

**DRAFT**

**AMENDED AND RESTATED  
DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
TEMECULA OFFICE CENTRE PROPERTY OWNERS ASSOCIATION**

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



Section 2.12 - Prohibition Against Partition. ....15

Section 2.13 - Equitable Servitudes. ....15

Section 2.14 - Notification of Sale of Condominium. ....15

**ARTICLE III.....16**

**ADMINISTRATION, MEMBERSHIP, AND VOTING RIGHTS.....16**

Section 3.1 - Duties and Powers of the Association. ....16

Section 3.2 - Membership.....16

Section 3.3 - Classes of Membership; Voting Rights. ....16

Section 3.4 - Board of Directors.....17

Section 3.5 - Specific Powers and Duties.....17

Section 3.6 - Prohibited Acts.....20

Section 3.7 - Adoption of Rules and Regulations. ....20

Section 3.8 - Indemnification. ....23

Section 3.9 - Limitation of Liability.....23

**ARTICLE IV .....25**

**ASSESSMENTS .....25**

Section 4.1 - Establishment and Imposition of Assessments.....25

Section 4.2 - Covenant to Pay. ....25

Section 4.3 - Payment of Assessments.....25

Section 4.4 - Maintenance Funds of Association. ....26

Section 4.5 - Regular Assessments.....27

Section 4.6 - Special Assessments. ....28

Section 4.7 - Limitation on Assessment Increases.....28

Section 4.8 - Notice of Assessment Increases.....30

Section 4.9 - Rate of Assessments.....30

Section 4.10 - Reimbursement Assessments.....30

Section 4.11 - Units Owned by Association. ....31

Section 4.12 - Taxes and Utilities. ....31

**ARTICLE V.....32**

**ASSESSMENT DELINQUENCIES AND COLLECTION .....32**

Section 5.1 - Assessment Delinquency. ....32

Section 5.2 - Payment Plans for Delinquent Assessments.....34

Section 5.3 - Assessment Collection. ....34

Section 5.4 - Priority of Assessment Liens. ....36

Section 5.5 - Waiver of Homestead.....37

Section 5.6 - Assignment of Rents. ....37

**ARTICLE VI.....39**

**USE RESTRICTIONS AND COVENANTS.....39**

Section 6.1 - Compliance and Enforcement.....39

Section 6.2 - Common Area. ....39

Section 6.3 - Mechanic’s Liens. ....42

Section 6.4 - General Use Restrictions.....42

Section 6.5 - Leasing of Units. ....50

Section 6.6 - Architectural and Design Restrictions. ....51

Section 6.7 - Restrictions on Unit Modification. ....55

Section 6.8 - Grandfathering of Pre-Existing Conditions. ....57

**ARTICLE VII .....57**

**MAINTENANCE AND REPAIR.....57**

Section 7.1 - Maintenance Standards. ....57

Section 7.2 - General Maintenance Obligations.....58

Section 7.3 - Owner Maintenance Obligations. ....58

Section 7.4 - Association Maintenance Obligations. ....59

Section 7.5 - Eradication of Wood-Destroying Pests.....60

Section 7.6 - Damage to Units.....61

Section 7.7 - Temporary Relocation Costs.....62

**ARTICLE VIII.....63**

**ARCHITECTURAL AND DESIGN CONTROL.....63**

Section 8.1 - Architectural Review. ....63

**ARTICLE IX.....63**

**INSURANCE.....63**

Section 9.1 - Association Insurance Requirement. ....63

Section 9.2 - Specific Association Insurance Provisions. ....66

Section 9.3 - Owner Insurance Requirements.....69

Section 9.4 - Injury or Damage Sustained Within a Unit. ....70

**ARTICLE X.....70**

**DAMAGE OR DESTRUCTION.....70**

Section 10.1 - Restoration Defined. ....70

Section 10.2 - Insured Casualty.....70

Section 10.3 - Inadequate Insurance Proceeds or Uninsured Loss. ....71

Section 10.4 - Restoration Assessment. ....71

Section 10.5 - Alternative Reconstruction. ....72

Section 10.6 - Sale of All Units.....72

Section 10.7 - Restoration of Partition Rights.....73

Section 10.8 - Rebuilding Contract. ....73

Section 10.9 - Interior Unit Repairs. ....73

**ARTICLE XI.....74**

<b>EMINENT DOMAIN .....</b>	<b>74</b>
Section 11.1 - Total Sale or Taking.....	74
Section 11.2 - Partial Sale or Taking.....	74
Section 11.3 - Representation by Association.....	75
<b>ARTICLE XII .....</b>	<b>76</b>
<b>RIGHTS OF MORTGAGEES .....</b>	<b>76</b>
Section 12.1 - Mortgages Permitted.....	76
Section 12.2 - Subordination.....	76
Section 12.3 - Amendments.....	77
Section 12.4 - Restriction on Certain Changes.....	78
Section 12.5 - Right to Examine Books and Records.....	79
Section 12.6 - Distribution of Insurance and Condemnation Proceeds.....	79
Section 12.7 - Notice to Mortgagees.....	80
Section 12.8 - Breaches of Restated Declaration.....	80
Section 12.9 - Foreclosure.....	81
Section 12.10 - Right to Furnish Information.....	81
Section 12.11 - No Right of First Refusal.....	81
<b>ARTICLE XIII.....</b>	<b>81</b>
<b>ENFORCEMENT AND DISPUTE RESOLUTION .....</b>	<b>81</b>
Section 13.1 - Right to Enforce.....	81
Section 13.2 - Equitable Relief.....	82
Section 13.3 - No Enforcement Waiver.....	82
Section 13.4 - Violations Constitute a Nuisance.....	82
Section 13.5 - Internal Dispute Resolution.....	82
Section 13.6 - Alternative Dispute Resolution.....	84
Section 13.7 - Judicial Reference.....	86

<b>ARTICLE XIV .....</b>	<b>88</b>
<b>AMENDMENTS .....</b>	<b>88</b>
<b>ARTICLE XV .....</b>	<b>89</b>
<b>MISCELLANEOUS PROVISIONS .....</b>	<b>89</b>
Section 15.1 - Term. ....	89
Section 15.2 - Headings, Number and Gender.....	90
Section 15.3 - Liberal Construction. ....	90
Section 15.4 - Severability. ....	90
Section 15.5 - Cumulative Remedies.....	90
Section 15.6 - No Discrimination.....	90
Section 15.7 - Attorneys’ Fees. ....	91
Section 15.8 - Delivery of Documents and Information. ....	91
<b>ARTICLE XVI.....</b>	<b>91</b>
<b>CONFLICTING PROVISIONS.....</b>	<b>91</b>
<b>EXHIBIT “A”.....</b>	<b>92</b>
<b>LEGAL DESCRIPTION OF THE PROPERTY.....</b>	<b>92</b>
<b>EXHIBIT “B”.....</b>	<b>93</b>
<b>ASSESSMENT SCHEDULE .....</b>	<b>93</b>
.....	93
<b>CERTIFICATE OF PRESIDENT AND SECRETARY.....</b>	<b>94</b>

**AMENDED AND RESTATED  
DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
TEMECULA OFFICE CENTRE PROPERTY OWNERS ASSOCIATION**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TEMECULA OFFICE CENTRE PROPERTY OWNERS ASSOCIATION (this “*Restated Declaration*”), effective as of the date of recordation hereof, is made by TEMECULA OFFICE CENTRE PROPERTY OWNERS ASSOCIATION (the “*Association*”), with reference to the following:

**RECITALS**

A. The Association is a California nonprofit mutual benefit corporation created for the purpose of managing the common interest development existing on certain real property located in the City of Temecula, County of Riverside, State of California, as more fully described on Exhibit “A” attached hereto and incorporated herein by reference (the “*Property*”).

B. The Property has been developed as a “condominium project”, as defined in the Commercial and Industrial Common Interest Development Act (the “*CICD Act*”) and consists of common area and twenty (20) units.

C. The Property is currently subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens, and charges set forth in the *Declaration of Covenants, Conditions and Restrictions for Temecula Office Centre* recorded on September 15, 2006 as Document/Instrument No. 2006-0985987 in the official records of Riverside County, California (the “*Original Declaration*”).

D. This Restated Declaration is intended to amend, restate, and replace, in its entirety, the Original Declaration, and has been approved in accordance with the requirements of the Original Declaration and the CICD Act.

NOW THEREFORE, the Association hereby declares that every portion of the Property is, and shall be, held, conveyed, hypothecated, encumbered, leased, rented, used, and occupied subject to the following covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens, and charges, all of which are hereby established and declared to be in furtherance of condominium ownership and the improvement, protection, maintenance, care, and management of the Property, and every portion thereof, and all of which are hereby further established, declared, and agreed to be for the purpose of uniformly enhancing, maintaining, and protecting the attractiveness of the Property and every part thereof. All of the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens, and charges set forth herein shall run with the Property and be binding upon, and inure to the benefit of, all persons and entities having or acquiring any right, title, or interest in the Property or any part thereof, and their respective grantees, heirs, executors, administrators, devisees, successors, and assigns.

