving a notice of work completion from an Owner, the Architectural Committee, or its duly authorized representatives,

may inspect the Improvement to determine whether it was constructed, reconstructed, altered, or refinished in substantial compliance with the approved Plans. If the Architectural Committee finds that the Improvement was not erected, constructed, or installed in substantial compliance with the Owner's approved Plans, then within 30 days after that inspection, the Architectural Committee shall give the Owner a written notice of noncompliance detailing those aspects of the Improvement project that must be modified, completed, or corrected. If the violation or nonconforming work is not timely corrected, the Association shall have the enforcement rights and remedies set forth in Section 5.11 of this Article 5.

(d) Failure of Association to Notify Owner of Noncompliance. If for any reason the Architectural Committee fails to notify the Owner in writing of any noncompliance within 60 days after receipt of the Owner's written notice of completion, the Improvement shall be deemed to have been constructed in accordance with the approved Plans for the project, unless it can be demonstrated that the Owner knew of the noncompliance and intentionally misled the Architectural Committee with respect to it.

#### **Section 5.11 – Enforcement of Architectural Review and Approval Requirements.**

(a) Abatement of Unauthorized Work. In addition to other enforcement remedies set forth in this Declaration, the Association shall have the authority to order an abatement of any construction, alteration, or other matter for which approval is required under this Article 5, to the extent that the work has not been approved by the Architectural Committee or the work does not conform to the Plans submitted to and approved by the Architectural Committee. In such event, the Owner and his or her contractor shall cease all construction activity until such time as the issue giving rise to the abatement order is resolved. The Association shall clearly state the reasons why the abatement has been ordered.

(b) Effect of Failure to Comply with This Article 5. If an Owner fails to remedy any noticed noncompliance within 30 days from the date of receipt of the Association's notice of noncompliance, or if the Owner has notified the Association within 30 days from the date of receipt of the Association's notice of noncompliance that he or she believes the notice of noncompliance is not justified, the Board shall set a date on which a hearing before the Board shall be held with the Owner regarding the alleged noncompliance within 30 days thereafter.

(c) Lack of Complaint Not Deemed Approval; Attorney's Fees. No work of an Owner for which approval is required under this Article 5 shall be deemed to be approved simply because it has been completed without a complaint, notice of violation, or commencement of a suit to enjoin such work by the Association (or any other Owner). If any legal proceeding is initiated to enforce any of the provisions of this Article 5, the prevailing party in such proceeding shall be entitled to recover his or her reasonable attorney fees in addition to the costs of such proceeding.



### **Section 5.12 – Variances.**

The Board, in its sole discretion, shall be entitled to allow reasonable variances in any procedures specified in this Article 5 to overcome practical difficulties, avoid unnecessary expense, or prevent unnecessary hardship to applicants, provided that the Board makes a good faith written determination that the variance is consistent with the following criteria:

(a) The requested variance will not constitute a material deviation from any restriction contained in this Declaration;

(b) The variance relates to a property use restriction or minimum construction standard otherwise applicable under this Declaration or the Architectural Rules that is unnecessary or burdensome under the circumstances; or

(c) The variance, if granted, will not result in a material detriment or create an unreasonable nuisance with respect to any other Unit or to the Common Area.

### **Section 5.13 – Limitation on Liability.**

Neither the Association, the Board, any individual Director, the Architectural Committee nor any member of the Architectural Committee shall be liable to any Owner for any damage, loss, or prejudice suffered or claimed on account of any mistakes in judgment, negligence, or nonfeasance arising out of the following, so long as such Person has acted in good faith on the basis of such information as he or she possessed at the time the act or omission occurred: (a) the approval or disapproval of any Plans, whether or not defective; or (b) the construction or performance of any Improvement project, whether or not under approved Plans.

### **Section 5.14 – Compliance with Governmental Regulations.**

Review and approval by the Architectural Committee of any proposals, Plans, or other submittals pertaining to Improvements shall in no way be deemed to constitute satisfaction of, or compliance with, any building permit process or any NCSD, Town, County, or other governmental requirements, the responsibility for which shall lie solely with the Owner who desires to construct, install, or modify an Improvement. Without limiting the generality of the foregoing, each Owner shall be responsible to obtain all building permits and other approvals from the NCSD, Town, County and other jurisdictions having authority that may be required within respect to the Owner's Improvements.

### **Section 5.15 – Architectural Agreement.**

Notwithstanding anything to the contrary contained in this Declaration, as a condition of approval of an Owner's improvement within or alteration to the Common Area, the Association may require that the Association and the Owner enter into and execute an architectural agreement, covenant running with the land, or similar document (an "**Architectural Agreement**") to be recorded against the Owner's Unit.



(a) Such Architectural Agreement will memorialize the conditions under which the improvement or alteration was approved, and the rights and responsibilities of the Association, the Owner, and future owners of the Owner's Unit with respect to the improvement or alteration. After recordation, the Association shall provide the Owner with a copy of the recorded Architectural Agreement. The Owner of the Unit (and each successive Owner of the Unit) shall be solely responsible to advise any prospective purchaser of the Unit of the existence and provisions of the Architectural Agreement.

(b) Unless otherwise provided in the Architectural Agreement, the following terms and conditions shall apply: (1) the Owner of the Unit shall be required to indemnify, defend, and hold the Association and its officers, Directors, and Managing Agents harmless from and against any claims arising from or related to the improvement or alteration; (2) the Owner of the Unit will be responsible to maintain, repair, and replace all portions of the improvement or alteration and related equipment and/or to reimburse the Association for costs relating to such work that may be performed by the Association; (3) the Owner of the Unit shall be responsible for any increased maintenance costs and/or damage to any roof or other building components which occurs as a result of the installation or use of the improvement or alteration; (4) consent for any improvement or alteration to occupy a portion of the Common Area is granted as a license which may be revoked by the Association in the event the Owner of the Unit (A) fails to properly maintain, repair, and/or replace the improvement or alteration or related equipment or (B) fails to comply with the Association's conditions of approval for the improvement or alteration; (5) the Owner of the Unit shall be required to obtain and maintain homeowner property damage and liability insurance with respect to the improvement or alteration as may be required by the Association; and (6) all subsequent Owners of the Unit will also be bound by these obligations.

## **ARTICLE 6 – PROTECTED USES**

The following provisions address certain protected uses established under the Davis-Stirling Act. Any improvements proposed to be made with respect to any of the items discussed in this Article 6 shall be subject to the review and approval requirements contained in Article 5 of this Declaration. The Board shall be authorized to adopt Operating Rules which further regulate the following items, to the extent such Operating Rules comply with this Declaration, the Davis-Stirling Act, and other applicable law.

### **Section 6.1 – Display of United States Flag.**

Except as required for the protection of the public health or safety, an Owner or Occupant shall be entitled to display the flag of the United States within his or her Unit or on his or her Exclusive Use Common Area. For purposes of the foregoing, "display the flag of the United States" means a flag of the United States made of fabric, cloth, or paper, and does not mean a depiction or emblem of the flag of the United States made of lights, paint, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative component.

## **Section 6.2 – Display of Noncommercial Signs or Flags.**

An Owner or Occupant may only post or display noncommercial signs, posters, flags, or banners in the Development to the extent expressly permitted by applicable law. Notwithstanding the generality of the foregoing, in no event may noncommercial signs and posters that are more than nine (9) square feet in size, or noncommercial flags or banners that are more than fifteen (15) square feet in size, be posted or displayed from any window, door, balcony, or other area exclusively serving a Unit. The provisions of this section do not allow or permit: any commercial signs, posters, flags, or banners to be posted or displayed in a manner that is visible outside of a Unit or in the Common Area; or any penetration in the deck/flooring, overhang (ceiling), railing, outside wall, or boundary fence of an Owner's Exclusive Use Common Area balcony or entry area, except with prior Association approval.

## **Section 6.3 – Antenna and Satellite Restrictions.**

(a) For purposes of this section, "**Antenna**" means a video or television antenna, including a satellite dish.

(b) The installation or use of an Antenna that has a diameter or diagonal measurement of greater than one meter is prohibited within the Development.

(c) No Antenna may be installed in the Common Area, including but not limited to landscaped areas and exterior surfaces of any building (such as the roof, fascia, chimneys, balcony walls or exterior wall surfaces), except as follows: Antennae may be installed in an Exclusive Use Common Area balcony on a mast or tripod, but no Person may make any installation that penetrates the exterior surface of any portion of the building.

(d) An authorized Antenna may be mounted on an Exclusive Use Common Area balcony on a mast or tripod to reach the height needed to receive an acceptable quality signal, subject to local government agency permitting requirements for safety purposes. No mast or tripod shall be installed in such a way that it overhangs a balcony area, or onto any portion of the Common Area outside the balcony area, or poses a threat of damage to property or injury to persons. Further, authorized Antennae shall not obstruct access to or exit from any doorway or window of a Unit, walkway, ingress or egress, electrical service equipment, water shut-off valves, or any other areas necessary for the safe operation of the Development.

(e) The installation, use, and/or attachment of an Antenna will be subject to the provisions of the Davis-Stirling Act regulating antenna and satellite restrictions and any Operating Rules that regulate Antennae.

## **Section 6.4 – Electric Vehicle Charging Stations and Dedicated TOU Meters.**

(a) For purposes of this Section 6.4: (1) an "**Electric Vehicle Charging Station**" means a station that is designed in compliance with the California Building Standards Code and delivers

electricity from a source outside an electric vehicle into one or more electric vehicles; and (2) an **“EV-Dedicated TOU Meter”** means an electric meter supplied and installed by an electric utility, that is separate from, and in addition to, any other electric meter and is devoted exclusively to the charging of electric vehicles, and that tracks the time of use (TOU) when charging occurs, including any wiring or conduit necessary to connect the electric meter to an Electric Vehicle Charging Station.

(b) No Owner shall be permitted to install or use an Electric Vehicle Charging Station or an EV-Dedicated TOU Meter in the Common Area, except with the prior written approval of the Association.

(c) An application for approval of the installation or use of an Electric Vehicle Charging Station or an EV-Dedicated TOU Meter shall be processed and approved by the Association in the same manner as an application for approval of any other improvement within the Development, and shall not be willfully avoided or delayed. The approval or denial of such application shall be in writing. If an application is not denied in writing within 60 days from the date of receipt of the application, the application shall be deemed approved, unless that delay is the result of a reasonable request for additional information by the Association.

(d) The Association may impose reasonable restrictions on the use and installation of Electric Vehicle Charging Stations in the Development, so long as those restrictions do not significantly increase the cost of the Electric Vehicle Charging Station or significantly decrease its efficiency or specified performance. The installation and use of Electric Vehicle Charging Stations within the Development, and the request/application of an Owner to install or use an Electric Vehicle Charging Station within the Development, shall be subject to the provisions of Sections 4600 and 4745 of the Civil Code and any Operating Rules regulating the installation and use of Electric Vehicle Charging Stations within the Development.

(e) The Association may impose reasonable restrictions on the use and installation of EV-Dedicated TOU Meters in the Development based upon space, aesthetics, structural integrity, and equal access to such services for all Owners; provided, however, the Association shall attempt to find a reasonable way to accommodate an Owner’s request to install an EV-Dedicated TOU Meter, unless the Association would need to incur an expense in relation to such installation. The installation and use of EV-Dedicated TOU Meters within the Development, and the request/application of an Owner to install or use an EV-Dedicated TOU Meter within the Development, shall be subject to the provisions of Section 4745.1 of the Civil Code and any Operating Rules regulating the installation and use of EV-Dedicated TOU Meters within the Development.

(f) The installation and use of an Electric Vehicle Charging Station or EV-Dedicated TOU Meter for the exclusive use of an Owner in the Common Area shall be authorized by the Association only if there is appropriate and reasonable space available for the installation and use of an Electric Vehicle Charging Station or EV-Dedicated TOU Meter in the Common Area. Any such Electric Vehicle Charging Station or EV-Dedicated TOU Meter proposed to be installed or

used in the Common Area shall be subject to such requirements as the Association may prescribe, which shall conform to the provisions of the Davis-Stirling Act.

(g) An Owner shall, at all times, be responsible to pay for the electricity usage associated with any Electric Vehicle Charging Station or EV-Dedicated TOU Meter installed or used by the Owner and Occupants of the Owner's Unit, as well as any costs to upgrade or install electrical components in the Development to accommodate the use of such Electric Vehicle Charging Station or EV-Dedicated TOU Meter. If such Electric Vehicle Charging Station or EV-Dedicated TOU Meter will not be separately metered to the Owner's Unit (meaning the utility company will not directly bill the Owner for electricity used by the Electric Vehicle Charging Station or EV-Dedicated TOU Meter), electricity usage by the Electric Vehicle Charging Station or EV-Dedicated TOU Meter shall be calculated in such manner as the Association may reasonably determine from time to time, and the Owner shall be required to reimburse the Association for the estimated cost of electricity usage by their Electric Vehicle Charging Station or EV-Dedicated TOU Meter as may be billed by the Association from time to time.

(h) An Owner shall, at all times, be liable for any property damage or bodily injury caused by or attributable to the installation, use, operation, maintenance, repair, replacement, or removal of any Electric Vehicle Charging Station or EV-Dedicated TOU Meter installed or used by the Owner and Occupants of the Owner's Unit.

#### **Section 6.5 – Clotheslines.**

No part of any balcony, railing, awning, or other exterior part of a structure or building in the Development, or part of the Common Area, shall be used as a clothesline or drying rack. For purposes of the foregoing, (a) "clothesline" means a cord, rope, or wire from which laundered items may be hung to dry or air, and (b) "drying rack" means an apparatus from which laundered items may be hung to dry or air.

#### **Section 6.6 – Real Estate Signs.**

An Owner or his or her agent may display or have displayed in the interior of a window of the Owner's Unit a real estate sign advertising the Owner's Unit for sale, lease, or exchange. Such sign must be reasonably located, in plain view of the public, of reasonable dimensions and design, and not adversely affect public safety (including traffic safety), and may advertise the following: (a) that the Unit is for sale, lease, or exchange by the Owner or his or her agent; (b) directions to the Unit; (c) the Owner's or agent's name; and (d) the Owner's or agent's address and telephone number. Further, to the extent required by the Town or County, an Owner may display on the inside of a window of the Owner's Unit a sign confirming that the Unit is permitted to be used for short term occupancy. No real estate signs may be displayed in the Common Area.

## **Section 6.7 – Solar Energy Systems.**

(a) For purposes of this Section 6.7, “**Solar Energy System**” means any of the following: (1) any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating; (2) a design feature of a building whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating; or (3) any photovoltaic device or technology that is integrated into a building, including, but not limited to, photovoltaic windows, siding, and roofing shingles or tiles.

(b) No Owner shall be permitted to install or use a Solar Energy System within the Common Area, except with the prior written approval of the Association, which may be withheld in the Board’s sole discretion to the extent permitted by law.

(c) An application for approval of the installation or use of a Solar Energy System shall be processed and approved by the Association in the same manner as an application for any other improvement within the Development, and shall not be willfully avoided or delayed. The approval or denial of such application shall be in writing. If an application is not denied in writing within 45 days from the date of receipt of the application, the application shall be deemed approved, unless that delay is the result of a reasonable request for additional information by the Association.

(d) The Association may impose reasonable restrictions on Solar Energy Systems that do not significantly increase the cost of the Solar Energy System or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits, as described in Section 714 of the Civil Code.

(e) If the Association needs to maintain, repair, or replace a roof or other building components upon which an Owner’s Solar Energy System is installed, the Association may remove portions of the Solar Energy System and related equipment to perform such work; except in emergency situations, the Association shall notify the Owner at least 14 days in advance of the need to remove any portions of the Owner’s Solar Energy System or related equipment. The Association shall take appropriate precautions to avoid damage to any Solar Energy System so removed, and will replace the portions of the Solar Energy System and related equipment removed in the same manner and area as existed prior to the move; provided, however, the Association shall have no responsibility to ensure that a re-installed Solar Energy System functions properly. The Owner of the Unit served by the Solar Energy System shall be responsible to reimburse the Association for all costs incurred by the Association to remove and/or re-install the Owner’s Solar Energy System, which costs shall be charged against the Owner as a Reimbursement Assessment. An Owner, in the Owner’s discretion and at his or her sole cost, may opt to be responsible for the timely removal and re-installation of the Owner’s Solar Energy System.

(f) The installation and use of Solar Energy Systems within the Development, and the request/application of an Owner to install or use a Solar Energy System within the Development, shall be subject to the provisions of Sections 714, 714.1, 4600, and 4746 of the Civil Code and any Operating Rules regulating the installation and use of Solar Energy Systems within the Development.

#### **Section 6.8 – Modifications to Facilitate Access for the Disabled.**

An Owner may modify his or her Unit, at the Owner's expense, to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which could be hazardous to these persons. These modifications may also include modifications of the route from the public way to the door of the Unit. The right granted by this section is subject to the following conditions:

- (a) The modifications shall be consistent with applicable building code requirements.
- (b) The modifications shall be consistent with the intent of otherwise applicable provisions of the Governing Documents pertaining to safety or aesthetics.
- (c) Modifications external to a Unit shall not prevent reasonable passage by other Occupants, and shall be removed by the Owner when the Unit is no longer occupied by persons requiring those modifications who are blind, visually handicapped, deaf, or physically disabled.
- (d) Any Owner who intends to modify his or her Unit pursuant to this section shall submit plans and specifications to the Association for review to determine whether the modifications will comply with the provisions of this section. The Association shall not deny approval of the proposed modifications under this section without good cause.
- (e) Any change in the exterior appearance of a Unit shall be in accordance with the Governing Documents and applicable provisions of law.

#### **Section 6.9 – Display of Religious Items on Doors.**

- (a) An Owner or Occupant may display one or more religious items on the entry door or entry door frame of his or her Unit. For purposes of the foregoing, "religious item" means an item displayed because of sincerely held religious beliefs.
- (b) Notwithstanding the foregoing, no religious item may be displayed or affixed on any entry door or entry door frame to a Unit that: (1) threatens the public health or safety; (2) hinders the opening or closing of the entry door; (3) violates any federal, state, or local law; (4) contains graphics, language, or any display that is obscene or otherwise illegal; or (5) individually, or in combination with any other religious item displayed or affixed on the entry door or door frame, has a total size greater than 36 by 12 square inches or exceeds the size of the door.

(c) If the Association is performing maintenance, repair, or replacement of an entry door or door frame that serves a Unit, the Owner of the Unit may be required to remove a religious item during the time the work is being performed. After completion of the Association's work, the Owner may again display or affix the religious item. The Association shall provide Individual Notice to the Owner regarding the temporary removal of the religious item.

## **ARTICLE 7 – ASSOCIATION AND OWNER MAINTENANCE RESPONSIBILITIES**

### **Section 7.1 – Common Area Maintenance.**

(a) Maintenance of Common Area. The Association shall be responsible for the maintenance, repair, upkeep, and replacement of all portions of the Common Area, other than with respect to certain portions of Exclusive Use Common Areas as described in this Declaration. No Person other than the Association or its duly authorized agents or contractors shall construct, reconstruct, refinish, alter, or maintain any improvement on, create any excavation or fill, or change the natural or existing drainage of any portion of the Common Area. In addition, no Person other than the Association or its duly authorized agents or contractors shall remove any tree, shrub, or other vegetation from, or plant any tree, shrub, or other vegetation on, the Common Area without the express prior approval of the Association. Without limiting the foregoing, certain specific maintenance, repair, upkeep, and replacement responsibilities of the Association are described in the Maintenance Responsibility Chart.

(b) Quality of Maintenance by Association. All maintenance, repair, upkeep, and replacement work required to be undertaken by the Association pursuant to this Section 7.1 and the Maintenance Responsibility Chart shall be performed with reasonable skill, care and diligence, and in compliance with applicable laws and the provisions of the Governing Documents. Any such work shall be performed, to the extent reasonably practicable, to minimize any noise, vibration, particulates and dust infiltration, or other annoyances which would unreasonably disturb Owners or Occupants. The Board shall determine, in its sole but reasonable discretion, the level and frequency of maintenance and repair of those portions of the Common Area and common facilities thereon or therein for which the Association is responsible.

(c) Application of Pesticides. The application of pesticides within the Development by the Association, as may be applicable, shall comply with applicable requirements of the Davis-Stirling Act and other law.

### **Section 7.2 – Owner Maintenance Responsibilities.**

(a) Maintenance of Unit. Except as specifically otherwise provided in the Maintenance Responsibility Chart, each Owner shall be responsible for the maintenance, repair, upkeep, and replacement of all portions of his or her Unit.



(b) Maintenance of Exclusive Use Common Areas. Each Owner shall be responsible to maintain all Exclusive Use Common Areas appurtenant to his or her Unit in a neat and clean condition. In addition, an Owner shall be responsible for the repair and/or replacement of those portions of the Exclusive Use Common Areas appurtenant to his or her Unit to the extent provided in the Maintenance Responsibility Chart.

(c) Quality of Maintenance by Owners. All maintenance, repair, upkeep, and replacement work required to be undertaken by an Owner pursuant to this Section 7.2 and the Maintenance Responsibility Chart shall be performed in a first class and workmanlike manner, with good maintenance practices, and in compliance with all applicable laws and the provisions of the Governing Documents. Any such work shall be performed, to the extent reasonably practicable, to minimize any noise, vibration, particulates and dust infiltration, or other annoyances which would unreasonably disturb other Owners or Occupants. All such work shall also be conducted in a manner to prevent any damage to other Units or the Common Area.

(d) Failure to Maintain. If an Owner fails to perform maintenance or repair functions in the Owner's Unit for which he or she is responsible, the Association may give written notice to the offending Owner with a request to correct the failure within 15 days after receipt thereof. If the Owner refuses or fails to perform any such necessary repair or maintenance work, the Association may exercise its rights under this Declaration to enter the Owner's Unit and perform the repair or maintenance. The cost of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Reimbursement Assessment against the offending Owner.

(e) Requirement to Notify Association of Defective Conditions. Owners should promptly notify the Association of any defective condition that is the responsibility of the Association to maintain or repair which is evident from within the Owner's Unit or any Exclusive Use Common Area appurtenant to his or her Unit.

(f) Plumbing Leaks and Repairs. With a view to minimizing both immediate and consequential damage to the Property (such as mold) and costs for both the Association and Unit Owners, water or sewage backups or overflows or leaks within or into a Unit should be reported immediately to the Association for repair by or at the direction of the Association. The fact that the Association responds to any water damage incident or performs or arranges for the performance of repairs or mitigation or other remediation shall not alter the financial responsibility of the Owner(s) and the Association, respectively, for the water damage as otherwise provided in this Declaration. Without limiting the generality of the preceding sentence, and as may be provided in this Declaration, an Owner may be liable to the Association for the cost of maintenance, repair, or replacement due to damage stemming from a water or sewage backup or overflow or leak, and may be liable to other Unit Owners or Occupants in relation to same.

(g) Liability for Maintenance Items. An Owner shall be liable for the cost to repair any damage to the Owner's Unit, another Owner's Unit, any Exclusive Use Common Area, or the



Common Area resulting from or relating to an item or area for which the Owner has maintenance and repair responsibility under this Declaration, whether or not the Owner was negligent.

(h) Adoption of Maintenance Standards. The Board shall have the power to adopt, as Operating Rules, specific guidelines and requirements for the maintenance and repair of items within Units and Exclusive Use Common Areas in order to help ensure the proper preservation and protection of the Common Area and/or the Development as a whole.

(i) Access for Maintenance. An Owner is entitled to reasonable access to the Common Area for the purpose of maintaining those items that he or she is required to maintain or repair hereunder. That access shall be subject to the consent of the Association, whose approval shall not be unreasonably withheld; the Association may include conditions relating to such access as it determines to be reasonable.

(j) Relocation During Maintenance. The costs of temporary relocation of an Owner or Occupant from a Unit during the repair and maintenance of the Unit, or during the repair and maintenance of any areas within the responsibility of the Association, shall be borne by the Owner or Occupant of the Unit affected.

### **Section 7.3 – Association’s Recovery of Costs of Certain Maintenance and Repairs.**

If the need for maintenance or repair that is the Association’s responsibility hereunder is caused through the willful or negligent acts or omissions of an Owner or an Occupant of the Owner’s Unit, or a Guest of either, the cost of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Reimbursement Assessment against the offending Owner.

### **Section 7.4 – Cooperative Maintenance Obligations.**

To the extent necessary or desirable to accomplish the Association’s maintenance and repair obligations hereunder, individual Owners shall cooperate with the Association and its agents, contractors, and personnel in the prosecution of its work.

### **Section 7.5 – Eradication of Pests.**

(a) Wood-Destroying Pests or Organisms. The Association shall be responsible for the prevention and eradication of wood-destroying pests or organisms (including, but not limited to, termites and fungus that causes dry rot) in both the Common Area and in Units.

(b) Insects and Rodents. The Association shall be responsible for the prevention and eradication of insects and rodents in the Common Area, including Exclusive Use Common Areas. Each Owner shall be responsible for the prevention and eradication of insects and rodents within the interior of his or her Unit.

(c) Relocation During Treatment for Pests. The costs of temporary relocation of an Owner or Occupant from a Unit as a result of an infestation by wood-destroying pests or organisms, insects, or rodents in that Unit, and/or during any treatment by the Association or an Owner or Occupant of a Unit to prevent and eradicate wood-destroying pests or organisms, insects, or rodents, shall be borne by the Owner or Occupant of the Unit affected.

#### **Section 7.6 – Damage to Units and Personal Property.**

(a) Owner Responsible to Repair Damage. In the event of any damage to a Unit, the Owner of the Unit shall be responsible to repair such damage in accordance with the provisions of Section 7.2 of this Article 7, even if: (1) another Owner or Occupant or some other Person may be liable to reimburse the Owner for the costs he or she incurs to repair his or her Unit; or (2) insurance proceeds may be available under an insurance policy maintained by the Association that cover part or all of the cost to repair the damage. Notwithstanding the foregoing, the Board, in its sole discretion, may determine to have the Association perform the repair of damage to a Unit for which the Association is financially liable pursuant to this Section 7.6.

(b) Liability of Association.

(1) The Association shall be financially liable for the repair and restoration of damage to an Owner's Unit (including but not limited to any costs to perform the repair of water damage or the remediation of mold within the Owner's Unit) caused by or resulting from pipes, drains, conduits, equipment, electrical sources, roofs, or any other improvement or item located within and a part of the Common Area for which the Association has maintenance and repair responsibility pursuant to this Declaration, unless such damage was caused by the willful or negligent acts or omissions of an Owner, Occupant, or Guest. In no event shall the Association be liable for any damage to a Unit caused by the willful or negligent acts or omissions of any Owner, Occupant, or Guest, or for damage to a Unit resulting from or relating to any item or area for which any Owner has maintenance and repair responsibility under this Declaration.

(2) In the event the Association is or may be liable for the cost to repair damage to a Unit (or an Exclusive Use Common Area item for which an Owner is responsible) pursuant to paragraph (1) above, the Owner of the Unit shall be required to cooperate with the Board in its investigation and cost analysis of repair options and requirements. No Owner shall commence or perform repairs for which the Association is or may be financially liable unless and until the Board approves the scope of repairs and the cost for same; an Owner in violation of this provision may not be entitled to receive full, or any, reimbursement from the Association for the repair costs that the Owner incurs. The Board shall not unduly delay or withhold its review or approval of any such scope of repairs or repair cost.