## **ARTICLE I DEFINITIONS**

### **Section 1.1 - Terms.**

Whenever used in this Restated Declaration, the following capitalized terms shall have the following meanings:

***“Annual Budget Report”*** shall mean an annual budget report prepared by the Association containing the following documents and information: (1) a pro forma operating budget, showing the estimated revenue and expenses on an accrual basis; (2) a reserve summary; (3) a summary of the reserve funding plan adopted by the Board; (4) a statement as to whether the Board has determined to defer or not undertake repairs or replacement of any major component with a remaining life of 30 years or less; (5) a statement as to whether the Board has determined or anticipates that a levy of one or more Special Assessments will be required to repair, replace, or restore any major component or to provide adequate reserve

funds for the same, including the anticipated amount of the Special Assessment; (6) a statement as to the mechanism by which the Board will fund reserves to repair or replace major components; (7) a general statement addressing the procedures used for the calculation and establishment of the reserves to defray the future repair, replacement, or addition to those major components that the Association is obligated to maintain; (8) a statement of any outstanding loans; (9) a summary of the Association's insurance policies; and (10) any other information that is required by law or the Governing Documents or that the Board determines to be appropriate for inclusion.

**"Annual Policy Statement"** shall mean an annual policy statement prepared by the Association outlining the following: (1) The name and address of the person designated to receive official communications to the Association; (2) a statement explaining that a Member may submit a request to have notices sent to up to two different specified addresses; (3) the location, if any, designated for posting of a General Notice; (4) notice of a Member's option to receive General Notices by Individual Delivery; (5) notice of a Member's right to receive copies of meeting minutes; (6) the statement of Assessment collection policies; (7) a statement describing the Association's policies and practices in enforcing lien rights or other legal remedies for default in the payment of Assessments; (8) a statement describing the Association's discipline policy, if any, including any schedule of penalties for violations of the Governing Documents; (9) A summary of dispute resolution procedures; (10) a summary of any requirements for Association approval of a physical change to Property; (11) the mailing address for overnight payment of Assessments; and (12) any other information that is required by law or the Governing Documents or that the Board determines to be appropriate for inclusion.

**"Articles"** shall mean the *Articles of Incorporation of Temecula Office Centre Property Owners Association* filed with the Secretary of State of the State of California on August 9, 2005, and any duly adopted and filed amendments thereto; the Association is identified as entity number 2797152 by the California Secretary of State.

**"Assessments"** shall mean assessment charges levied against an Owner pursuant to this Restated Declaration, and shall include Regular Assessments, Reimbursement Assessments, and Special Assessments.

**“Assessment Unit”** shall mean the arithmetical value allocated to each Condo for purposes of calculating the share of assessments to be levied by the Association against such Condo pursuant to this Declaration.

**“Association”** shall mean Temecula Office Centre Property Owners Association, a California nonprofit mutual benefit corporation.

**“Beneficiary”** shall mean a mortgagee under a mortgage as well as a beneficiary under a deed of trust.

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

**“Bylaws”** shall mean the bylaws of the Association, including the *Amended and Restated Bylaws of Temecula Office Centre Property Owners Association* and any duly adopted amendments thereto.

**“CICD Act”** shall mean the Commercial and Industrial Common Interest Development Act, codified as Sections 6500 through 6876 of the California Civil Code.

**“City”** shall mean the City of Temecula in the County of Riverside in the State of California, in which the Development is located.

**“Common Area”** shall mean and refer to all areas within the Property other than the Condos and the Exclusive Use Common Areas (defined below) including, without limitation, all roadways or driveways, parking areas, exterior walls of buildings, planting, shrubs, irrigation systems, sidewalks, embellished pavement, water features, other landscaping improvements, Property identity signs, and drainage and other related facilities located from time to time on the Property. In addition, all water to be provided to all of the Condos shall be delivered through Common Area facilities and, therefore, the Owners shall be assessed for such water in the same manner as all other Common Areas; provided, however, Declarant shall have the right to install a separate water meter for each building or a flow meter to measure the amount of water actually used by each Condo, and, in the event of any such installation, each Owner shall be assessed for such water in

accordance with the amount thereof actually consumed. The Common Areas are to be established, operated, managed, used, repaired, and maintained by the Association in accordance with the provisions in this Restated Declaration.

**“Condominium”** shall mean an estate in real property consisting of: (1) a separate interest in a Unit, the boundaries of which are described on the Condominium Plan; and (2) an undivided interest as a tenant-in-common in a portion of the Common Area, as described in Section 2.2 of this Restated Declaration.

**“Condominium Plan”** shall mean the *Condominium Plan Temecula Office Centre* recorded against the Property on September 15, 2006, as Document/Instrument No. 2006-0985986 in the official records of Riverside County, California, and any duly adopted amendments thereto.

**“County”** shall mean the County of Riverside in the State of California, in which the Development is located.

**“Development”** shall mean the common interest development located at the Property, including the Common Area and the Units.

**“Director”** shall mean a natural person who serves on the Board.

**“Eligible Mortgage Holder”** shall mean any First Mortgagee who has sent the Association a written request for notice, as described in Section 12.7(b) of this Restated Declaration.

**“Exclusive Use Common Area”** shall mean a portion of the Common Area designated for the exclusive use of one or more, but fewer than all, of the Owners and which is appurtenant to a Condominium or Condominiums. The Exclusive Use Common Areas at the Development shall include, without limitation any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, exterior doors, doorframes, and hardware incident thereto, screens and windows or other fixtures designed to serve one or more, but fewer than all Condominiums, but located outside the boundaries of the Unit, to the extent these items exist; and internal and external telephone wiring designed to serve a single Unit, but located outside the boundaries of the Unit. No exterior walls of buildings, landscaping,

irrigation, walkways, or parking facilities shall be construed to be Exclusive Use Common Areas regardless of location or use. The Exclusive Use Common Areas are to be established, operated, managed, used, repaired, and maintained by the Association, at the expense of the benefited Condominium, in accordance with the provisions of this Restated Declaration.

**“First Mortgagee”** shall mean a Mortgagee holding a mortgage in a first lien position against a Condominium who has priority over all other mortgages, if any, that encumber the same Condominium.

**“General Delivery”** shall mean the general delivery of documents and/or notices to the Members pursuant to the methods described in the Bylaws.

**“General Notice”** shall mean the giving of notice by general notice to the Members pursuant to the methods described in the Bylaws.

**“Governing Documents”** shall mean this Restated Declaration and any other documents, such as, without limitation, the Articles, Bylaws, or Rules, which govern the operation of the Development or the Association.

**“Improvements”** shall mean: (1) all structures, additions, and/or appurtenances within the Development of every kind, including, but not limited to, underground installations, slope and grade alterations, buildings, mechanical, electrical and other equipment, recreational structures and amenities, walkways, vehicular and pedestrian entry gates, parking areas, driveways, walls, fences, antennae, railings, planters, storage areas, common trash receptacles, private utility lines and connections, poles, the exterior surfaces of any visible structures and the paint on such surfaces, landscaping and irrigation systems, and exterior air conditioning equipment; and (2) all additions and/or modifications to the exterior of any building at the Development, including, but not limited to, painting the exterior of any portion of a building or other structure, building, constructing, installing, or altering shades, awnings, screen doors, exterior doors, or solar heating panels, and/or altering in any way any portion of Exclusive Use Common Area appurtenant to any Unit.

***“Individual Delivery”*** shall mean the delivery of a document by individual delivery to a Member pursuant to the requirements of the CICD Act and as described in the Bylaws.

***“Individual Notice”*** shall mean the giving of notice by individual notice to a Member pursuant to the requirements of the CICD Act and as described in the Bylaws.

***“Invitee”*** shall mean a person who is invited to the Development by an Owner or a Resident, including but not limited to family members, social guests, houseguests, servants, employees, agents, and/or contractors of such Owner or Resident.

***“Lease”*** shall mean a lease or rental agreement, whether or not in writing, entered into between an Owner and a Tenant for the Tenant’s occupancy of the Owner’s Unit.

***“Lessee”*** shall mean the holder of a leasehold interest in all or part of the Property.

***“Licensee”*** shall mean any person or entity having any right or rights with respect to a part of the Property pursuant to a license granted by the Owner of such part of the Property.

***“Master Architectural Review Committee”*** shall mean the committee formed pursuant to Article VIII of this Restated Declaration to administer and enforce the architectural and design control guidelines contained in the Governing Documents. As provided in Section 8.1 of this Restated Declaration, if the Board does not appoint an Architectural Review Committee, the Board shall be deemed to be the body acting as the Architectural Review Committee.

***“Master Association”*** shall mean Rancho California Business Park Association, a California Nonprofit Mutual Benefit Corporation.