(3) The Association shall in no event be responsible to reimburse an Owner or Occupant for the repair, restoration, or replacement of damage to any of his or her personal property (such as, for example only, furniture, electronics, clothing, artwork, appliances, and jewelry), nor will the Association be liable for any loss of use or loss of income that may be

suffered by an Owner or Occupant as a result of damage to a Unit, no matter the cause or source of the damage. Each Owner shall be responsible, at his or her cost, to purchase, obtain, and maintain an insurance policy or policies to provide coverage for such losses as he or she deems reasonable.

(c) Relocation During Repair of Damage. The costs of temporary relocation of an Owner or Occupant from a Unit as a result of and/or during the repair of damage to his or her Unit shall be borne by the Owner or Occupant of the Unit affected, no matter the cause of the damage and irrespective of who may be financially liable for the cost of such repairs.

## **ARTICLE 8 – USE OF DEVELOPMENT AND RELATED RESTRICTIONS**

In addition to the provisions and restrictions established by law or Operating Rules promulgated by the Board of Directors, the following provisions and restrictions are hereby imposed on the use of Units and the Common Area by Owners and Occupants and their Guests.

### **Section 8.1 – Residential Use.**

(a) Primary Residential Purpose. The intended use of the individual Units in the Development is residential use. In no event shall a Unit be occupied by more individuals than permitted by applicable zoning laws or governmental regulations.

(b) Home Offices. A portion of a Unit may be used for home office use, so long as such use is professional or administrative in nature and incidental to the principal residential use of the Unit. Examples of activities that are permitted in a Unit with respect to home office use are: (1) maintaining a personal library; (2) keeping personal business records or accounts; (3) handling personal or professional calls, correspondence, or electronic communications; (4) writing or authoring documents; and (5) conducting any other activities otherwise compatible with residential use and the provisions of this Declaration that are permitted under applicable zoning laws or regulations without the necessity of first obtaining a special use permit or specific governmental authorization. No home office use will be permitted that involves exterior signage, regularly visiting clients/customers, or non-Occupant employees who work in a Unit. The Board may adopt Operating Rules further regulating the use of Units for home office purposes.

(c) General Ban on Commercial Uses. No business or commercial activities of any kind whatsoever shall be conducted in any Unit except with respect to those home office uses permitted under this Section 8.1.

### **Section 8.2 – Use of Common Area.**

(a) No Storage of Items in Common Area. No Owner or Occupant shall permit anything to obstruct the Common Area. Occupants may store personal items in either the storage closets located on the entry decks to their Unit or in the ski lockers located in the laundry rooms within the Tower Units. No item of any kind (including, but not limited to, bicycles and other

wheeled devices) may be stored, placed, or located by an Owner or Occupant, or Guest of either, elsewhere in the Common Area, except as permitted under this Declaration or an Operating Rule. Any items stored, placed, or located in the Common Area in violation of the foregoing provision may be removed, discarded, or donated by the Association, in the Board's sole discretion, and the costs that are incurred by the Association to remove the items may be levied against the responsible Owner as a Reimbursement Assessment. The foregoing restrictions shall not prohibit the keeping or placement of items within Exclusive Use Common Areas that are otherwise permitted under this Declaration or Operating Rules.

(b) Association Not Responsible for Personal Property. Neither the Association nor any of its Directors, officers, agents, representatives, or personnel shall be responsible to any Owner, Occupant, or Guest for any theft of, or loss, damage, or vandalism to, any personal property of such Person, including, without limitation, automobiles, bicycles, plants, decorations, clothing, or sports equipment, which may be stored, placed, or located in the Common Area (including, but not limited to any Exclusive Use Common Area), whether or not such storage, placement, or location of personal property is in compliance with the provisions of this Declaration and the Operating Rules.

(c) Storage by Association. The Association shall have the right to establish and maintain in the Common Area storage areas for the maintenance of materials and equipment used by the Association in connection with its planting, building, repair, maintenance, and preservation of the structures and other improvements within the Common Area and any portion of the Units that the Association is obligated to repair and maintain pursuant to this Declaration.

### **Section 8.3 – Modification of Unit.**

No Person shall make any improvement or alteration within the boundaries of a Unit that impairs the structural integrity or mechanical systems or lessens the support of any other Unit or the Common Area.

### **Section 8.4 – Prohibition of Nuisance Activities.**

(a) General Nuisance Restrictions. No illegal, noxious, or offensive activities shall be carried out or conducted on any Unit or in the Common Area, nor shall anything be done within the Development that is or could become an unreasonable annoyance or nuisance to neighboring Owners or Occupants of reasonable and normal sensitivity. Without limiting the foregoing, no Owner shall permit noise (including but not limited to barking dogs, the operation of excessively noisy air conditioners, stereo amplifier systems, television systems, motor vehicles, or power tools) or smoke to emanate from an Owner's Unit that would unreasonably disturb any other Owner's or Occupant's enjoyment of his or her Unit or the Common Area.

(b) Owner Self-Help. In the event an Owner believes there is a non-compliance with the foregoing provisions in another Owner's Unit, the Owner should endeavor to resolve the dispute directly with the other Owner. If the Owners are unable to resolve the dispute between

themselves, upon request the Board will evaluate the matter and determine the appropriate level of Association participation in the dispute resolution process; it shall be incumbent upon the complaining Owner to provide substantial evidence of the alleged violation to the Board.

(c) Association Intervention. The Association shall have wide discretion to determine what constitutes a nuisance, and the duty to order those responsible to cease or abate such nuisance immediately. In no event shall the Association be obligated to resolve a complaint of an alleged nuisance to the satisfaction of a complaining Owner or Occupant, if the Board determines the complaint is a neighbor-to-neighbor dispute, involves a hyper-sensitivity, or does not involve a violation of the Governing Documents.

#### **Section 8.5 – Prohibition of Certain Other Activities.**

(a) Activities Affecting Association Insurance Policies. No Person may engage in any activity within the Development which may: (a) increase the rate of insurance for the Association or the Common Area; or (b) result in cancellation of any insurance policy maintained by the Association or for the Common Area. An Owner will be liable to the Association for any costs the Association incurs related to such an increase or cancellation that the Owner causes, or which an Occupant of his or her Unit or a Guest to his or her Unit causes.

(b) Unlawful Activities. No Person may engage in any activity within the Development which violates any applicable law. An Owner will be liable to the Association for any costs or penalties it incurs related to any unlawful actions that the Owner causes, or which an Occupant of his or her Unit or a Guest to his or her Unit causes.

#### **Section 8.6 – Animals.**

(a) Description of Permitted Animals. Only domesticated birds, cats, dogs, aquatic animals kept within an aquarium, and other animals as agreed to between the Association and an Owner are permitted within Units. No other animals, livestock, or poultry of any kind shall be kept, bred, or raised in any Unit.

(b) Number of Permitted Animals. No more than two animals shall be kept or maintained in any Unit at any time. Notwithstanding the foregoing, a reasonable number of fish may be kept in an aquarium in a Unit, provided such aquarium has a maximum capacity of thirty (30) gallons or less.

(c) Service Animals and Emotional Support Animals. Notwithstanding the foregoing provisions of paragraphs (a) to (c) of this Section 8.6, an Owner or Occupant may keep an animal in his or her Unit that does not conform to those provisions if such animal is licensed, trained, or serves as a service or emotional support/companion animal to accommodate a disability of the Owner or Occupant, and if the Association is required to allow such non-conforming animal under local, state, or federal fair housing laws. Any Owner claiming a need for a service or emotional support/companion animal to accommodate a disability, whether for the Owner or any Occupant

of the Owner's Unit, shall be required to provide evidence of the need for such animal to the Association, in the form of a prescription, letter, or other documentation from a licensed medical doctor or therapist who treats the Owner's or Occupant's disability. Any authorized service or emotional support/companion animal kept within a Unit shall be subject to all of the following provisions of this Section 8.6.

(d) General Animal Restrictions.

(1) Animals shall only be allowed in the Common Area when they are leashed and otherwise under the supervision and restraint of their owners/handlers.

(2) No animal shall be left, caged, chained, or tethered in the Common Area (including any Exclusive Use Common Area).

(3) No animal cages, dog houses, dog runs, or other structures for the care, housing, or confinement of any animal shall be permitted in the Common Area.

(4) Animal owners shall be responsible for the prompt removal and disposal of animal waste deposited by their animals within the Development.

(5) The ownership of all animals must comply with Town and County guidelines, including, but not limited to, animal registration, immunization and sanitation laws.

(6) No animals may be kept, bred, or maintained for commercial purposes within the Development.

(e) Liability for Animals. Each person bringing or keeping an animal in the Development shall be solely responsible for the conduct of his or her animal. The Association and its Board, Directors, officers, agents, and personnel shall have no liability (whether by virtue of this Declaration or otherwise) to any Owners, Occupants, or Guests for any damage or injury to persons or property caused by any animal.

(f) Removal of Animals from Development. No animal may be kept within a Unit that interferes with, or has a reasonable likelihood of interfering with, the rights of any other Owner or Occupant of reasonable and normal sensitivity to the peaceful and quiet enjoyment of his or her Unit or use of the Common Area, or which is dangerous or vicious, as determined by the Board. Any animal in violation of the foregoing provision shall be deemed a nuisance, and such animal must be removed from the Development within a reasonable time after the Board determines, after a duly noticed hearing with the Owner of the Unit, that the animal creates an unreasonable annoyance or nuisance within the Development. In addition, any unleashed animal found in the Common Area may be reported by the Association to local animal control authorities.

(g) No Outside Feeding of Animals. There shall be no feeding of any undomesticated, wild, or stray animals within the Common Area. In order to help prevent the presence of bears,

coyotes, deer, feral cats, raccoons, rats, and other undomesticated, wild, or stray animals within the Development, no animal food shall be kept or placed within the Common Area (including any Exclusive Use Common Area). The installation and use of bird feeders on balconies, exterior portions of buildings, or elsewhere in the Common Area is prohibited, except as follows: up to two hanging bird feeders of reasonable size per balcony is permitted, so long as such bird feeders are not liquid bird feeders (liquid bird feeders are prohibited).

(h) Additional Animal Regulations. The Board shall have the right to establish and enforce additional rules and regulations and impose standards for the reasonable control and keeping of animals in, on, and around the Development to ensure that the same do not interfere with the quiet and peaceful enjoyment of the Development by Owners and Occupants.

#### **Section 8.7 – Trash Disposal.**

No rubbish, trash, garbage, or recycling shall be placed or allowed to accumulate in the Common Area, other than in garbage dumpsters located in areas designated by the Association for such items, and only in the correct receptacle (e.g., landfill, recycling, or compost). Any extraordinary accumulation of rubbish, trash, garbage, or debris (such as debris generated on vacating a Unit or during the construction of modifications and improvements on a Unit) shall be removed from the Development to a public dump or trash collection area by the Owner or Occupant of the Unit at his or her expense. No construction debris or materials, mattresses, appliances, or items other than customary household garbage may be disposed of in Common Area garbage dumpsters/areas. An Owner shall be liable for any costs the Association incurs to remove or clean up rubbish, trash or garbage for which the Owner or an Occupant of or Guest to the Owner's Unit is responsible.

#### **Section 8.8 – Balconies.**

(a) Furnishings. Each Owner of a Unit which has an Exclusive Use Common Area attached to the Unit shall have the right to furnish such balcony with furniture designed for outdoor use and plants consistent with the architecture of the Development and reasonable residential use. In no event shall unsightly objects be placed or stored on a balcony where they may be seen by other Owners or from other Units, the Common Area, or streets or parking areas. No balcony may be used to store an Owner's personal items which are not specifically permitted under this Section 8.8. The Board may adopt Operating Rules further regulating items that are allowed and not allowed on and around balconies.

(b) Covers, Handrails, and Overhangs. Owners shall not construct or install any enclosing structure on a balcony. No floor/deck covering of any kind or nature may be installed on any balcony without the prior written approval of the Association. No objects may be placed on the handrails of balconies or hung from any part of a balcony, and no penetration may be made in the balcony deck or the overhang (ceiling) of a balcony, except with prior approval of the Association.

(c) Plants. Plants may be maintained on a table or other permitted furniture on a balcony, or on the floor of the balcony, so long as such plants are set on a saucer, drip tray, or other container/item that can easily hold and absorb excess water. The Board may adopt Operating Rules regulating the types and sizes of plants that may be kept or placed on balconies.

(d) Drainage; Moisture and Water Intrusion. Nothing shall be placed on the surface of a balcony floor, and no alteration shall be made to the surface of a balcony floor, that will trap moisture or water, interfere with the drainage of moisture or water, or cause moisture or water intrusion into a Unit or into the Common Area. In particular, balcony floor surfaces must be maintained in a manner that prevents the accumulation of moisture or water and to prevent the intrusion of moisture or water into a Unit or into the Common Area.

### **Section 8.9 – Fires; Barbecues.**

(a) Unit Interiors. Candles and other open-flame decorative lighting used in Units must be well secured to prevent overturning, placed on noncombustible bases, and kept away from furniture, window coverings, and other combustible items and materials, and not be left unattended.

(b) Balconies.

(1) *Barbecues*. Gas barbecues may be placed and used on balconies, subject to applicable laws (including but not limited to fire codes and local ordinances of the County and NCSD) and the Operating Rules. Notwithstanding the foregoing, the placement and use of charcoal grills and other open flame cooking devices of any type on balconies in the Development is prohibited. The Board shall have broad authority to adopt Operating Rules regarding gas barbecues, including, but not limited to, fuel-source, size, hours of use, location, and any other issues that may affect fire-safety, life-safety, or insurance concerns; such Operating Rules may ban some or all types of gas barbecues within the Development.

(2) *Candles*. Candles may not be used on balconies.

(3) *Outdoor Propane Heaters*. Outdoor propane heaters may be placed and used on balconies, but only subject to applicable laws (including but not limited to fire codes and local ordinances of the County and NCSD) and the Operating Rules. The Board shall have broad authority to adopt Operating Rules regarding outdoor propane heaters, including, but not limited to, size, hours of use, location, and any other issues that may affect fire-safety, life-safety, or insurance concerns; such Operating Rules may ban the placement and use of outdoor propane heaters within the Development.

(4) *Fire Pits, Outdoor Fireplaces, Tiki Torches and the Like*. In no event shall a fire pit, tiki torch, or similar item be installed, placed, or used on any balcony.



(c) Fires in Common Area. No exterior fires are permitted within the Common Area, other than on balconies to the extent permitted under this Section 8.9.

**Section 8.10 – Machinery and Equipment.**

No machinery or equipment of any kind shall be placed, operated, or maintained in any Unit, except such machinery or equipment as is usual or customary in connection with the use, maintenance, or repair of a Unit.

**Section 8.11 – Diseases and Pests.**

No Owner shall permit any thing or condition to exist in his or her Unit or Exclusive Use Common Areas (including, but not limited to, the accumulation rubbish, trash, garbage, or recycling that may induce, breed, or harbor infectious plant diseases, rodents, or noxious insects.

**Section 8.12 – Parking and Vehicle Restrictions.**

(a) Use of Parking Spaces. There are no assigned parking spaces within the Development. Each Owner and Occupant shall keep all Common Area parking spaces within the Development that they may use free of oil, grease, and other debris.

(b) No Storage or Non-Parking Purposes. Parking spaces are to be used solely for the parking of standard passenger vehicles and trucks, and shall not be used for the storage of vehicles or personal property or used for living or recreational purposes. The Board may adopt Operating Rules defining what constitutes “long-term storage”.

(c) Parking Restrictions. Vehicles, including but not limited to mopeds and motorcycles, shall be parked only within designated parking spaces. Any vehicle parked in a parking space must be parked solely within the boundaries of that parking space. No person shall park, leave, or abandon any vehicle in the Common Area in a manner that impedes or prevents ready ingress, egress, or passage through the Development, or in a manner that impedes or prevents access to or from any parking space or private street within the Development. No vehicle shall be parked within any area that is designated as a “no parking” zone, a red painted zone, or something similar.

(d) Maintenance of Vehicles. No motor vehicle shall be constructed, reconstructed, or repaired within the Development; provided, however, the provisions of this paragraph shall not apply to emergency vehicle repairs (such as a “jump start”, replacement of a battery, or changing a flat tire) to the extent necessary to remove the vehicle to a repair facility. The changing or removal of oil or other fluids from a vehicle is not permitted within the Development, nor is the washing of vehicles.

(e) Prohibited Vehicles.

(1) The following types of vehicles are prohibited within the Development: (A) dilapidated or inoperable vehicles; (B) unreasonably noisy vehicles and vehicles that emit foul-smelling or offensive exhaust fumes; (C) campers, mobile homes, motor homes, trailer homes, and recreational vehicles (each, a "**Recreational Vehicle**"); (D) trailers; (E) boats; (F) any vehicle that exceeds three-quarter ton capacity (an "**Oversized Vehicle**"); (G) unregistered vehicles; and (H) commercial vehicles.

(2) Notwithstanding the foregoing: (A) a Recreational Vehicle or Oversized Vehicle may be parked temporarily – not to exceed one period of up to four hours in any 48 hour period – in the Development for purposes of active loading or unloading, provided such vehicle does not interfere with the safe ingress and egress of pedestrians and vehicular traffic within the Development; and (B) a two-axle passenger vehicle, van, or pickup truck that is used by an Occupant both for business and for daily personal transportation shall not be deemed a commercial vehicle, provided that any signs or markings of a commercial nature on such vehicle shall be unobtrusive and inoffensive as determined by the Board and provided, further, that such vehicle is not an Oversized Vehicle.

(f) Compliance with Vehicle Code. All operators of motor vehicles, including motorcycles, within the Development must possess a valid driver's license. Further, all provisions of the California *Vehicle Code* must be honored at all times when operating any motor vehicle within the Development.

(g) Authority to Tow. The Board shall have the authority to tow any vehicle parked or stored in the Common Area in violation of this Section 8.12, at the expense of the owner of the vehicle. The Association shall post such notices or signs within the Common Area as may be required by law to effectuate this towing provision and otherwise comply with applicable provisions of Section 22658 of the California *Vehicle Code*.

(h) Indemnification. Each Owner and Occupant shall indemnify, defend and hold harmless the Association and its Board, officers, manager, employees, and other Owners and Occupants against any and all loss, cost or liability including attorney's fees, arising out of claims related to his or /her ownership, maintenance or use of motor vehicles on the Property.

(i) Parking and Vehicle Rules. The Board shall have the authority to promulgate Operating Rules further regulating the parking and/or operation of vehicles within the Development, as may be deemed prudent and appropriate by the Board.

**Section 8.13 – Roof Access.**

No Owners, Occupants, or Guests shall enter upon or attempt to enter upon any portion of a building roof without the prior approval of the Association.

### **Section 8.14 – Noise and Sound Reduction.**

Noise transmission between adjacent Units is to be expected. Such noise transmission may include, but is not limited to, sounds generated by: plumbing and other utility systems; the impact of closing doors; the use of appliances, stereos, radios, televisions, and other electronics; permitted musical instruments; and voices and conversations within a Unit. The use of stereo equipment, televisions, radios, musical instruments, and other sound producing or amplifying devices shall not unreasonably disturb the peace and quiet within the Development for persons of ordinary sensitivities. All Owners and Occupants shall take all reasonable precautions to lower noise transference between Units, especially during the late night and early morning hours when most people are generally sleeping, and abide by any noise reduction ordinance or regulation of the Town and/or County. No modification or alteration of a Unit shall be permitted that may increase noise transference.

### **Section 8.15 – Unit Floor Coverings in Tower Units.**

The following provisions apply to the installation and maintenance of floor coverings in Tower Units. Flooring materials other than carpeting (*e.g.*, hardwood, vinyl, laminate, tile, etc.) shall be referred to in this section as “**Hard Surface Flooring**”.

(a) Prior Approval Required. Prior to the installation of new or replacement Hard Surface Flooring in a portion of a Tower Unit located above another Tower Unit, the Owner of the Tower Unit must submit plans and specifications for such installation to the Association for review and approval in accordance with the provisions of Article 5 of this Declaration. The Association will not grant approval of any such proposed Hard Surface Flooring unless the installation includes an appropriate level of acoustical separation designed to help ensure that the Hard Surface Flooring will not increase sound transmissions through the floor of the Tower Unit that could unreasonably disturb the Occupants of a Tower Unit below.

(b) General Flooring Criteria. In deciding upon permitted floor coverings, whether Hard Surface Flooring or otherwise, Owners shall take all reasonable measures to choose floor coverings that mitigate sound transfer between Tower Units. All floor coverings within a Tower Unit must be underlain with a sound attenuating material that, if installed pursuant to manufacturer’s recommendations, will minimize impact noise to a reasonable level that does not cause a noise disturbance to the Occupants of any other Tower Units, and in all events meet any noise level standards established by the Town and/or County.

(c) Sound Abatement Measures. Owners shall take reasonable steps to help minimize noise transfer to other Tower Units from any permitted Hard Surface Flooring installed in their Tower Units. Such steps may include, without limitation and as appropriate, placing area rugs with padding underneath in the foot traffic areas of such floors and/or placing felt or rubber pads (or similar items) underneath the legs of furniture on such floors.

(d) Sound Test. In the event a complaint is made by an Owner regarding non-compliant floor noise or sound allegedly emanating from another Owner's Tower Unit, the complaining Owner will be required to provide, or help facilitate the providing of, evidence of the alleged floor noise/sound issue to the Board. The Board shall evaluate the complaint and the evidence submitted, and, as the Board determines to be reasonable under the circumstances, may require an inspection of one or both Tower Units as a part of its investigation. In the Board's discretion, the Board may require the complaining Owner to obtain a sound test, at such Owner's own cost; if it is determined that there is non-compliant flooring in the Tower Unit being complained of, the Owner of that other Tower Unit shall be required to promptly reimburse the complaining Owner for the costs he or she incurred to obtain the sound test.

(e) Non-Compliant Flooring. The Board shall have the power to require an Owner to remove flooring materials from his or her Tower Unit which do not adequately mitigate sound transfer and reduce noise in compliance with this Section 8.15, and replace such floor covering with compliant materials, at the Owner's sole cost.

(f) Flooring Noise. It is recognized that even with compliance with the requirements of this Section 8.15, some noise from footfall, moving of furniture, and other activities within a Tower Unit will likely be noticeable in other Tower Units to a certain degree.

(g) Reimbursement of Expenses. Any costs and expenses incurred by the Association as a part of an inspection and/or testing of flooring in a Tower Unit that is determined to be non-compliant with this Section 8.15, or to enforce the compliance of a Tower Unit with this Section 8.15, may be levied against the Owner of the Tower Unit as a Reimbursement Assessment.

(h) Flooring Rules. The Board, in its discretion, may adopt reasonable Operating Rules regulating the installation and maintenance of Hard Surface Flooring and other floor coverings within Tower Units, to the extent consistent with this Section 8.15. Such Operating Rules may include, without limitation, a minimum impact insulation class (IIC) rating requirement for Hard Surface Flooring.

#### **Section 8.16 – Smoking.**

(a) Definition of Smoking. For purposes of this section, "smoking" means inhaling, exhaling, or the burning of any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, electronic smoking device or any plant product intended for human inhalation, whether the item is natural or synthetic and whether or not it contains nicotine.

(b) Smoking Prohibited in Common Area. No smoking shall be permitted in any portion of the Common Area. For clarification purposes, and without limiting the generality of the foregoing, smoking is not permitted within any Exclusive Use Common Area balcony or entry area serving a Unit.

(c) Smoking in Units. An Owner or Occupant smoking within his or her Unit (as well as any Guest of an Owner or Occupant) shall take reasonable measures to: (1) prevent ashes, cigarette butts, and other debris from falling or blowing into any other Unit or any portion of the Common Area; and (2) prevent and minimize any smoke from entering any other Unit or any portion of the Common Area.

(d) Secondhand Smoke Complaints. In the event an Owner or Occupant of a Unit submits a complaint to the Association regarding an alleged secondhand smoke nuisance emanating from within another Unit, the Association will investigate the complaint. As a result of such a complaint and the Association's following investigation, the Association can require the Owner of the offending Unit to take steps, at the Owner's sole cost, within his or her Unit to help minimize secondhand smoke transfer to other Units and/or the Common Area.

(e) Compliance with Laws. Smoking anywhere in the Development shall be subject to applicable ordinances and laws of the NCSD, Town, County, and State of California. If the Town, County, or State of California adopts an ordinance or law prohibiting smoking within individual Units, all Owners, Occupants, and Guests shall be required to comply with such ordinance or law.

#### **Section 8.17 – Flammable, Toxic, and Hazardous Substances.**

No gasoline, kerosene, cleaning solvents, or other flammable liquids or substances, or any toxic or hazardous materials, may be kept or stored in any Unit or any Exclusive Use Common Area (including, but not limited to, any storage area); provided, however, reasonable amounts of such liquids, substances, or materials that are placed in appropriate containers and packaged for normal household use, such as for cleaning purposes, may be stored by an Owner within his or her Unit. No toxic or hazardous materials may be disposed of within the Property by dumping in garbage containers or down drains, or otherwise, other than those required, in limited quantities, for the normal cleaning of a Unit.

#### **Section 8.18 – Fireworks and Firearms.**

No fireworks may be discharged or used within the Development. The storage, possession and carrying of firearms within the Development shall at all times comply with local and state laws.

#### **Section 8.19 – Use of Common Area Laundry Rooms in Tower Buildings.**

Common Area laundry rooms located in a Tower Building, and the laundry machines located therein, are for the use of Occupants of the Tower Units within said Tower Building, and shall be kept in a neat and clean condition by the Occupants using them. Use of Common Area laundry rooms in the Tower Buildings shall be subject to any Operating Rules governing the use of such areas and the laundry machines inside.

### **Section 8.20 – Window Coverings.**

Only customary window coverings such as drapes, curtains, shutters, or blinds may be installed in Unit windows. No bed sheets, towels, paper, foil, paint, or reflective substances may be applied to the glass portion of any window, and no exterior window coverings shall be permitted. The exterior facing side of Unit window coverings shall be white or beige in color, unless an Operating Rule permits other colors.

### **Section 8.21 – Conduct of Guests and Occupants**

Each Owner shall be held accountable for the conduct and behavior of his or her family members and Guests, Occupants of his or her Unit (including, without limitation, tenants), and family members and Guests of Occupants of the Owner's Unit, when in the Development.

### **Section 8.22 – Restriction on Further Subdivision and Severability.**

No Unit shall be further subdivided, nor shall less than all of any Unit be conveyed by an Owner thereof (unless such conveyance is of an undivided interest therein), nor shall any Owner of a Unit within the Development be entitled to sever that Unit from the Development or from the jurisdiction of this Declaration or the Association.

### **Section 8.23 – Unit Mergers.**

The merger of contiguous Units within the Development is not permitted.