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

**“Mortgagee”** shall mean a Person, including the beneficiary of a deed of trust, holding a mortgage that encumbers a Condominium.

**“Occupant”** shall mean any person or entity who occupies part of the Property and is not an Owner, Lessee or Licensee.

**“Original Declaration”** shall mean the covenants, conditions and restrictions previously recorded against the Property, which are described in Recital C at the beginning of this Restated Declaration and which have been amended, restated and replaced by this Restated Declaration.

**“Owner”** shall mean the record owner(s) of fee simple title to a Condominium within the Development, including contract sellers but excluding those Persons having interest in a Condominium merely as security for the performance of an obligation.

**“Person”** shall mean a natural person, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, association, or other entity. When the word “person” is not capitalized in this Restated Declaration, it shall mean and refer only to natural persons.

**“Property”** shall mean the real property described in Exhibit “A” against which this Restated Declaration is recorded.

**“Regular Assessments”** shall mean annual Assessments levied by the Association against each Owner, representing the Owner’s share of: (1) the actual and estimated costs of, and reserves for, maintaining, managing, and operating the Common Area; (2) the costs and fees attributable to managing and administering the Association; and (3) all other costs and expenses incurred by the Association for the common benefit of the Development and the Owners, as may be required or allowed under the Governing Documents or law.

**“Reimbursement Assessments”** shall mean Assessments levied by the Association against an individual Owner as a means of reimbursing the Association for costs incurred by the Association, as described in Section 4.10 herein.

**“Reserve Accounts”** shall mean both of the following: (a) 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 (b) 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 funds shall be separately itemized from the funds described in (a).

**“Reserve Account Requirements”** shall mean 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.

**“Restated Declaration”** shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Temecula Office Centre Property Owners Association, and any duly adopted and recorded amendments hereto.

**“Rules”** or **“Rules and Regulations”** shall mean any rules, regulations and policies adopted by the Board from time to time that apply generally to the management and operation of the Development or the conduct of the business and affairs of the Association.

**“Secret Ballot”** shall mean the procedures outlined in Section 4.3 of the Bylaws, to be used in an Association election on any topic that is expressly identified in the Governing Documents as required to be held by Secret Ballot, if any.

**“Separate Interest”** shall mean a separately owned Unit.

**“Special Assessments”** shall mean Assessments levied by the Association against each Owner to supplement budgeted Regular Assessments for any fiscal year because the amount to be collected from Regular Assessments for that fiscal year will, for any reason, be inadequate to defray the Association’s common expenses.

**“Tenant”** shall mean a person who occupies any portion of a Unit at the Development pursuant to a Lease, irrespective of any rent paid or compensation given to the Owner of the Unit for such occupancy.

**“Unit”** means that portion of a Condominium that consists of a separate interest used for commercial or industrial purposes. Each Unit shall be a separate freehold estate, as separately shown, numbered, and designated on the Condominium Plan. The element(s) and boundaries of the Units are summarized in Section 2.4 of this Restated Declaration.

**Section 1.2. Reference to Statute.**

Wherever reference is made in this Restated 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, and such reference shall continue to apply any amendment or renumbering of, and any successor statute or law to, such statute or law.

**ARTICLE II**

**PROPERTY OWNERSHIP AND EASEMENTS**

**Section 2.1 - Development Subject to Restated Declaration.**

The entire Development and the Property shall be subject to this Restated Declaration.

**Section 2.2 - Description of Land and Improvements.**

The Development consists of the real property described in Exhibit “A” and is divided between the Common Area and the Units. The Common Area is owned by the Owners as tenants-in-common in equal one-twentieth (1/20) undivided interests. Each Owner has a nonexclusive right of ingress, egress, use, enjoyment, and general recreational purposes over, on, and upon the Common Area; provided, however, that nonexclusive easement is subordinate to any exclusive easements held by any Owner. Each Unit is owned by an individual Owner(s) as separate property.

### **Section 2.3 - Condominium Ownership.**

Ownership of each Condominium within the Development shall include: (1) a separate interest in a Unit, the boundaries of which are described on the Condominium Plan; (2) all easements appurtenant to such Unit (nonexclusive and exclusive) over, upon, under, and/or through the Common Area and/or other Units within the Development (whether reserved in this Restated Declaration and/or otherwise described on the Condominium Plan and/or in the grant deed transferring title to said Unit to the Owner thereof), including the Exclusive Use Common Areas appurtenant to the Unit; and (3) a membership in the Association.

### **Section 2.4 - Unit Description.**

Each Unit consists of the space bounded by and contained within the interior surfaces of the perimeter walls, floors, ceilings, windows, and doors of the Unit, and includes both the portions of the building so described and the airspace so encompassed, as well as the midpoint of the interior common walls. Unless the Condominium Plan otherwise provides, to the extent walls, floors, or ceilings are designated as boundaries of a Unit, the interior finished surfaces of the perimeter walls, floors, ceilings, windows, doors (including entry door glass), and outlets located within the Unit are part of the Unit and any other portions of the walls, floors, or ceilings are part of the Common Area. Notwithstanding the foregoing, as described in the Condominium Plan, the following are not a part of a Unit: bearing walls, columns, vertical supports, floors, roofs, foundations, beams, balcony railings, pipes, ducts, flues, chutes, conduits, wires, and other utility installations wherever located, except the outlets thereof when located within the Unit.

### **Section 2.5 - Presumption Regarding Boundaries of Units.**

In interpreting deeds and the Condominium Plan, the existing physical boundaries of a Unit, when the boundaries of the Unit are contained within a building, 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.

**Section 2.6 – Splits, Reversions to Acreage or Resubdivision of Condominiums.**

No splits, reversions to acreage or resubdivision of any of the Condominiums contained in the Development and shown on the final map as recorded, shall be permitted without the consent of the appropriate governmental agency, the Association, and the Master Association in writing. In the event of a split, reversion to acreage or resubdivision of one or more Condominiums is so approved, each of the Condominiums created as a result of the Condominium split, reversion to acreage or resubdivision, shall be subject and bound by this Declaration, the Articles and the Bylaws of the Association, and existing laws and regulations of the City of Temecula, County of Riverside and State of California.

**Section 2.7 - No Separate Conveyance.**

No Unit shall be conveyed by any Owner separately from that Owner's interest in the Common Area. Furthermore, no Unit shall be conveyed separately from the Exclusive Use Common Areas appurtenant thereto, and *vice versa*. The conveyance of a Unit shall automatically transfer the appurtenant interest in the Common Area, all elements of the Unit, and in the applicable Exclusive Use Common Areas without the necessity of express reference in the instrument of conveyance. Any conveyance of a Unit shall also automatically include the Owner's membership interest in the Association. Any conveyance in violation of the foregoing provisions shall be void.

**Section 2.8 - No Restriction of Access to 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 a Member or Resident physical access to the Member's or Resident's Unit, either by restricting access through the Common Area to the Unit, or by restricting access solely to the Unit.

**Section 2.9 - Utility Rights, Easements and Duties.**

(a) For purposes of this Section 2.9, the term "*Utility Facilities*" shall mean and include all utility facilities, including, without limitation, intake and exhaust systems, storm and sanitary sewer systems, drainage systems, ducting systems for ventilation and utility services, domestic water systems, natural gas systems, heating and air conditioning systems, electrical systems, telephone

systems, cable television systems, telecommunications systems, water systems, sump pumps, central utility services and all other utility systems and facilities reasonably necessary to service any Improvement situated in, on, over and under the Development.

(b) The rights and duties of the Owners of Units within the Development with respect to Utility Facilities shall be as follows:

(1) Whenever a Utility Facility, or any portion thereof, installed within the Property lies in or upon a Unit owned other than by the Owner of a Unit served by said Utility Facility, the Owner of any Unit served by said Utility Facility shall have the right, and is hereby granted an easement to the full extent necessary to enter upon the Unit, or to have a utility company enter upon the Unit, in or upon which said Utility Facility, or any portion thereof, lies, to repair, replace and generally maintain said Utility Facility as and when necessary.

(2) Whenever a Utility Facility, or any portion thereof, installed within the Property serves more than one Unit, the Owner of each Unit served by said Utility Facility shall be entitled to the full use and enjoyment of such portions of said Utility Facility that services the Owner's Unit.

(3) In the event of a dispute between Owners with respect to the repair or rebuilding of any Utility Facility, or with respect to the sharing of the cost thereof, then, upon receipt of a written request from one of such Owners addressed to the Association, the matter shall be submitted to the Board, which shall decide the dispute, and the decision of the Board shall be final and conclusive on such Owners.

(c) An easement over and under the Property for the installation, repair, and maintenance of Utility Facilities as may be required or needed to service the Common Area, or items for which the Association is responsible under this Restated Declaration, is hereby reserved for the Association.

(d) Notwithstanding the foregoing, the Association shall maintain all Utility Facilities located in the Common Area, except for those Utility Facilities maintained by utility companies (public, private, or municipal) and those Utility Facilities which may be identified as the responsibility of an Owner under this

Restated Declaration. The Association shall pay, as a common expense, all charges for utilities supplied to the Development, except those metered or charged separately to the Units.