### **Section 8.24 – Grandfathering of Pre-Existing Unit Conditions.**

(a) Any conditions relating to permanent improvements within a Unit, including but not limited to architectural improvements, that exist in the Unit as of the date of recordation of this Declaration (the "**Recordation Date**") and which were in compliance with both the Prior Declaration and the then current Operating Rules of the Association as of the Recordation Date are grandfathered and excepted from compliance with this Declaration for so long as such conditions exist. Those grandfathered conditions, if any, must otherwise comply with the requirements of this Declaration, and there shall be no grandfathering of any new conditions occurring or arising after the Recordation Date. Notwithstanding the foregoing, the Board may require the removal or abatement of any grandfathered condition if the Board determines, in its sole and reasonable discretion, that the grandfathered condition: (1) violates the nuisance provisions contained in Section 8.4 of this Declaration; (2) is illegal; (3) would impose an undue financial and administrative burden on the Association; or (4) would fundamentally alter the nature of the Association's operations.

(b) Nothing contained in this section shall be deemed or construed to be approval or acceptance by the Association of any condition (pre-existing or otherwise) which constitutes a violation of the Prior Declaration, the Governing Documents, or any law. In any dispute over whether a condition which violates this Declaration was pre-existing and/or is grandfathered

under this section, the burden of proof will be on the Owner who is in violation of this Declaration. Conditions which violate this Declaration and are not grandfathered under this section shall be required to be timely corrected by the Owner in violation.

## **ARTICLE 9 – RIGHT TO LEASE**

An Owner or Occupant may rent out his or her Condominium provided that (a) the rental agreement is in writing, (b) the rental is made subject to the Governing Documents, (c) the tenant agrees to abide by all provisions of the Governing Documents, and (d) an executed copy of the rental agreement is delivered to the Association prior to the tenant taking possession of the Condominium. An Owner shall be responsible for ensuring the compliance with the Governing Documents by everyone residing in the Owner's Unit. Each Owner hereby grants the Association an irrevocable power of attorney to commence and pursue injunctive relief or an unlawful detainer action against a tenant who is in violation of the Governing Documents. All Condominium rentals must comply with applicable laws, including, without limitation, any Town or County ordinance regulating short-term rentals of residential dwelling units.

## **ARTICLE 10 – INSURANCE**

### **Section 10.1 – General Liability Insurance.**

The Association shall maintain an insurance policy insuring the Association, its Directors, officers and the Owners against public liability incident to ownership and use of the Property. The limits of coverage shall not be less than three million dollars (\$3,000,000) per incident of injury, death and property damage. The policy shall contain a severability of interest endorsement precluding the insurer from denying coverage to a named insured because his/her act or omission created liability in favor of another insured. The policy shall also contain a contractual liability endorsement.

### **Section 10.2 – Directors' and Officers' Liability Insurance.**

The Association shall maintain an insurance policy insuring the Association, its Directors and officers against liability arising out of acts or omissions in their capacity as agents of the Association. The limits of coverage shall not be less than one million dollars (\$1,000,000) per incident. The policy shall provide prior acts coverage.

### **Section 10.3 – Fire and Casualty Insurance.**

The Association shall maintain a policy of fire and casualty insurance providing multi-peril coverage for all portions of the Property that the Association is obligated to maintain and all Association property. The limits of coverage shall not be less than full current replacement cost including required building code upgrades. The policy shall contain an agreed amount

endorsement. The Association shall insure fixtures located within the Unit, but the Association is not responsible for the maintenance and monitoring of the fixture.

#### **Section 10.4 – Other Insurance.**

(a) Fidelity Bond. The Association shall maintain fidelity bond coverage for the Association's Directors, officers, and employees in an amount that is equal to or more than the combined amount of the Reserve Accounts of the Association and total Regular Assessments for three months. The Association's fidelity bond shall also include computer fraud and funds transfer fraud. If the Association uses a Managing Agent, the Association's fidelity bond coverage shall additionally include dishonest acts by that person or entity and its employees.

(b) Additional Insurance. The Association may acquire such additional insurance, coverages or limits as it deems advisable. If the Association has employees, it shall maintain workers' compensation insurance as required by law.

#### **Section 10.5 – General Policy Provisions.**

Each Association insurance policy shall (a) name the Association as trustee for policy benefits payable to the Owners, (b) provide a waiver of subrogation rights against the Association, its Directors, officers and Owners, (c) state that coverage be primary and not affected by any other insurance held by an Owner, and (d) require that at least thirty (30) days' prior written notice be given to the Association by the insurer before cancellation.

#### **Section 10.6 – Insurance Rating.**

The Association's insurance shall be written by an insurance company qualified to do business in California with a rating of at least an "A" by Best's Insurance Reports or equivalent.

#### **Section 10.7 – Review of Insurance Policies.**

The Board shall review all Association insurance policies at least once a year to ensure that they are adequate to meet the current needs of the Association.

#### **Section 10.8 – Notice of Change in Insurance Coverage.**

The Association shall notify the Owners by Individual Notice as soon as reasonably practical if any of its insurance policies: (a) lapses or is canceled and is not immediately renewed, restored or replaced; (b) will undergo significant change such as a reduction in coverage or limits, or an increase in the deductible; or (c) is subject to a notice of nonrenewal and replacement coverage will not be in effect at the time the existing coverage will lapse.



### **Section 10.9 – Inability to Obtain Insurance.**

If the insurance required by the Governing Documents is difficult, impractical or unduly expensive to obtain, the Association shall obtain insurance as nearly equivalent to the required insurance as is reasonably available.

### **Section 10.10 – Owner’s Insurance.**

Each Owner shall obtain and maintain a policy of fire and casualty insurance providing multi-peril coverage for the Owner’s personal property. The policy shall contain a waiver of subrogation rights against the Association and other Owners.

### **Section 10.11 – Casualty Insurance Deductibles and Proceeds.**

The deductible payable in the event of a loss shall be paid by the Person(s) responsible for maintenance at the point of origin of the physical damage. The Person(s) who pays the deductible shall have the right to recover such amount from any party responsible for the loss. Proceeds from Association insurance received as a consequence of damage or loss to a portion of the Property which an Owner must maintain shall be distributed to that Owner. If the proceeds are insufficient to complete the work, the Owner shall pay the additional amounts.

## **ARTICLE 11 – CATASTROPHIC DAMAGE AND CONDEMNATION**

### **Section 11.1 – Catastrophic Damage.**

As used in this Section, “*Catastrophic Damage*” means sudden and unexpected physical damage to portions of the Property which the Association is obligated to maintain for which the repair cost will exceed fifty percent (50%) of the full replacement cost of all portions of the Property which the Association is obligated to maintain.

(a) Determining Extent Of Damage. Immediately after the occurrence of Catastrophic Damage, the Association shall obtain two (2) or more written bids from separate licensed contractors to restore the damaged elements to substantially the same condition as existed before the damage occurred. Repair bids shall include at a minimum a detailed scope of work, fixed or not-to-exceed contract price, completion date and provision for adequate insurance coverage by the contractor.

(b) Determining Availability Of Repair Funds. After obtaining repair bids, the Association shall promptly determine the amount of funds available for the repair from insurance, Reserve Accounts, loans, and any other source. In making this determination, the Association shall consider as available any insurance proceeds payable to any Owner for repair or replacement of any of the damaged elements.

(c) Decision To Rebuild. Provided that repairing the damaged areas of the Property would not necessitate a Special Assessment of more than two hundred thousand dollars (\$200,000) on any Unit, the Association shall repair, and any difference between the total funds available and the actual repair cost shall be imposed as a Special Assessment. Any Owner who receives insurance proceeds for repair or replacement of any of the damaged elements shall provide such proceeds to the Association in addition to his or her portion of the Special Assessment. If repair would necessitate a Special Assessment of more than two hundred thousand dollars (\$200,000) on any Unit, the Association shall not repair unless a majority of Units vote to do so. If the Association does not repair, it shall sell the entire Property in its then existing condition on the best available terms. Each Owner hereby grants the Association an irrevocable power of attorney to represent the Owner in any negotiations or agreements related to sale or other liquidation following Catastrophic Damage. The sale proceeds together with any insurance proceeds, net of any expenses associated with necessary stabilization of the Property and fees associated with disposition of the Property, shall then be distributed as provided in Section 11.3 of this Article 11. The Association shall then be dissolved and the entire Development terminated as provided by law. If the Association fails to sell the Property within a reasonable period of time, it may bring an action for judicial partition.

(d) Repair Work. All individuals or entities performing repairs for the Association shall (1) hold all licenses legally required for such repairs and (2) enter into a written contract with the Association which satisfies all of the requirements for repair bids specified in paragraph (a) of this Section 11.1. Payment and performance bonds shall be required in repair contracts exceeding one hundred thousand dollars (\$100,000) unless the Board passes a resolution under which it specifically decides not to require them. The Association shall ensure that repairs are diligently pursued to completion in accordance with best construction practices prevailing in the locale at the time the work is done.

(e) Emergency Repair. The Association may make repairs or take any other necessary action in an emergency without first complying with the provisions of this Article 11. For purposes of the foregoing, an "emergency" means an event or condition that threatens imminent peril to the health or welfare of persons, or damage to property, or an emergency situation as defined in Civil Code section 5610.

(f) Certification Of Intention. If the Association decides, in accordance with this Article 11, by affirmative act or failure to act, to sell the Property rather than repair Catastrophic Damage, it shall promptly notify all Owners in writing of the decision and record a certificate reciting that fact with the County Recorder.

(g) Certification Of Intention. If the Association decides, in accordance with this Article 11, by affirmative act or failure to act, not to repair Catastrophic Damage, the Association shall have the power and authority to execute and record, on behalf of itself and the individual Owners, all necessary documents to show the altered status of the Property, including but not limited to a revised Condominium Plan.

### **Section 11.2 – Condemnation.**

Each Owner hereby grants the Association an irrevocable power of attorney to represent the Owner in any condemnation or eminent domain negotiation or proceeding, whether or not a civil action has been started. The proceeds from a taking of two or more Condominiums or of any portion of the Common Area by eminent domain shall be distributed as provided in Section 11.3 of this Article 11.

### **Section 11.3 – Distributions.**

All net proceeds from insurance, liquidation, or condemnation relating to two or more Condominiums or any portion of the Common Area shall be paid to the Association for the benefit of the Owners and their Mortgagees. To the extent proceeds from insurance or condemnation have been allocated among affected Units and Common Area by the paying entity, the Association shall distribute such funds in accordance with that allocation. Otherwise, the Association shall distribute these funds to the affected Owners based upon the relative value of the affected Owners' Condominiums. Relative value shall be determined through an appraisal process as follows:

(a) The Association shall retain three (3) appraisers meeting the following requirements: (1) having at least two (2) years experience appraising real estate similar to the Property in the area where the Property is located, (2) holding a valid real estate sales, brokerage or appraisal license, (3) having no prior business or personal relationship with any Owner, and (4) agreeing in writing to complete his or her appraisal within thirty (30) calendar days of retention.

(b) The Association shall instruct each appraiser to determine the fair market value of each Condominium involved in the relative valuation. The appraisers shall base their valuations on the physical conditions which existed on the date immediately preceding the destruction or other event triggering the need for valuation.

(c) Upon receiving the valuations of all appraisers, the Association shall disregard the lowest and highest appraisal for each Condominium. The Association shall then use the remaining appraisal for each Condominium to determine the relative values.

If any Owner owes money to the Association at the date of the disbursement, the amount owed shall be subtracted from the amount to be disbursed to that Owner.

## **ARTICLE 12 – ENFORCEMENT OF GOVERNING DOCUMENTS**

### **Section 12.1 – Remedy at Law Inadequate.**

Except for the 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 easements, rights, rights-

of-way, liens, charges, or equitable servitudes contained in this Declaration is inadequate, and the failure of any Owner or Occupant of any Unit, or any user of any portion of the Common Area, to comply with any provision of the Governing Documents may be enjoined by appropriate legal proceedings instituted by any Owner or the Association.

#### **Section 12.2 – Attorney’s Fees.**

Reasonable attorney’s fees and costs shall be awarded to the prevailing party in any civil action to enforce the Governing Documents or a party’s rights arising under the Governing Documents, the Davis-Stirling Act, or the Nonprofit Mutual Benefit Corporation Law.

#### **Section 12.3 – Cumulative Remedies.**

The respective rights and remedies provided by this Declaration or by law shall be cumulative. The exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or any different default or breach, or for the same or any different failure, of any Owner or others to perform or observe any provision of this Declaration.

#### **Section 12.4 – Failure Not a Waiver.**

The failure of any Owner, the Board of Directors, the Association, or its officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants or easements, rights, rights-of-way, liens, charges, or equitable servitudes contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability on the Association or the Board or any of its officers or agents.

#### **Section 12.5 – Rights and Remedies of the Association.**

(a) General Enforcement Rights. In the event of a breach or violation of any provision contained in any Governing Document by an Owner or an Occupant of the Owner’s Unit, or a Guest of either, the Board, for and on behalf of all other Owners, may enforce the obligations of such Owner to obey the Governing Documents through the use of such remedies as are deemed appropriate by the Board and available at law or in equity, including but not limited to hiring legal counsel, imposing fines and monetary penalties, or pursuing legal action; provided, however, the Association’s right to undertake disciplinary action against the Members shall be subject to the conditions set forth in this Section 12.5. The decision as to whether it is appropriate or necessary for the Association to take enforcement or disciplinary action in any particular instance shall be within the sole discretion of the Board. If the Association declines to take action, or is delayed in taking action, in any instance, that event shall not limit any Owner’s right of enforcement of the Governing Documents as provided under this Declaration, the Davis-Stirling Act, or other law.

(b) Schedule of Fines. The Board 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 (such as fines for late payment of Assessments, impermissibly parked vehicles, or improper storage of items in Exclusive Use Common Areas or the Common Area). Any fine or penalty imposed against an Owner shall be subject to the limitation on the use of lien and foreclosure remedies stated in Section 4.3(f) of this Declaration.

(c) What Constitutes a Violation. A violation of the Governing Documents shall be defined as a single act or omission that violates a specific provision of a Governing Document; a Member may have discipline imposed against him or her as a result of such violation. If a violation continues for multiple ongoing days, discipline imposed by the Board may include, without limitation, a per diem (daily) fine for as long as the violation continues. Similar violations on different days shall justify separate disciplinary measures.

(d) Notice and Hearing Procedures. Before the Board can impose discipline upon a Member, or impose a Reimbursement Assessment against a Member, the Board shall meet to consider such discipline or Reimbursement Assessment. The Board shall notify the Member in writing, by either personal delivery or Individual Notice, at least ten (10) 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 the Member may be disciplined or the nature of the issue for which a Reimbursement Assessment may be imposed, and a statement that the Member has a right to attend and may address the Board at the meeting. If the Board imposes discipline on a Member or imposes a Reimbursement Assessment as a result of that meeting, the Board shall provide the Member a written notification of the decision, by either personal delivery or Individual Notice, within fifteen (15) days following the action. The Board shall also comply with any additional or alternate requirements for disciplinary action under the Davis-Stirling Act.

(e) Voluntary Compliance Objective. The objective of this Declaration shall be to promote and seek voluntary compliance by Owners and Occupants with the environmental standards and property use restrictions contained herein. Accordingly, in the event that the Association becomes aware of an architectural or property use infraction that does not necessitate immediate corrective action, the Owner responsible for the violation may, in the Board's discretion, receive written notice thereof and be given a reasonable opportunity to comply voluntarily with the pertinent Governing Document provision(s) prior to the Board calling the Owner to a hearing. Such notice shall describe the noncomplying condition, and request that the Owner correct the condition within a reasonable time specified in the notice.

(f) Immediate Corrective Action. 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 of, the Common Area or common facilities thereon or therein, the Association may undertake immediate corrective action and the Board may thereafter hold a disciplinary hearing with the offending Owner in accordance with the procedures set forth in paragraph (d) above.

## **Section 12.6 – Internal Dispute Resolution.**

The Association shall provide a fair, reasonable, and expeditious procedure for resolving a dispute between the Association and a Member involving their rights, duties, or liabilities under the Davis-Stirling Act, the Nonprofit Mutual Benefit Corporation Law, or the Governing Documents; this procedure may be referred to in this Declaration as the Association's "meet and confer" program. In developing a procedure pursuant to this section, the Association shall make maximum, reasonable use of available local dispute resolution programs involving a neutral third party, including low-cost mediation programs such as those listed on the Internet Web sites of the Department of Consumer Affairs and the United States Department of Housing and Urban Development. If the Association does not provide a fair, reasonable, and expeditious procedure for resolving a dispute within the scope of this paragraph, the statutory default procedure provided in the Davis-Stirling Act for internal dispute resolution applies and satisfies the requirement of this section. A Member of the Association may refuse a request to meet and confer, but the Association shall not refuse a request to meet and confer; a Member shall not be charged a fee to participate in the process.

## **Section 12.7 – Enforcement Actions; Alternative Dispute Resolution.**

(a) Pre-Litigation Filing Requirements. The Association or a Member may not file an enforcement action in the superior court unless the parties have endeavored to submit their dispute to alternative dispute resolution pursuant to the requirements of the Davis-Stirling Act. In addition, the Association may not file a civil action against a Member regarding a dispute in which the Member has requested dispute resolution unless the Association has complied with Civil Code section 5910 by engaging in good faith in the internal dispute resolution procedures after a Member invokes those procedures.

(b) Application of Section. This Section 12.7 applies only to a civil action or proceeding, other than a cross-complaint, for enforcement of the Davis-Stirling Act, the Nonprofit Mutual Benefit Corporation Law, or the Governing Documents that is solely for declaratory, injunctive, or writ relief, or for that relief in conjunction with a claim for monetary damages not in excess of the jurisdictional limits stated in Sections 116.220 and 116.221 of the *California Code of Civil Procedure*.

(c) Available Procedures. "Alternative dispute resolution" means mediation, arbitration, conciliation, or other nonjudicial procedure that involves a neutral party in the decision-making process. The form of alternative dispute resolution chosen pursuant to this Section 12.7 may be binding or nonbinding, with the voluntary consent of the parties. If the parties cannot agree on a form of alternative dispute resolution, mediation shall be the form used.

(d) Refusal to Participate. In an enforcement action in which attorney's fees and costs may be awarded, the court, in determining the amount of the award, may consider whether a

party's refusal to participate in alternative dispute resolution before commencement of the action was reasonable.

**Section 12.8 – Assessment Collection Actions.**

The notice and hearing procedures set forth in Section 12.5(d) shall not apply to any actions by the Association or its duly authorized agents to collect delinquent Assessments. Assessment collections shall be subject to the notice and procedural requirements imposed by Article 4 of this Declaration, the Davis-Stirling Act, and any other notice, hearing, and/or dispute resolution requirements or procedures as may be specifically applicable by law to community association assessment collection efforts.

**ARTICLE 13 – MORTGAGEE PROTECTION**

**Section 13.1 – Subordination.**

Any lien created or claimed under this Declaration is subject and subordinate to the rights of any previously recorded Mortgage secured by the same property made in good faith and for value; and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of such Mortgage unless the Mortgagee expressly subordinates its interest, in writing, to such lien. On foreclosure of a previously recorded Mortgage, the foreclosure-purchaser shall take title free of any Assessment liens and shall be obligated to pay only Assessments or other charges levied or assessed by the Association that became due or payable on or after the foreclosure-purchaser acquired title. The subsequently levied Assessments or other charges may include previously unpaid Assessments, provided all Owners including the foreclosure-purchaser and his or her successors and assigns are required to pay their proportionate share.

**Section 13.2 – First Refusal Inapplicable to Mortgagee.**

Any right of first refusal or option shall not bind a Mortgagee and shall not impair the rights of a Mortgagee (a) to foreclose or take title pursuant to the remedies provided in the Mortgage, (b) to accept a deed (or assignment) in lieu of foreclosure in the event of default under the Mortgage, or (iii) to sell or lease a Unit acquired by the Mortgagee following a Mortgage default.

**Section 13.3 – Mortgagee Right to Furnish Information.**

Any Mortgagee can furnish information to the Board concerning the status of any Mortgage.

#### **Section 13.4 – Former Owner in Possession Following Foreclosure.**

A former Owner who loses title by foreclosure but remains in possession shall be bound by the Governing Documents as long as he or she remains in possession, but shall have no obligation to pay Assessments accruing after the date title is transferred.

#### **Section 13.5 – Mortgagee Priority in Distribution of Proceeds.**

Each Mortgagee shall have priority over the rights of the Owner of the mortgaged property in case of a distribution to the respective Owner of insurance proceeds or condemnation awards for losses to or a taking of such Owner's interest in the Property. Any provision to the contrary in the Governing Documents is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected Mortgagees, naming such Mortgagees as their interests may appear.

#### **Section 13.6 – Mortgagee Approval Requirements.**

The prior written consent (or deemed consent as provided below) of Mortgagees holding First Mortgages on at least fifty-one percent (51%) of all Units encumbered by Mortgages shall be required to take any of the following actions:

(a) Except as otherwise provide in this Declaration for cases of Catastrophic Damage, use hazard insurance proceeds for a purpose other than the repair, replacement, or reconstruction, abandon the Property, or terminate the Association;

(b) Change the method of determining the obligations, Assessments, dues, or other charges that may be levied against an Owner, or to change the pro rata interest or obligations of any Owner for purposes of levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or for determining the pro rata share of ownership of each Owner in the Common Area;

(c) Abandon, partition, subdivide, encumber, sell or transfer the Common Area (but the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Association or the Owners shall not be deemed to be a transfer within the meaning of this clause);

(d) Fail to maintain fire and extended coverage insurance on insurable property owned by the Association, including any Common Area improvements, in an amount not less than one hundred percent (100%) of the insurable value based on current replacement cost; and

(e) Materially amend any provision of the Governing Documents that are for the express benefit of Mortgagees.

Any Mortgagee who receives a written request to consent to additions or amendments requiring consent under this section who does not deliver or post to the requesting party a negative



response within thirty (30) days after such receipt shall be deemed to have consented to such request.

### **Section 13.7 – Mortgagee Notice Rights.**

Each Mortgagee shall be entitled to written notice of the following:

(a) The occurrence of loss, casualty, condemnation or eminent domain which decreases the value of the property encumbered by its Mortgage by more than fifty percent (50%) of its fair market value immediately prior to the occurrence;

(b) Any sixty (60) day delinquency in the payment of Assessments by, or Association commencement of judicial or nonjudicial foreclosure proceedings to enforce payment of delinquent obligations owed under the Governing Documents against, the Owner of its encumbered property; and

(c) Any lapse or cancellation of any Association insurance policy.

Failure of a Mortgagee to receive the notice required by this section shall not be construed to benefit an Owner or to impede the Association in enforcing the Governing Documents.

### **Section 13.8 – Mortgagee Information Rights.**

A Mortgagee is entitled to obtain the same information as an Owner from the Association upon written request and payment of required fees.

### **Section 13.9 – Mortgagee Right to Appear at Meetings.**

Because of its financial interest in the Property, any Mortgagee may appear (but cannot vote, except as otherwise expressly provided hereunder), at meetings of Members and the Board to draw attention to violations of this Declaration that have not been corrected or that have been made the subject of remedial proceedings or Assessments.

## **ARTICLE 14 – AMENDMENT OF DECLARATION**

### **Section 14.1 – Amendment Approval.**

(a) Member Approval Requirements. This Declaration may be amended by the affirmative vote of the holders of not less than a majority of the voting power of the Association (i.e., Members owning at least 91 of the 180 Units within the Development).

(b) Authority of Board to Amend. Notwithstanding the provisions of paragraph (a) above, the Board shall have the power to amend this Declaration without Member approval, upon adoption of a Board resolution authorizing such amendment, if such amendment is: (1)

required under any law; (2) merely to resolve a conflict between this Declaration and the law; or (3) to correct a cross-reference in this Declaration to any statute or law that was repealed and continued in a new provision.

(c) Approval of Eligible Mortgagees. As provided in Section 13.6 of this Declaration, certain material amendments to this Declaration (which are enumerated in that section of the Declaration) must also be presented to, and approved by, Mortgagees holding First Mortgages on at least fifty-one percent (51%) of all Units encumbered by Mortgages.

#### **Section 14.2 – Procedural Requirements.**

(a) Voting. Any vote to amend this Declaration shall be conducted in accordance with the secret ballot voting procedures required by the Davis-Stirling Act and contained in the Governing Documents.

(b) Adoption of Amendment. An amendment to this Declaration becomes effective after all of the following requirements are met: (1) the amendment has been approved by the percentage of Members required by this Declaration and any other Person whose approval is required by this Declaration (including, but not limited to, as may be applicable, any Mortgagees); (2) that fact has been certified in a writing executed and acknowledged by the president and secretary of the Association; and (3) the amendment has been recorded with the County recorder.

(c) Distribution to Members. As soon as practicable after an amendment to this Declaration is recorded, the Association shall deliver to each Member, by Individual Notice, a copy of the amendment, together with a statement that the amendment has been recorded.

### **ARTICLE 15 – GENERAL PROVISIONS**

#### **Section 15.1 – 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 the Units and the Common Area as herein provided and shall inure to the benefit of and be binding on the Owners, the Association, its Board of Directors, and its officers and agents, and their respective successors in interest, for the term of twenty (20) years from the date of the recording of this Declaration. After the expiration of the initial term, the term of this Declaration shall be automatically extended for successive periods of ten (10) years each, unless within six (6) months before the expiration of the initial twenty (20) year term or any such ten (10) year extension period, a recordable written instrument, approved by Owners entitled to vote and holding at least a majority of the voting power of the Association terminating the effectiveness of this Declaration, is recorded. This section shall not be construed to limit the amendment of this Declaration at any time in accordance with Article 14 of this Declaration.

## **Section 15.2 – Construction.**

(a) Liberal Construction. This Declaration shall be liberally construed to facilitate the operation of the Development as a condominium project, and its provisions shall be presumed to be independent and severable.

(b) Severability. In the event any provision contained in this Declaration is held to be invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions of this Declaration shall be and remain in full force and effect.

(c) Other Provisions. Unless the context requires otherwise or a term is specifically defined herein, the general provisions, rules of construction, and definitions in the Davis-Stirling Act shall govern the construction of this Declaration. Without limiting the generality of the foregoing, the masculine gender includes the feminine and neuter, a singular number includes the plural, and a plural number includes the singular. All captions and titles used in this Declaration are intended solely for the reader's convenience of reference and shall not affect the interpretation or application of any of the terms or provisions contained herein.

## **Section 15.3 – Controlling Authority.**

To the extent of any conflict between this Declaration and the law, the law shall prevail. To the extent of any conflict between this Declaration and the Articles or the Bylaws, this Declaration shall prevail. To the extent of any conflict between this Declaration and an Operating Rule, this Declaration shall prevail unless the Operating Rule was adopted to comply with prevailing law.

## **Section 15.4 – Delivery of Documents.**

The delivery of documents and notices to the Members by the Association, and to the Association by a Member, pursuant to this Declaration shall be subject to and governed by applicable provisions of the Bylaws and the Davis-Stirling Act.

## **Section 15.5 – No Discrimination.**

No Owner shall execute or cause to be recorded any instrument that imposes a restriction on the sale, lease, rental, use, or occupancy of his or her Unit on the basis of age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information of any person, or any other basis protected by law ("**Protected Attributes**"). Nor shall any Owner or Occupant, or a Guest of either, discriminate against or harass any person within the Development on the basis of a Protected Attribute.