(e) The exercise of any right or easement provided for in this Section 2.9 shall be subject to the conditions precedent that such exercise shall be reasonable and in good faith, and that all damage to a Unit or to the Common Area resulting therefrom shall be repaired at the sole cost and expense of the Person exercising such easement.

### **Section 2.10 - Easements.**

(a) The Association shall have a nonexclusive right and easement appurtenant to the Common Area and to all Units for the support, maintenance, and repair of the Common Area. Each Owner shall have a nonexclusive right and easement appurtenant to the Common Area and to all Units for the support, maintenance, and repair of the Owner's Unit and any Exclusive Use Common Area designated for the use of the Owner. All governmental subdivisions, agencies, and utilities and their agents shall have a nonexclusive easement over the Common Area (including, but not limited to, Exclusive Use Common Areas) for the purposes of performing their duties within the Development or with respect to the Property, as may be applicable. The Property may be burdened in some cases, and benefitted in other cases, by other easements granted under this Restated Declaration, the Condominium Plan or other documents to the Association, one or more Owners and/or a third party or parties.

(b) The Association and all Owners shall have a nonexclusive easement for ingress and egress over and Condominiums within the Property for the purpose of gaining access to fire riser rooms and roof ladders in order to gain access to the roofs of the Property. A key is to be provided to any Condominium in which a fire riser room or roof ladder is located to any professional management company to insure all Owners have access to such fire riser room and roof ladders at all times.

(c) The Master Association shall have an easement over the Property for maintenance and installation of Master Association common area landscaping and related improvements and any other Master Association owned or maintained improvements on or adjacent to the Property.

### **Section 2.11 - Encroachment Easements.**

Each Unit and the Common Area shall have an easement over all adjoining Units and Common Area for the purpose of accommodating any minor encroachment due to engineering errors, errors in original construction, settlement, or shifting. There shall be valid easements for maintenance of said encroachments so long as they shall exist, and the rights and obligations of Unit Owners and the Association shall not be altered in any way by said encroachment, settlement, or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner if said encroachment occurred due to the negligence, willful acts, or omissions of such Owner (or someone for whose acts the Owner is responsible). In the event a structure within the Development is partially or totally destroyed and then rebuilt or repaired, minor encroachments over adjoining Units and Common Area shall be permitted, and there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

### **Section 2.12 - Prohibition Against Partition.**

Except as provided by the CICD Act, the Common Area shall remain undivided, and there shall be no judicial partition thereof.

### **Section 2.13 - Equitable Servitudes.**

The covenants and restrictions in this Restated Declaration shall be enforceable equitable servitudes and shall inure to the benefit of and bind all Owners of Units. These servitudes may be enforced by any Owner of a Unit or by the Association, or by both.

### **Section 2.14 - Notification of Sale of Condominium.**

Within five (5) business days after a Person assumes title to a Unit and becomes the Owner of such Unit, whether by sale, foreclosure, or other transfer, such Person shall be required to notify the Board in writing of his or her assumption of title to the Unit. Such notification shall include, at a minimum: (1) the full name of such Person; (2) the street address and number of the Unit transferred to such Person; (3) the mailing address of such Person; and (4) the date of transfer of the Unit. Prior to the receipt of such notification, any notice or communication given by the Association, Board, Architectural Review Committee, or a representative of same,

shall be deemed to be duly made and given to such Person if and when given to the transferor/prior Owner of the Unit.

### **ARTICLE III**

#### **ADMINISTRATION, MEMBERSHIP, AND VOTING RIGHTS**

##### **Section 3.1 - Duties and Powers of the Association.**

The Association shall be charged with the duties and vested with the powers set forth in the Articles, the Bylaws, and this Restated Declaration. The Association shall have the authority to do all lawful things which are necessary or proper in operating the Development for the peace, health, comfort, safety, and general welfare of the Owners, subject to the limitations on the powers of the Association set forth in the Governing Documents.

##### **Section 3.2 - Membership.**

Ownership of a Condominium is the sole qualification for membership in the Association. Every Person, upon becoming an Owner, shall automatically become a Member of the Association, and shall remain a Member of the Association until such time as such Person's ownership of a Condominium ceases for any reason, at which time such Person's membership in the Association shall automatically cease. Membership in the Association shall be held in accordance with the provisions of the Articles, the Bylaws, and this Restated Declaration.

Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the sale of the Condominium to which it is appurtenant, and then only to the purchaser of such Condominium. A Mortgagee shall not have membership rights in the Association unless and until the Mortgagee becomes an Owner by foreclosure or deed in lieu of foreclosure. Any attempt to make a prohibited transfer of membership in the Association shall be null and void.

##### **Section 3.3 - Classes of Membership; Voting Rights.**

The Association shall have one (1) class of membership. Each Member shall be entitled to cast one (1) vote for each Unit owned. The voting rights of the Members shall be subject to the provisions of the Bylaws and this Restated Declaration.

### **Section 3.4 - Board of Directors.**

The rights, powers, duties, and obligations of the Association shall be exercised by the Board, subject to any limitations contained in the Articles, the Bylaws, or this Restated Declaration. Such rights, powers, duties, and obligations shall be discharged when and in such manner as the Board determines in its judgment to be appropriate.

### **Section 3.5 - Specific Powers and Duties.**

In addition to its general powers and duties, the Association has the specific powers and duties set forth in this Section 3.5.

#### **(a) Common Area.**

The Association shall have the sole and exclusive right, power and duty to manage, operate, control, insure, repair, maintain, rebuild, replace, and/or restore all of the Common Area (and all Improvements forming a part thereof) in good condition and repair, except to the extent such right and duty is otherwise provided to any Owner in this Restated Declaration.

#### **(b) Assessments.**

The Association shall have the right and power to establish, fix, levy, collect, and enforce the payment of Assessments in accordance with the provisions of Article IV of this Restated Declaration and the CICA Act.

#### **(c) Rules and Regulations.**

The Association, through the Board, shall have the right and power to promulgate, adopt, and enforce Rules and Regulations for the Development and the Association, consistent with Section 3.7 of this Restated Declaration and the CICA Act. The Association, through the Board, shall have the power and authority to amend the Rules and Regulations from time to time, in the Board's sole discretion. The Rules and Regulations may, among other things, establish reasonable fees for the use of any recreational facility or amenity in the Common Area and/or limit the number of persons that may utilize any recreational facility or amenity in the Common Area at any one time.

#### **(d) Enforcement of Governing Documents.**

The Association shall have the right and power to enforce the provisions of the Governing Documents; provided, however, nothing contained in this Restated

Declaration shall be construed to prohibit enforcement of the Governing Documents by any Owner.

**(e) Member Discipline.**

The Association shall have the right and power to impose disciplinary measures against a Member for a violation of the Governing Documents by the Member, a Resident of the Member's Unit, or an Invitee of either, through the imposition of monetary penalties and/or the suspension of membership privileges (such as the suspension of Common Area recreational facility or amenity use privileges). The Association, through the Board, also has the power to impose a Reimbursement Assessment against a Member as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to the Common Area caused by the Member, a Resident of the Member's Unit, or an Invitee of either. When imposing disciplinary measures against a Member, the Association shall adhere to the procedures prescribed in the Bylaws and the law. A monetary penalty for a violation of the Governing Documents shall not exceed the monetary penalty stated in the schedule of monetary penalties or supplement that is in effect at the time of the violation.

**(f) Entry Into Units.**

The Association shall have the right and power, but not the duty, to enter each Unit and Exclusive Use Common Area to: (1) inspect the Property; (2) perform any maintenance, repairs, landscaping, or construction work for which the Association is responsible; (3) abate any nuisance, or any dangerous, unauthorized, prohibited or unlawful activity, being conducted or maintained in such Unit or Exclusive Use Common Area; (4) effect necessary maintenance or repairs which the Owner has failed to perform; (5) protect the property rights and welfare of the other Owners; or (6) for any other purpose reasonably related to the performance by the Association of its responsibilities under this Restated Declaration. Such entry shall be made after three (3) or more days' advance written notice to the Owner by Individual Delivery, except for emergency situations, for which advance notice is not required, and with as little inconvenience to the Owner as is practical. Any verifiable damage to the Unit or Exclusive Use Common Area caused by entry under this subsection shall be repaired by the Association at its sole expense. No person entering a Unit or Exclusive Use Common Area on behalf of or at the direction of the Association pursuant to this subsection shall be guilty of trespass.

**(g) Borrow Money.**

The Association shall have the right and power, but not the duty, to borrow money as may be needed in connection with the discharge by the Association of its powers and duties, and the right and power, but not the duty, to cause to be executed and delivered, in the Association's name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, or other evidences of debt and securities for same, subject to any restrictions set forth in the Articles or this Restated Declaration.

**(h) Goods and Services.**

The Association shall have the right and power to contract and pay for: (1) maintenance, repair, and replacement of Improvements in the Common Area in accordance with the Association's responsibility for same as set forth in this Restated Declaration, including, but not limited to, Common Area building components, landscaping, and utility facilities; (2) materials, supplies, and services relating to the Common Area, including, but not limited to, utility services Common Area facilities; (3) materials, supplies, and services relating to the Units, as may be applicable and subject to any limitations set forth in the Governing Documents, such as, without limitation, bulk satellite or cable television services for the Development; (4) employment of personnel as necessary to provide for proper operation of the Property; (5) professional management services for the Development and the Association, subject to the provisions of the Bylaws; and (6) legal, accounting, and consulting services necessary or proper in the operation of the Development and the Association or the enforcement of the Governing Documents.

**(i) Grant of Exclusive Use Common Area.**

The Association shall have the right and power to grant Exclusive Use Common Area, subject to the requirements of the CICD Act and this Restated Declaration.

**(j) Vehicle and Parking Enforcement.**

The Association shall have the right and power to remove any vehicle within the Development parked in violation of this Restated Declaration or the Rules, in accordance with the provisions of Section 22658 of the Vehicle Code.

**(k) Legal Actions.**

The Association shall have standing to institute, defend, settle, or intervene in litigation, alternative dispute resolution, or administrative proceedings in its own name as the real party in interest and without joining the Owners, in matters pertaining to: (1) enforcement of the Governing Documents, including, but not limited to, the collection of delinquent Assessments in accordance with this Restated Declaration; (2) damage to the Common Area; (3) damage to portions of the Units which the Association is obligated to maintain or repair; (4) damage to portions of the Units which arises out of, or is integrally related to, damage to the Common Area or portions of the Units which the Association is obligated to maintain or repair; or (5) any other matters in which the Association is a party, including, but not limited to, contract disputes.

**Section 3.6 - Prohibited Acts.**

In addition to the other limitations set forth in the Governing Documents, the Association shall not engage in any of the activities set forth in this Section 3.6.

**(a) Off-Site Nuisances.**

The Association shall not use any Association funds or resources to abate any annoyance or nuisance emanating from outside the physical boundaries of the Property.

**(b) Political Activities.**

The Association shall not conduct, sponsor, participate in, or expend funds or resources on any activity, campaign, or event, including, but not limited to, any social or political campaign, event, or activity, which does not directly and exclusively pertain to the authorized activities of the Association.

**Section 3.7 - Adoption of Rules and Regulations.**

The Board may adopt Rules and Regulations in accordance with the provisions of this Section 3.7. For purposes of this Section 3.7, a Rule change is commenced when the Board takes its first official action leading to adoption of the Rule change.

**(a) Validity of Rules.**

A Rule is valid and enforceable only if all of the following requirements are satisfied:

- (1) The Rule is in writing.
- (2) The Rule is within the authority of the Board conferred by law or by this Restated Declaration, the Articles, or the Bylaws.
- (3) The Rule is not in conflict with governing law and this Restated Declaration, the Articles, or the Bylaws.
- (4) The Rule is reasonable, adopted, amended, or repealed in good faith and in substantial compliance with the requirements of this Section 3.7 and the CICD Act.

**(b) Application of Rule Change Requirements.**

- (1) The Rule change requirements set forth in subsection (c) of this Section 3.7 apply to Rules that relate to one or more of the following subjects:
  - (A) Use of the Common Area or of an Exclusive Use Common Area.
  - (B) Use of a Unit, including any aesthetic or architectural standards that govern alteration of a Unit.
  - (C) Member discipline, including any schedule of monetary penalties for violation of the Governing Documents and any procedure for the imposition of penalties.
  - (D) Any standards for delinquent Assessment payment plans.
  - (E) Any procedures adopted by the Association for resolution of disputes.
  - (F) Any procedures for reviewing and approving or disapproving a proposed physical change to a Member's Unit or to the Common Area.

(G) Procedures for elections.

(2) The Rule change requirements set forth in subsection (c) of this Section 3.7 do not apply to the following actions of the Board:

- (A) A decision regarding maintenance of the Common Area.
- (B) A decision on a specific matter that is not intended to apply generally.
- (C) A decision setting the amount of an Assessment.
- (D) A Rule change that is required by law, if the Board has no discretion as to the substantive effect of the Rule change.
- (E) Issuance of a document that merely repeats existing law or the Governing Documents.

**(c) Rule Change Requirements.**

The Board shall provide General Notice of a proposed Rule change at least twenty-eight (28) days before making the Rule change. The notice shall include the text of the proposed Rule change and a description of the purpose and effect of the proposed Rule change. Notwithstanding the foregoing, notice is not required if the Board determines that an immediate Rule change is necessary to address an imminent threat to public health or safety or imminent risk of substantial economic loss to the Association.

A decision on a proposed Rule change shall be made at a Board meeting, after consideration of any comments made by Association Members. As soon as possible after making a Rule change, but not more than fifteen (15) days after making the Rule change, the Board shall deliver General Notice of the Rule change. If the Rule change was an emergency Rule change, the notice shall include the text of the Rule change, a description of the purpose and effect of the Rule change, and the date that the Rule change expires. An emergency Rule change is effective for one hundred twenty (120) days unless the Rule change provides for a shorter effective period; an emergency Rule change may not be readopted as an emergency Rule change.

### **Section 3.8 - Indemnification.**

To the fullest extent authorized by law, the Association shall indemnify all Board members, Association officers, Architectural Review Committee members, and all other Association committee members for all damages, pay all expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action brought because of performance of an act or omission which such person reasonably believed to be within the scope of his or her duties (each, an “*Official Act*”). Board members, Association officers, Architectural Review Committee members, and all other Association committee members are deemed to be agents of the Association when they are performing Official Acts for purposes of obtaining indemnification from the Association pursuant to this Section 3.8. The entitlement to indemnification under this Section 3.8 shall inure to the benefit of the estate, executor, administrator, and heirs of any person entitled to such indemnification. Notwithstanding the foregoing, the Association shall not be required to provide the foregoing indemnification to any Board member, Association officer, Architectural Review Committee member, or any other Association committee member who is determined: (1) not to have acted in accordance with the requirements of Section 7231 of the Corporations Code (the provisions of which are commonly referred to as the “business judgment rule”); (2) under Section 7237 of the Corporations Code to have acted in bad faith in the performance of such person’s duties and, in the case of a criminal proceeding, to have had reasonable cause to believe such person’s conduct was unlawful; or (3) to have acted with willful or malicious misconduct.

The Association has the power, but not the duty, to the fullest extent authorized by law, to indemnify any other Person acting as an agent of the Association for damages incurred, pay expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action because of an Official Act.

### **Section 3.9 - Limitation of Liability.**

#### **(a) Limited Obligation to Act.**

The rights and powers conferred upon the Board, the Architectural Review Committee or other committees of the Association, or the members thereof, or any other representatives of the Association by the Governing Documents are not duties, obligations, or liabilities charged upon those Persons unless such rights and powers are explicitly identified as including duties or obligations in the Governing

Documents or law. Unless a duty to act is imposed upon the Board, the Architectural Review Committee or other committees of the Association, or the members thereof, and/or any other representatives of the Association by the Governing Documents or law, such Persons shall have the right to decide to act or not act. Any decision not to act by such Persons shall not be a waiver of the right to act in the future.

**(b) Liability for Injuries and Damage.**

No Person shall be liable to any other Person (other than the Association or a party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries result from the Person's willful or malicious misconduct. No Person is liable to the Association (or any party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent such injuries or damage result from such Person's negligence or willful or malicious misconduct. The Association shall not be liable for damage to a Unit, unless such damage was caused by the willful misconduct or negligence of the Association or any of its Directors, officers, agents, representatives, or employees.

**(c) Personal Liability of Directors and Officers.**

A volunteer Director or volunteer officer of the Association shall not be personally liable to any 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 of the Association 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 including 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, in the types of coverage and in the minimum amounts prescribed under this Restated Declaration. The payment of actual expenses incurred by a Director or officer of the Association 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 subsection. Notwithstanding the foregoing, the limitation of liability set forth in this subsection

shall only apply to a volunteer Director or officer of the Association who is an Owner of no more than two (2) Units in the Development.

## **ARTICLE IV ASSESSMENTS**

### **Section 4.1 - Establishment and Imposition of Assessments.**

The Association shall levy Regular Assessments and Special Assessments sufficient to perform its obligations under the Governing Documents and the CICD 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.

### **Section 4.2 - Covenant to Pay.**

Each Owner shall pay to the Association all Assessments and other charges established and levied by the Association pursuant to this Restated Declaration. Assessments and any late charges, reasonable fees and costs of collection, if any, and interest, if any, assessed in accordance with the provisions of this Restated Declaration shall be a debt of the Owner of the Unit at the time the Assessment or other sums are levied. No Owner may waive or otherwise escape liability for Assessments by nonuse of the Common Area and/or abandonment of the Owner's Unit.