**Section 15.6 – Amendment or Revocation of Condominium Plan.**

The Condominium Plan may be amended or revoked by a recorded instrument that is acknowledged and signed by all the Persons who, at the time of amendment or revocation, are persons whose signatures are required under the Davis-Stirling Act.

**Section 15.7 – Notice of Airport in Vicinity.**

(a) Statutory Disclosure. The following statement is being given in accordance with Section 4255 of the Civil Code.

NOTICE OF AIRPORT IN VICINITY

This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.

(b) Definition of “Airport Influence Area”. For purposes of this section, an “airport influence area” (also known as an “airport referral area”) is the area in which current or future airport-related noise, overflight, safety, or airspace protection factors may significantly affect land uses or necessitate restrictions on those uses as determined by an airport land use commission.

(c) No Title Defect. The foregoing statement acknowledging that the Property is located in an airport influence area does not constitute a title defect, lien, or encumbrance.

[Exhibits on Following Pages]

## **EXHIBIT A – Legal Description of Property**

The Property consists of certain real property situated in the Town of Truckee, County of Placer, State of California, more particularly described as follows:

Blocks 1 through 6, inclusive, as shown on that certain map entitled "Tract No. 223, Northstar Unit 1-B, a Condominium Development", accepted for record and filed in the Office of the Recorder of Placer County, State of California, on December 1, 1971 and recorded in Book J of Maps, on page 40.

**EXHIBIT B – Common Area Ownership Interests**

The Common Area located within each Block is owned by the Owners of Units within such Block as tenants in common, in undivided shares per Unit. The percentage ownership of the Common Area in each Block is as follows:

<b>BLOCK 1</b>			
<b>Unit No.</b>	<b>Address</b>	<b>Building Type</b>	<b>% Interest</b>
1	3001 Silver Strike	2/2	2.584
2	3002 Silver Strike	3/2	2.975
3	3003 Silver Strike	2/1	2.291
4	3004 Silver Strike	2/1	2.291
5	3005 Silver Strike	2/2	2.619
6	3006 Silver Strike	2/2	2.619
7	3007 Silver Strike	3/2	2.975
8	3008 Silver Strike	3/2	3.206
9	3009 Silver Strike	2/2	2.584
10	3010 Silver Strike	3/2	2.975
11	3011 Silver Strike	2/1	2.291
12	3012 Silver Strike	2/1	2.291
13	3013 Silver Strike	2/2	2.642
14	3014 Silver Strike	2/2	2.642
15	3015 Silver Strike	2/1	2.314
16	3016 Silver Strike	2/2	2.659
17	3017 Silver Strike	2/2	2.676
18	3018 Silver Strike	3/2	3.033
19	3019 Silver Strike	2/1	2.354
20	3020 Silver Strike	2/1	2.332
21	3021 Silver Strike	2/2	2.699
22	3022 Silver Strike	2/2	2.733
23	3023 Silver Strike	2/1	2.372
24	3024 Silver Strike	3/2	3.091
25	3025 Silver Strike	2/2	2.733
26	3026 Silver Strike	2/2	2.733
27	3027 Silver Strike	2/1	2.406
28	3028 Silver Strike	3/2	3.091
29	3029 Silver Strike	2/2	2.733
30	3030 Silver Strike	2/2	2.757

**BLOCK 1 (cont.)**

<b>Unit No.</b>	<b>Address</b>	<b>Building Type</b>	<b>% Interest</b>
31	3031 Silver Strike	3/2	3.119
32	3032 Silver Strike	2/1	2.446
33	3033 Silver Strike	3/2	3.132
34	3034 Silver Strike	3/2	3.206
35	3035 Silver Strike	2/2	2.676
36	3036 Silver Strike	3/2	3.044
37	3037 Silver Strike	2/2	2.676

**BLOCK 2**

<b>Unit No.</b>	<b>Address</b>	<b>Building Type</b>	<b>% Interest</b>
38	3038 Silver Strike	2/2	2.2507
39	3039 Silver Strike	2/1	2.0530
40	3040 Silver Strike	3/2	2.6644
41	3041 Silver Strike	2/2	2.2507
42	3042 Silver Strike	2/2	2.2507
43	3043 Silver Strike	2/1	2.0530
44	3044 Silver Strike	3/2	2.6644
45	3045 Silver Strike	2/1	2.0531
46	3046 Silver Strike	3/2	2.6644
47	3047 Silver Strike	2/2	3.0355
48	3048 Silver Strike	2/2	2.2507
49	3049 Silver Strike	2/1	2.0530
50	3050 Silver Strike	3/2	2.6644
51	3051 Silver Strike	2/2	2.2507
52	3052 Silver Strike	2/2	2.2507
53	3053 Silver Strike	3/2	2.6644
54	3054 Silver Strike	3/2	3.0355
55	3055 Silver Strike	2/2	2.2507
56	3056 Silver Strike	3/2	2.6644
57	3057 Silver Strike	3/2	3.0355
58	3058 Silver Strike	2/2	2.2507
59	3059 Silver Strike	3/2	2.6644
60	3060 Silver Strike	2/2	2.2507
61	3061 Silver Strike	2/2	2.2507
62	3062 Silver Strike	2/1	2.0530
63	3063 Silver Strike	3/2	2.6644

**BLOCK 2 (cont.)**

<b>Unit No.</b>	<b>Address</b>	<b>Building Type</b>	<b>% Interest</b>
64	3064 Silver Strike	2/1	2.0531
65	3065 Silver Strike	3/2	2.6644
66	3066 Silver Strike	2/2	3.0355
67	3067 Silver Strike	2/2	2.2507
68	3068 Silver Strike	3/2	2.6644
69	3069 Silver Strike	2/2	2.2507
70	3070 Silver Strike	2/2	2.2507
71	3071 Silver Strike	2/1	2.0530
72	3072 Silver Strike	3/2	2.6644
73	3073 Silver Strike	2/1	2.0531
74	3074 Silver Strike	3/2	2.6644
75	3075 Silver Strike	2/2	3.0355
76	3076 Silver Strike	2/2	2.2507
77	3077 Silver Strike	3/2	2.6644
78	3078 Silver Strike	2/2	2.2507

**BLOCK 3**

<b>Unit No.</b>	<b>Address</b>	<b>Building Type</b>	<b>% Interest</b>
79	3079 Aspen Grove Road	2/2	4.178
80	3080 Aspen Grove Road	3/2	4.750
81	3081 Aspen Grove Road	2/1	3.671
82	3082 Aspen Grove Road	2/2	4.135
83	3083 Aspen Grove Road	3/2	5.010
84	3084 Aspen Grove Road	3/2	4.697
85	3085 Aspen Grove Road	2/1	3.732
86	3086 Aspen Grove Road	3/2	4.697
87	3087 Aspen Grove Road	2/2	4.135
88	3088 Silver Strike	3/2	4.941
89	3089 Silver Strike	3/2	4.750
90	3090 Silver Strike	2/2	4.135
91	3091 Silver Strike	2/2	4.135
92	3092 Silver Strike	2/1	3.584
93	3093 Silver Strike	3/2	4.572
94	3094 Silver Strike	2/1	3.557
95	3095 Silver Strike	3/2	4.415
96	3096 Silver Strike	2/2	3.934



**BLOCK 3 (cont.)**

<b>Unit No.</b>	<b>Address</b>	<b>Building Type</b>	<b>% Interest</b>
97	3097 Silver Strike	2/2	3.995
98	3098 Silver Strike	2/1	3.557
99	3099 Silver Strike	2/2	3.995
100	3100 Silver Strike	2/2	3.934
101	3101 Silver Strike	2/1	3.557
102	3102 Silver Strike	2/2	3.934

**BLOCK 4**

<b>Unit No.</b>	<b>Address</b>	<b>Building Type*</b>	<b>% Interest</b>
103	3103 Aspen Grove Road	A	3.076
104	3104 Aspen Grove Road	B	2.806
105	3105 Aspen Grove Road	D	2.806
106	3106 Aspen Grove Road	E	3.641
107	3107 Aspen Grove Road	F	4.148
108	3108 Aspen Grove Road	A	3.076
109	3109 Aspen Grove Road	B	2.806
110	3110 Aspen Grove Road	C	3.641
111	3111 Aspen Grove Road	D	2.806
112	3112 Aspen Grove Road	E	3.641
113	3113 Aspen Grove Road	F	4.148
114	3114 Aspen Grove Road	A	3.076
115	3115 Aspen Grove Road	B	2.806
116	3116 Aspen Grove Road	C	3.641
117	3117 Aspen Grove Road	G	3.076
118	3118 Aspen Grove Road	A	3.076
119	3119 Aspen Grove Road	B	2.806
120	3120 Aspen Grove Road	C	3.641
121	3121 Aspen Grove Road	D	2.806
122	3122 Aspen Grove Road	E	3.641
123	3123 Aspen Grove Road	F	4.148
124	3124 Aspen Grove Road	A	3.076
125	3125 Aspen Grove Road	E	3.641
126	3126 Aspen Grove Road	F	4.148
127	3127 Aspen Grove Road	A	3.076
128	3128 Aspen Grove Road	B	2.806
129	3129 Aspen Grove Road	G	3.076

**BLOCK 4 (cont.)**

<b>Unit No.</b>	<b>Address</b>	<b>Building Type*</b>	<b>% Interest</b>
130	3130 Aspen Grove Road	A	2.806
131	3131 Aspen Grove Road	E	3.641
132	3132 Aspen Grove Road	F	4.148

**BLOCK 5**

<b>Unit No.</b>	<b>Address</b>	<b>Building Type</b>	<b>% Interest</b>
133	3133 Aspen Grove Road	Studio	3.8732
134	3134 Aspen Grove Road	Studio	3.8732
135	3135 Aspen Grove Road	Studio	3.8732
136	3136 Aspen Grove Road	Studio	3.8732
137	3137 Aspen Grove Road	Studio	3.8732
138	3138 Aspen Grove Road	Studio	3.8732
139	3139 Aspen Grove Road	Studio	3.8732
140	3140 Aspen Grove Road	Studio	3.8732
141	3141 Aspen Grove Road	One Bedroom	4.7536
142	3142 Aspen Grove Road	One Bedroom	4.7536
143	3143 Aspen Grove Road	One Bedroom	4.7536
144	3144 Aspen Grove Road	One Bedroom	4.7536
145	3145 Aspen Grove Road	Studio	3.8732
146	3146 Aspen Grove Road	Studio	3.8732
147	3147 Aspen Grove Road	Studio	3.8732
148	3148 Aspen Grove Road	Studio	3.8732
149	3149 Aspen Grove Road	Studio	3.8732
150	3150 Aspen Grove Road	Studio	3.8732
151	3151 Aspen Grove Road	Studio	3.8732
152	3152 Aspen Grove Road	Studio	3.8732
153	3153 Aspen Grove Road	One Bedroom	4.7536
154	3154 Aspen Grove Road	One Bedroom	4.7536
155	3155 Aspen Grove Road	One Bedroom	4.7536
156	3156 Aspen Grove Road	One Bedroom	4.7536

**BLOCK 6**

<b>Unit No.</b>	<b>Address</b>	<b>Building Type</b>	<b>% Interest</b>
157	3157 Aspen Grove Road	Studio	3.8732
158	3158 Aspen Grove Road	Studio	3.8732
159	3159 Aspen Grove Road	Studio	3.8732

<b>BLOCK 6 (cont.)</b>
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<b>Unit No.</b>	<b>Address</b>	<b>Building Type</b>	<b>% Interest</b>
160	3160 Aspen Grove Road	Studio	3.8732
161	3161 Aspen Grove Road	Studio	3.8732
162	3162 Aspen Grove Road	Studio	3.8732
163	3163 Aspen Grove Road	Studio	3.8732
164	3164 Aspen Grove Road	Studio	3.8732
165	3165 Aspen Grove Road	One Bedroom	4.7536
166	3166 Aspen Grove Road	One Bedroom	4.7536
167	3167 Aspen Grove Road	One Bedroom	4.7536
168	3168 Aspen Grove Road	One Bedroom	4.7536
169	3169 Aspen Grove Road	Studio	3.8732
170	3170 Aspen Grove Road	Studio	3.8732
171	3171 Aspen Grove Road	Studio	3.8732
172	3172 Aspen Grove Road	Studio	3.8732
173	3173 Aspen Grove Road	Studio	3.8732
174	3174 Aspen Grove Road	Studio	3.8732
175	3175 Aspen Grove Road	Studio	3.8732
176	3176 Aspen Grove Road	Studio	3.8732
177	3177 Aspen Grove Road	One Bedroom	4.7536
178	3178 Aspen Grove Road	One Bedroom	4.7536
179	3179 Aspen Grove Road	One Bedroom	4.7536
180	3180 Aspen Grove Road	One Bedroom	4.7536

\*The Building Types noted for the Units in Block 4 – A, B, C, D, E, F and G – are based on the Condominium Plan. Building Types A, B, D and G are two bedroom Units; Building Types C and E are three bedroom Units; and Building Type F is a four bedroom Unit.