### **Section 4.3 - Payment of Assessments.**

(a) Assessments shall be paid by such method or methods as may be established by the Board.

(b) Any Assessment payments made by an Owner 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, and/or interest. Notwithstanding the foregoing, unless otherwise limited by law, the terms of a payment plan entered into between an Owner and the Association may provide for a different application of payments.

(c) When an Owner makes an Assessment 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.

(d) The Association shall provide a mailing address for overnight payment of Assessments. The address shall be provided in the Annual Policy Statement.

(e) If a dispute exists between an Owner and the Association regarding any disputed 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, the Owner may, in addition to pursuing dispute resolution pursuant to applicable provisions of this Restated Declaration, 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. The foregoing right of an Owner shall not impede the Association's ability to collect delinquent Assessments as provided in this Restated Declaration.

(f) All Assessments shall be payable in the amount specified and no offset against such amount shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Governing Documents or a claim that the Association owes money, for any reason, to the Owner.

#### **Section 4.4 - Maintenance Funds of Association.**

The Association shall establish no fewer than two (2) separate cash deposit accounts (the "*Maintenance Fund Accounts*"), into which shall be deposited all monies paid to the Association and from which disbursements shall be made, as provided in this Restated Declaration. The Maintenance Fund Accounts may be established as trust accounts at one (1) or more banking and/or savings institutions whose accounts are insured by the Federal Deposit Insurance Corporation, and shall include both of the following:

(a) One (1) or more "operating accounts", into which shall be deposited the operating portion of all Assessments, as fixed and determined for all Members in accordance with this Restated Declaration. Disbursements from the operating account shall be for the general need of the operation of the Association and the

Development, including, but not limited to, wages, repairs, payment of vendors, betterments, maintenance, utilities, and other operating expenses of the Development, as may be applicable.

(b) One (1) or more 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 to repair, restore, replace, or maintain and for which the reserve fund was established. Notwithstanding the foregoing, the Board may authorize the temporary transfer of moneys from a Reserve Account to the Association's operating accounts to meet short-term cash flow requirements or other expenses, pursuant to the provisions of the CICD Act or Governing Documents. The signatures of at least two (2) Directors shall be required for the withdrawal of moneys from the Association's Reserve Accounts. Moneys received by the Association, whether from Assessments or otherwise, shall not be deemed reserve funds until deposited into a Reserve Account.

#### **Section 4.5 - Regular Assessments.**

(a) Regular Assessments are to be levied and collected for: (1) the actual and estimated costs of, and reserves for, maintaining, managing, and operating the Common Area; (2) the costs and fees attributable to managing and administering the Association; and (3) all other costs and expenses incurred by the Association for the common benefit of the Development and the Owners, as may be required or allowed under the Governing Documents or law.

(b) Regular Assessments shall be estimated on an annual basis by the Board and documented in the Annual Budget Report for each fiscal year of the Association. Each Owner shall pay Regular Assessments for the Owner's Unit to the Association in equal monthly installments on or before the first (1<sup>st</sup>) day of each calendar month, unless the Board adopts an alternative method for payment, regardless of whether any monthly invoice, statement, or notice of the Regular Assessment is provided to the Owner. Annual Regular Assessments for fractions of any month shall be prorated on the basis of a thirty (30) day month.

(c) Annual increases in Regular Assessments for any fiscal year shall not be imposed unless the Board has distributed the Annual Budget Report with respect to that fiscal year, or has obtained the approval of a majority of a quorum of the Members at a Member meeting or election to increase Regular Assessments. For the purposes of this subsection (c), and notwithstanding any contrary provision in the Governing Documents, “quorum” shall be more than fifty percent (50%) of the Members.

(d) The failure of the Board to fix Regular Assessments prior to the commencement of any fiscal year shall not be deemed a waiver or modification of any provision of this Restated Declaration or a release of any Owner from the obligation to pay Regular Assessments, and the Regular Assessments for such fiscal year shall continue in the same amount and at the same rate as in the immediately previous fiscal year.

#### **Section 4.6 - Special Assessments.**

If the Board determines that the amount to be collected from Regular Assessments for a fiscal year will, for any reason, be inadequate to defray the Association’s common expenses for such fiscal year, the Board shall levy a Special Assessment for the additional amount needed to supplement the Regular Assessments, subject to any limitations imposed by this Restated Declaration or the CICD Act.

#### **Section 4.7 - Limitation on Assessment Increases.**

(a) The Board may not impose a Regular Assessment that is more than ten percent (10%) greater than the Regular Assessment for the Association’s preceding fiscal year, without the approval of a majority of a quorum of the Members at a Member meeting or election. For the purposes of this subsection (a), and notwithstanding any contrary provision in the Governing Documents, “quorum” shall be more than fifty percent (50%) of the Members. The requirement for obtaining consent of the Association Members for regular assessment increases in excess of ten percent (10%) above the regular assessment for the previous year shall not apply to regular assessment increases needed as a result of an increase in regular assessments or the levy of a special assessment against the Property by the Master Association.

(b) Special Assessments may be levied by the Board, if, for any reason, the Board determines that the estimated total amount of funds necessary to defray the expenses of the Association for a given fiscal year is or will become inadequate to meet the estimated expenses of the Association, including but not limited to, unanticipated repairs, replacements or reconstruction of the capital improvements in the Common Areas, or if funds are otherwise required for any authorized activity of the Association.

(1) The Board shall determine the approximate amount necessary to defray the expenses set forth in Section 4.7(b) above and, if the amount is approved by a majority vote of the Board, it shall become a special assessment over the remaining months of the fiscal year or levy the assessment immediately against each Condominium. Any Special Assessment in excess of ten percent (10%) of the budgeted gross expenses of the Association for the fiscal year in which a special assessment is levied, shall require approval by a vote or written consent by a majority of the voting power of the Members of the Association. The requirements stated above for obtaining approval of the members prior to levying a special assessment in excess of ten percent (10%) of the Association's budgeted gross expenses shall not apply to special assessments levied by the Association in order to pay a special or an emergency assessment levied by the Master Association or to make up a delinquency in payment of assessments to the Master Association.

(c) Subsection (a) of this Section 4.7 does not limit Assessment increases necessary for emergency situations. For purposes of this subsection (b), 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 Annual Budget Report. However, prior to the imposition or collection of an Assessment under this provision, 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.

#### **Section 4.8 - Notice of Assessment Increases.**

The Association shall provide Individual Notice to the Members of any increase in the Regular Assessments or Special Assessments of the Association, not less than thirty (30) nor more than sixty (60) days prior to the increased Assessment becoming due.

#### **Section 4.9 - Rate of Assessments.**

The total Annual Regular Assessments and all Special Assessments shall be levied against each Unit as described on Exhibit "B" attached hereto and incorporated herein by reference; provided, however, an Assessment levied to fund the repair or reconstruction of damage or destruction to the Development pursuant to Article X of this Restated Declaration shall be levied on the basis described in Section 10.4 of this Restated Declaration.

#### **Section 4.10 - Reimbursement Assessments.**

(a) The Association may levy a Reimbursement Assessment against an individual Owner as a means of reimbursing the Association for costs incurred by the Association: (1) in the repair of damage to Common Area caused by the Owner, a Resident of the Owner's Unit, or an Invitee of either; (2) on behalf of and for the benefit of the Owner, whether with the Owner's consent or pursuant to the Association's powers under the Governing Documents or law, including, without limitation, the performance of maintenance or repairs to the Owner's Unit or Exclusive Use Common Area components for which the Owner is responsible; (3) due to the negligence, willful acts, or omissions of the Owner, a Resident of the Owner's Unit, or an Invitee of either, including, without limitation, an increase in the insurance premiums for any insurance policy purchased or obtained by the

Association for the benefit of the Development and the Owners; and/or (4) to address a violation of the Governing Documents by the Owner (or a Resident of or Invitee to the Owner's Unit), including, without limitation, attorneys' fees and costs.

(b) Prior to levying a Reimbursement Assessment against an Owner, the Board shall notify the Owner in writing of the Board's intent to meet to consider or impose the Reimbursement Assessment, by either personal delivery or Individual Delivery 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 costs incurred by the Association for which the Reimbursement Assessment may be imposed against the Owner, and a statement that the Owner has a right to attend and may address the Board at the meeting. The Board shall meet in executive session to consider or impose the Reimbursement Assessment, unless the Owner requests that the Board meet in open session. The decision of the Board to impose a Reimbursement Assessment shall be final and binding on the Owner.

(c) If the Board determines to impose a Reimbursement Assessment against an Owner, the Board shall provide the Owner a written notification of the decision, by either personal delivery or Individual Delivery, within fifteen (15) days following the action. Reimbursement Assessments shall be due and payable thirty (30) days from the date Individual Notice of the Reimbursement Assessment is given by the Board to the Owner.

#### **Section 4.11 - Units Owned by Association.**

The portion of any Assessments attributable to any Unit owned by the Association, if any, shall be deemed to be a common expense payable by all of the remaining Unit Owners through Regular Assessments and/or Special Assessments. Such Assessments shall be allocated among each of the remaining Unit Owners based on the rate of Assessments described in Section 4.9 of this Restated Declaration.

#### **Section 4.12 - Taxes and Utilities.**

Each Owner shall be obligated to pay the taxes and assessments assessed by the City, County, and/or 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 assessed or charged individually against such Owner's Unit.

**ARTICLE V**  
**ASSESSMENT DELINQUENCIES AND COLLECTION**

**Section 5.1 - Assessment Delinquency.**

(a) Assessments levied pursuant to the Governing Documents shall be delinquent thirty (30) days after they become due.

(b) If an Assessment is delinquent, the Association may recover all of the following:

(1) Reasonable costs incurred in collecting the delinquent Assessment, including reasonable attorneys' fees.

(2) A late charge not exceeding ten percent (10%) of the delinquent Assessment or ten dollars (\$10), whichever is greater.

(3) Interest on all sums imposed in accordance with this Section 5.1, including the delinquent Assessments, reasonable fees and costs of collection, and reasonable attorney's fees, at an annual interest rate not to exceed ten percent (10%) or the maximum lawful rate, whichever is greater, commencing thirty (30) days after the Assessment becomes due.

(c) Prior to recording a lien upon the Unit of an Owner of record to collect a debt to the Association that is past due, the Association shall comply with the requirements of the CICD Act and the Governing Documents.

(d) The amount of any Assessment, plus any costs of collection, late charges, and interest assessed in accordance with this Restated Declaration, shall be a lien on the Owner's Unit from and after the time the Association causes to be recorded with the county recorder of the County a notice of delinquent assessment (a "*Notice of Delinquent Assessment*").

(1) The Notice of Delinquent Assessment shall state the amount of the Assessment and other sums imposed in accordance with this Restated Declaration, a legal description of the Owner's Unit in the Development against which the Assessment and other sums are levied, and the name of the

record Owner of the Unit in the Development against which the lien is imposed.

(2) The itemized statement of the charges owed by the Owner shall be recorded together with the Notice of Delinquent Assessment.

(3) In order for the lien to be enforced by nonjudicial foreclosure as provided in the CICD 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.

(4) The Notice of Delinquent Assessment shall be signed by the person designated by the Association for that purpose, which may include an agent of the Association, or if no one is designated, by the President of the Association.

(5) 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 the notice shall be mailed no later than ten (10) calendar days after recordation.

(e) A lien created pursuant to subsection (d) of this Section 5.1 shall be prior to all other liens recorded subsequent to the Notice of Delinquent Assessment, except as may otherwise be provided under this Restated Declaration with respect to the subordination thereof to any other liens and encumbrances.

(f) Within twenty-one (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 in which the Notice of Delinquent Assessment is recorded 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.

(g) If it is determined that a lien previously recorded against a Unit by the Association was recorded in error, the Association shall: (1) within twenty one (21) calendar days, record or cause to be recorded in the office of the county recorder in which the Notice of Delinquent Assessment is recorded 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; and (2) promptly reverse all late charges, fees, interest, attorney's fees, costs of collection, costs imposed in relation to the 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 5.2 - Payment Plans for Delinquent Assessments.**

(a) An Owner may submit a written request to meet with the Board, which the Board may agree or disagree to the same, to discuss a payment plan for the debt noticed by the Association. The Association shall provide the Owner the standards for payment plans, if any exist.

(b) Should the Board agree to meet with the requesting Owner, the Board shall meet with the Owner in executive session within forty five (45) days of the postmark of the request, if the request is mailed within fifteen (15) days of the date of the postmark of the notice, unless there is no regularly scheduled Board meeting within that period, in which case the Board may designate a committee of one (1) or more Directors to meet with the Owner.

(c) 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.

(d) Payment plans shall not impede an Association's ability to record a lien on the Owner's Unit to secure payment of delinquent Assessments.

(e) 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.

### **Section 5.3 - Assessment Collection.**

(a) Except as otherwise provided in this Section 5.3, after the expiration of thirty (30) days following the recording of a lien created pursuant to this Restated Declaration, 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 this Restated Declaration shall prohibit actions against the Owner of a Unit to recover sums for which a lien is created pursuant to this Restated Declaration or prohibit the Association from taking a deed in lieu of foreclosure.

(b) Prior to initiating a foreclosure on an Owner's Unit, the Association shall comply with the requirements of the CICD Act.

(c) Any foreclosure 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 legal representative, in accordance with the requirements of the CICD Act.

(d) 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 ninety (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 in the Development shall include a statement that the property is being sold subject to this right of redemption.

(e) If the Association seeks to collect delinquent Assessments of an amount less than one thousand eight hundred dollars (\$1,800), not including any accelerated Assessments, late charges, fees and costs of collection, attorneys' 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 manners prescribed in the CICD Act, Governing Documents, or applicable law; provided, however, the foregoing limitation on the foreclosure of Assessment liens shall not apply to Assessments secured by a lien that are more than twelve (12) months delinquent. The foregoing limitation does not preclude the Association from commencing the judicial or nonjudicial foreclosure process prior to such time as judicial or nonjudicial foreclosure may lawfully occur.

(f) A monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the Governing Documents, except for late payments, may not be characterized or treated as an Assessment that may become a lien against the Member's Unit enforceable by the sale of the Unit under Sections 2924, 2924b, and 2924c of the Civil Code.

(g) The Annual Policy Statement shall include the notice regarding Assessments and foreclosure, payments, meetings, and payment plans.

(h) 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. Notwithstanding the foregoing, the Association shall have the right and ability to assign any unpaid obligations of a former Member to a third party for purposes of collection.

(i) Except as otherwise provided under the CICD Act, this Section 5.3 applies to a lien created on or after January 1, 2003. A lien created before January 1, 2003, is governed by the law in existence at the time the lien was created.

#### **Section 5.4 - Priority of Assessment Liens.**

(a) The Association's lien for Assessments provided by this Restated Declaration shall be prior and superior to: (1) any declaration of homestead recorded after the recordation of this Restated Declaration; (2) any other liens, except (A) taxes, bonds, assessments, and other levies which, by law, would be superior thereto, and (B) the lien or charge of any Mortgagee for a mortgage made in good faith and value that encumbers a Condominium and which was recorded before the date on which a Notice of Delinquent Assessment was recorded against the same Condominium by the Association.

(b) Neither the sale nor transfer of a Condominium shall affect an Assessment lien, except that the sale or transfer of a Condominium pursuant to judicial or nonjudicial foreclosure by a First Mortgagee extinguishes the lien of such Assessments as to payments which became due before such sale or transfer.

No sale or transfer relieves such Condominium from liens for any Assessments thereafter becoming due. No Person who obtains title to a Condominium pursuant to judicial or nonjudicial foreclosure by a First Mortgagee shall be liable for the share of Assessments chargeable to such Condominium which became due before the acquisition of title to the Condominium by such Person; such unpaid Assessments shall be a common expense collectible from all Owners, including, but not limited to, such Person.

(c) No sale or transfer of a Condominium pursuant to judicial or nonjudicial foreclosure by a First Mortgagee, or otherwise, shall serve to cancel the personal obligation of the prior Owner for payment of the delinquent Assessments and charges which accrued during such Owner's period of ownership. The personal obligation of any prior Owner for payment of delinquent Assessments and charges may only be satisfied and therefore discharged by payment of said amounts, whether or not such Owner remains in possession of that Condominium.

#### **Section 5.5 - Waiver of Homestead.**

Each Owner hereby waives, to the extent of any liens created pursuant to this Article V, the benefit of any homestead or exemption law in effect at the time any Assessment or installment thereof becomes delinquent or any lien for delinquent Assessments is imposed pursuant to the provisions of this Restated Declaration.

#### **Section 5.6 - Assignment of Rents.**

##### **(a) Assignment of Rents.**

Each Owner who is leasing or renting his or her Unit to a Tenant or Tenants hereby assigns to the Association all of the rents and any other income now due or which may become due to Owner pursuant to the Lease for the Owner's Unit (the "**Rents**"), together with any and all rights and remedies which the Owner may have against the Tenant or Tenants, or others in possession of the Unit, for the collection or recovery of the Rents so assigned. Such assignment shall be effective only upon the Owner's failure to pay any Assessment within thirty (30) days after the due date, and under no other circumstances, if the Association accepts such assignment.

**(b) Process to Effectuate Assignment of Rents.**

An assignment of rents pursuant to this Section 5.6 shall only be effective if it complies with the requirements of Section 2938 of the Civil Code and any other applicable law. Any costs incurred by the Association in effectuating an assignment of rents pursuant to this Section 5.6 shall be considered a cost of collection of delinquent Assessments, for which the applicable Owner shall be responsible.