**EXHIBIT C – Maintenance Responsibility Chart**

<b>COMPONENT</b>	<b>OWNER</b>	<b>ASSOCIATION</b>
<b><i>Unit – Interior Components, Finishes, and Fixtures</i></b>		
Perimeter and bearing walls	Maintain, repair, and replace interior surfaces	Maintain, repair and replace, other than interior surfaces
Interior non-bearing walls (including drywall, plaster, and other materials)	Maintain, repair, and replace	
Wall surfaces (including paint, wallpaper, paneling, mirrors, and other wall coverings)	Maintain, repair, and replace	
Ceiling surfaces (including paint, texture, and other ceiling coverings)	Maintain, repair, and replace	
Floor surfaces (including carpet, hardwood, vinyl, laminate, tile, etc.)	Maintain, repair, and replace	
Interior doors, doorframes, door locks, and door hardware	Maintain, repair, and replace	
Cabinets and cabinet hardware	Maintain, repair, and replace	
Countertops and backsplashes	Maintain, repair, and replace	
Built-in bookshelves	Maintain, repair, and replace	
Mantles	Maintain, repair, and replace	
Closet shelves and hardware	Maintain, repair, and replace	
Window treatments and coverings	Maintain, repair, and replace	
Appliances (built-in and free-standing)	Maintain, repair, and replace	
Bathroom and kitchen fixtures (including toilets, showers, bathtubs, faucets, sinks, drains, garbage disposals, and other fixtures)	Maintain, repair, and replace	
Light fixtures	Maintain, repair, and replace; replace light bulbs as necessary	

<b>COMPONENT</b>	<b>OWNER</b>	<b>ASSOCIATION</b>
<b><i>Unit – Interior Components, Finishes, and Fixtures (cont.)</i></b>		
Smoke detectors and carbon monoxide detectors	Maintain, repair, and replace; periodic testing and battery replacement	
Interior stairs (including treads, risers, railing, posts, stringer, etc.)	Maintain, repair, and replace	
Interior architectural and design finishes and elements installed by an Owner	Maintain, repair, and replace	
All other items within the Unit for which the Association does not have maintenance and repair responsibility	Maintain, repair, and replace	
<b><i>Unit – Front Door</i></b>		
Door	Maintain interior surface	Maintain exterior surface; repair and replace
Door frame	Maintain interior surface	Maintain exterior surface; repair and replace
Door trim	Maintain, repair, and replace interior trim	Maintain, repair, and replace exterior trim
Knob/handle, lock, hinges, strike plate, and other hardware	Maintain, repair, and replace	
Door sweep/weather stripping	Maintain, repair, and replace	
Threshold	Maintain, repair, and replace	
Doorbell system (button, transformer, chime box, wiring, etc.)	Maintain, repair, and replace	
Exterior display or posting of Unit number/address		Maintain, repair, and replace
<b><i>Unit – Sliding Glass Door</i></b>		
Door and fixed glass panel	Maintain interior surface	Maintain exterior surface; repair and replace
Door frame	Maintain interior surface	Maintain exterior surface; repair and replace
Door trim	Maintain, repair, and replace interior trim	Maintain, repair, and replace exterior trim

<b>COMPONENT</b>	<b>OWNER</b>	<b>ASSOCIATION</b>
<b><i>Unit – Sliding Glass Door (cont.)</i></b>		
Flashing, caulking, and other weather and water proofing components	Maintain, repair, and replace interior portions	Maintain, repair, and replace exterior portions
Handle, lock, hardware, and operable door mechanisms		Maintain, repair, and replace
Screen	Maintain, repair, and replace	
<b><i>Unit – Windows</i></b>		
Window (including glass)	Maintain interior surface	Maintain exterior surface; repair and replace
Window frame	Maintain interior surface	Maintain exterior surface; repair and replace
Window trim	Maintain, repair, and replace interior trim	Maintain, repair, and replace exterior trim
Flashing, caulking, and other weather and water proofing components	Maintain, repair, and replace interior portions	Maintain, repair, and replace exterior portions
Handle, lock, hardware, and operable window mechanisms		Maintain, repair, and replace
Screen		Maintain, repair, and replace
<b><i>Unit – Fireplace</i></b>		
Hearth, doors, and surround	Maintain, repair, and replace	
Firebox, smoke chamber, smoke shelf, and damper	Maintain, repair, and replace interior surfaces	Repair and replace, other than interior surfaces
Flue and chimney		Periodic cleaning; repair and replace
Spark arrestor / chimney cap		Maintain, repair, and replace
<b><i>Utility Facilities and Systems Exclusively Serving a Unit – Wherever Located</i></b>		
Water and sewer pipes, drain lines, and other plumbing	Maintain, repair, and replace portions in Unit	Maintain, repair, and replace portions under Unit and in Common Area
Blocked kitchen and bathroom facilities	Plunge; use snake as necessary	

<b>COMPONENT</b>	<b>OWNER</b>	<b>ASSOCIATION</b>
<b><i>Utility Facilities and Systems Exclusively Serving a Unit – Wherever Located (cont.)</i></b>		
Refrigerator, dishwasher, and other appliance water lines and hoses	Maintain, repair, and replace	
Water heater	Maintain, repair, and replace	
Water pressure regulator (if any)	Maintain, repair, and replace	
Gas lines and gas shut off valve	Maintain, repair, and replace portions in Unit	Maintain, repair, and replace portions in Common Area
Bathroom and kitchen exhaust fans and related system components	Maintain, repair, and replace	
Ducts (dryer, heating, stove, oven, etc.)	Maintain, repair, and replace	
Electric switches and outlets	Maintain, repair, and replace	
Electric wiring	Maintain, repair, and replace portions in Unit	Maintain, repair, and replace portions in Common Area
Circuit breaker panel and breakers	Maintain, repair, and replace	
Heating, ventilating and air conditioning unit and related equipment	Maintain, repair, and replace	
Heating equipment, filters, and controls (including baseboard heaters, wall-mounted heaters, and heater fans and related components, and the like)	Maintain, repair, and replace	
Telephone, cable and satellite television, internet/data, and similar wiring and lines	Maintain, repair, and replace portions in Unit	Maintain, repair, and replace portions in Common Area
Home alarm system, security cameras, sensors, etc.	Maintain, repair, and replace	
Other utility fixtures, equipment, facilities, and systems that exclusively serve a Unit	Maintain, repair, and replace portions in Unit	Maintain, repair, and replace portions in Common Area
<b><i>Exclusive Use Common Areas</i></b>		
Entry area leading to Unit, including any exclusive use doorstep, stoop, porch, or stair areas	Keep free of debris and trash; routinely clean surfaces	Maintain, repair, and replace, other than routine cleaning

<b>COMPONENT</b>	<b>OWNER</b>	<b>ASSOCIATION</b>
<b><i>Exclusive Use Common Areas (cont.)</i></b>		
Balcony	Keep free of debris and trash (including the deck/floor); regularly clean interior surfaces	Maintain, repair, and replace structural elements and surface finishes of walls, deck/floor, and railing
Storage closet	Clean, maintain, and repair interior surfaces; maintain, repair, and replace door lock and hardware	Maintain, repair, and replace structural components; repair and replace door (other than lock and hardware)
Exterior lights in entry, balcony, or storage areas	Replace light bulbs as necessary	Maintain, repair, and replace light fixtures
All other Exclusive Use Common Areas (except to the extent otherwise provided in this Declaration)	Maintain	Repair and replace
<b><i>Selected Structural, Exterior, and Other Building Components</i></b>		
Roof covers and structures		Maintain, repair, and replace
Foundations		Maintain, repair, and replace
Pipes, ducts, flues, chutes, conduits, wires and other utility installations serving two or more Units or serving the Common Area		Maintain, repair, and replace
Bearing walls, columns and girders to the unfinished surface thereof, regardless of location		Maintain, repair, and replace
Building siding		Maintain (including painting and sealing), repair, and replace
Gutters and downspouts		Maintain, repair, and replace
Association-approved improvements, modifications, alterations, or installations made by an Owner to structural and/or exterior building components	Maintain, repair, and replace, unless a different written agreement is entered between the Owner and the Association	



COMPONENT	OWNER	ASSOCIATION
<b><i>Common Area Facilities</i></b>		
Dumpsters and dumpster enclosures		Maintain, repair, and replace
Open spaces		Maintain, repair, and replace
Trees, hedges, plantings, shrubs, and other landscaping, and irrigation systems		Maintain, repair, and replace
Lighting (other than exterior lights in Exclusive Use Common Area entry and balcony areas)		Maintain, repair, and replace
Sidewalks and walkways		Maintain, repair, and replace
Private streets and parking lots		Maintain, repair, and replace
Vehicular access gates or similar installations and equipment		Maintain, repair, and replace
Perimeter/boundary fencing of the Development (if any)		Maintain, repair, and replace
Community signs		Maintain, repair, and replace
Surveillance cameras (if any)		Maintain, repair, and replace
Gate systems and lighting		Maintain, repair, and replace

Notes:

1. The information included in this Maintenance Responsibility Chart is not an exhaustive list of Association and Owner maintenance, repair, and replacement obligations, and is meant to supplement the provisions of Sections 7.1 and 7.2 of this Declaration.
2. Owner maintenance, repair, and replacement responsibilities set forth in this Maintenance Responsibility Chart are subject to the architectural control provisions contained in Article 5 of this Declaration.
3. The term “***maintain***” when used in this Maintenance Responsibility Chart 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. In the case of landscaping, “maintain” shall mean regular fertilizing, irrigation, pruning and other garden management practices necessary to promote healthy plant growth free of weeds or dead or dying plants.

4. The term “**repair**” when used in this Maintenance Responsibility Chart shall mean the minor restoration of property that is torn, broken, or otherwise damaged, or has sustained wear, tear, or deterioration such that minor restoration is necessary.

5. The term “**replace**” when used in this Maintenance Responsibility Chart shall mean the substantial reconstruction, restoration, or substitution of the whole or a substantial part of property that has deteriorated or 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. In the case of landscaping, “replace” shall mean the removal and replanting of trees, shrubs, lawns, and other plants that are dead or dying or otherwise not serviceable or the substitution of plants for hardscape or substitution of hardscape for plants.

6. In accordance with Section 7.3 of this Declaration, the Association may recover the cost of Common Area maintenance and repairs from an Owner if the need for the maintenance or repair is caused through the willful or negligent acts or omissions of the Owner or an Occupant of the Owner’s Unit, or a Guest of either.

7. If a building component or element, or utility facility or system, is to be maintained, repaired, or replaced partially by the Association and partially by an Owner in this Maintenance Responsibility Chart and such building component or element, or utility facility or system, requires maintenance, repair, or replacement that would involve simultaneous or coordinated work by the Association and the Owner, the Association can, in its sole discretion, perform the needed maintenance, repair, or replacement work and charge an equitable portion of the cost of the work (as determined by the Board) to the Owner as a Reimbursement Assessment.

8. If any maintenance, repair, or replacement work that an Owner is responsible to perform will or could impact or alter any portion of the Common Area, such work must be coordinated with the Association in advance, except in the event of an emergency situation. An Owner shall be liable for all damage to the Common Area that he or she (or his or her contractors or other Guests) may cause in the performance of his or her maintenance, repair, or replacement duties.

9. If an improvement or alteration to the Common Area for the benefit of a Unit is made by the current Owner of the Unit or a prior Owner of the Unit and such improvement or alteration leaks or otherwise causes damage to the Common Area or any other Unit, the Owner of the Unit performing such work at the time of such leak or other damage will be liable to reimburse the Association for the costs incurred by the Association to repair such damage; such costs may be levied against the responsible Owner as a Reimbursement Assessment.

10. Article 11 (“Catastrophic Damage and Condemnation”) of this Declaration describes the responsibility of the Association to repair damage to the Development stemming from a fire other casualty.

[End of Maintenance Responsibility Chart]

**CERTIFICATE OF AMENDMENT**

This Certificate of Amendment has been prepared to accompany the foregoing *Third Restated Declaration of Covenants, Conditions, and Restrictions for Aspen Grove Condominium Association* (the "**Declaration**") in compliance Section 4270 of the *California Civil Code*. The Declaration amends and restates the "Prior Declaration" defined and described in the recitals of the Declaration.

We, the undersigned officers of Aspen Grove Condominium Association (the "**Association**"), hereby certify that: (1) the Declaration was approved on November 1, 2023 by the affirmative vote of Members owning a majority of the Units, in accordance with Section 11.1 of the Prior Declaration; and (2) the vote on the Declaration was conducted by the Association in compliance with the provisions of *California Civil Code* section 5100 et seq. in effect at the time of such vote.

**IN WITNESS WHEREOF**, we have executed this Certificate of Amendment as of the date(s) written below.

**Aspen Grove Condominium Association**

By: Richard A. Bjur

By: Mark A Mondentkael

Name: Richard A. Bjur  
AKA RICHARD ALAN BJUR

Name: Mark A Mondentkael

Title: President

Title: Secretary

Date: November 3, 2023

Date: November 2, 2023

**SEE ATTACHED FOR  
NOTARIAL WORDING  
& SEAL**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

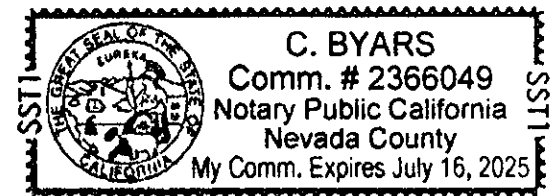
County of Nevada)

On 11/3/2023 before me, C. Byars, notary public,

personally appeared Richard Alvin Byars,  
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: C. Byars

(Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Nevada)

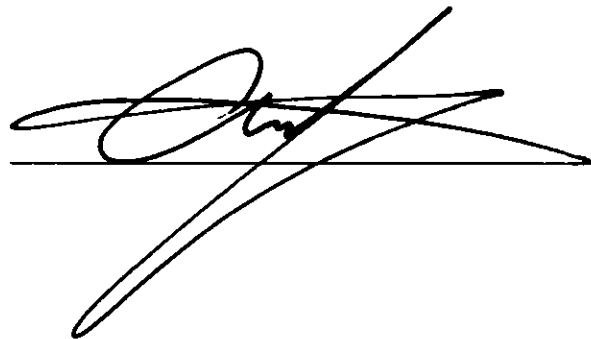
On 11/02/2023 before me, A. Garcia-Flores, notary public,

personally appeared Mark A. Mendenhall, 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)