**(c) Association Not a Landlord.**

The exercise and enforcement of the Association's rights under this Section 5.6 shall in no way constitute the Association as a landlord or lessor under any Lease, and the Association shall have no such responsibility. Each Owner hereby agrees to indemnify, defend, and hold harmless the Association and its Directors, officers, agents, representatives, employees, and attorneys, as may be applicable, from and against any and all claims by a Tenant or any third party that the Association failed to fulfill the duties of landlord or lessor under any Lease for the Owner's Unit.

**(d) Payment of Rents to Association.**

Each Owner irrevocably consents that the Tenant or Tenants under a Lease for the Owner's Unit, upon receiving from the Association notice of an assignment of rents pursuant to this Section 5.6, shall pay the Rents to the Association without incurring any liability for the failure to determine the actual existence of any Assessment delinquency claimed by the Association. Each Owner further agrees that such Tenant or Tenants shall not be liable to the Owner for nonpayment of the Rents to the Owner for Rents paid to the Association pursuant to this Section 5.6. The full amount of the Rents received by the Association shall be applied to the Owner's account; however, application of the Rents to particular Assessments and charges owed by the Owner to the Association shall be at the Association's discretion to the extent not dictated by law.

**(e) Association Powers Upon Default.**

The Association may at any time pursue legal action against an Owner and/or the Owner's Tenant or Tenants for, or otherwise seek collection of, any Rents not paid to the Association pursuant to this Section 5.6. The Association shall deduct from the Rents received in any such action the costs and expenses of collection, including, but not limited to, reasonable attorney's fees.

**(f) Termination of Payment of Rents to Association.**

The Association may continue receiving Rents assigned directly from the Tenant or Tenants of an Owner's Unit until any foreclosure action against the subject Unit is completed by the Association or a First Mortgagee or until the amount of money owed to the Association by the Owner, including Assessments, late charges, interest, and collection costs, including reasonable attorney's fees, is paid in full, whichever occurs first.

**(g) Mortgage Holder Rights.**

The assignment of rents and powers described in this Section 5.6 shall not affect, and shall in all respects be subordinate to, the execution of the rights and powers of any First Mortgagee to do the same or similar acts.

**ARTICLE VI  
USE RESTRICTIONS AND COVENANTS**

**Section 6.1 - Compliance and Enforcement.**

The occupancy, use, and enjoyment of the Development by Owners, Residents, and their Invitees shall be subject to, and shall at all times comply with, the provisions of this Restated Declaration and the other Governing Documents. Unless otherwise provided in this Restated Declaration, the Association, through the Board, and each Owner shall have the right to enforce the provisions of this Restated Declaration and the other Governing Documents.

**Section 6.2 - Common Area.**

**(a) Association Easement.**

The Association shall have a non-exclusive easement in, on, over, and throughout the Common Area, including any Improvements thereon or therein, to perform its duties and exercise its powers provided under the Governing Documents or by law.

**(b) Third Party Easements.**

The Association may grant to a third party or parties easements in, on, over, and throughout the Common Area for the purpose of constructing, installing, or maintaining utilities and/or services for the benefit of the Development, or for

other purposes reasonably related to the operation of the Development. Each Owner, in obtaining an ownership interest in a Unit, expressly consents to any such easements. Notwithstanding the foregoing, no such easement may be granted if it would unreasonably interfere with the occupancy, use, or enjoyment of any Unit, Exclusive Use Common Area or portions of the Common Area not subject to exclusive easements.

**(c) Delegation of Owners' Rights.**

Notwithstanding the easement and other rights of Owners provided in this Restated Declaration, an Owner whose Unit is subject to a Lease shall be deemed to have delegated that Owner's right to use and enjoy the Common Area to the Tenants of the Owner's Unit. In such case, neither the Owner nor any Invitee of the Owner (including, but not limited to, any family members of the Owner) shall be entitled to use and enjoy the Common Area for so long as a Lease for the Owner's Unit is in effect. Notwithstanding the foregoing, such Owner may take ingress, egress, and access to and through the Common Area for the purpose of visiting the Unit or attending Member and Board meetings.

**(d) Maintenance and Repairs.**

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 Owner.

**(e) Common Area Obstructions and Storage.**

No Owner or Resident shall permit anything to obstruct the Common Area. No item of any kind may be stored, placed or located by an Owner, Resident or Invitee of either in the Common Area, except as permitted under this Restated Declaration and/or the Rules with respect to Exclusive Use Common Areas, or in portions of the Common Area specifically designated for such purpose by the Board, if any; provided, however, the Association may store supplies, equipment and other items in the Common Area for the Association's use in connection with the management, maintenance, and operation of the Common Area. 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 related to same that are incurred by the Association may be levied against the applicable Owner as a Reimbursement Assessment.

**(f) Change in Occupancy of a Unit.**

The Board has the power to adopt Rules requiring an Owner to pay to the Association: (1) a non-refundable administrative fee to fund the Association's cost of readying the Common Area for the move-in or move-out of a Resident from the Owner's Unit prior to such move-in or move-out, if such preparation is deemed reasonably necessary by the Association; (2) a non-refundable administrative fee to defray costs incurred by the Association as a result of the move-in or move-out of a Resident from the Owner's Unit; and/or (3) a refundable damage deposit as security against any damage to the Common Area which may occur as a result of a Resident moving into or out of the Owner's Unit prior to such move-in or move-out.

**(g) Damage Liability.**

Each Owner shall be liable to the Association for any damage to the Common Area or to any property owned by the Association which is caused by the Owner, a Resident of the Owner's Unit, or an Invitee of either, regardless of how the damage is sustained, whether due to the negligence, acts, omissions, or willful misconduct of such Person; in the case of joint ownership of a Unit, the liability of the co-Owners shall be joint and several. The costs and expenses incurred by the Association to correct or repair such damage shall be levied against the Owner(s) as a Reimbursement Assessment.

**(h) Association Not Responsible for Loss.**

Neither the Association nor any of its Directors, officers, agents, representatives, employees, or attorneys shall be responsible to any Owner, Resident, or Invitee 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, whether or not such storage, placement, or location of personal property is in compliance with the provisions of this Restated Declaration and the other Governing Documents.

**(i) Security and Privacy Disclaimer.**

The Association does not undertake to provide security or privacy for the Property, the Owners, the Residents, any Invitees, or any persons or property located within the Development, nor does the Association make any representations or warranties concerning the security, privacy and/or safety of the

Property, the Owners, the Residents, any Invitees, or any persons or property located within the Development, irrespective of whether there are any access control devices installed and operated in the Common Area of the Development or access control personnel employed or engaged by the Association.

**(j) Access to Common Area Facilities.**

The Board may restrict access to portions of the Common Area to the Board, certain Directors and other personnel engaged by the Association, such as storage facilities, workrooms and offices located in the Common Area.

**Section 6.3 - Mechanic's Liens.**

(a) No labor performed or services or materials furnished with the consent of, or at the request of, an Owner or the Owners' agent or contractor within the Development shall be the basis for the filing of a mechanic's lien against the Condominium of another Owner unless that other Owner has expressly consented to or requested the performance of the labor or furnishing of the materials or services; provided, however, express consent shall be deemed to have been given by the Owner of any Condominium in the case of emergency repairs thereto.

(b) The Owner of any Condominium may remove that Owner's Condominium from a mechanic's lien against two (2) or more Condominiums or any part thereof by payment to the holder of the mechanic's lien of the fraction of the total sum secured by the mechanic's lien that is attributable to the Owner's Condominium.

**Section 6.4 - General Use Restrictions.**

In exercising the right to occupy, use and/or enjoy a Unit or the Common Area, Owners, Residents, and their Invitees shall comply with the following restrictions.

**(a) Land Classification.**

All of the property within the Property is zoned as Light Industrial and allows those uses, facilities and office Condominiums, as more particularly described in the Master Association CC&R's and the City's zoning ordinance with

the exception of automotive fabrication, dismantling or repair (and any uses related thereto) which are specifically prohibited.

**(b) Commercial Purpose.**

(1) Each Unit shall be used only for commercial or business purposes, subject to the limitations of the City of Temecula. An Owner may rent/lease his or her Unit for such commercial and business purpose under a Lease, pursuant to Section 6.5 of this Restated Declaration. The number of persons occupying a Unit at any one time shall comply with all City and County codes, regulations, and ordinances regarding the occupancy for each specific Unit and its respective business and may not exceed any occupancy limits established under such codes, regulations, or ordinances.

(2) The improvement, operation and use of a Condominium shall be restricted to those uses authorized under the City's Light Industrial zone and the Master Association CC&R's, all of such nature and type as will not create or emit offensive, hazardous or excessive quantities of dust, dirt, fly ash, smoke, noise, fumes, odors or vibrations, or create fire, explosion or other hazards. Upon written request therefor, the Board shall be provided with evidence that proper controls, measures, or devices will be provided to insure and protect the interest, safety and general welfare of other Occupants of the Property from any and all such nuisances or hazards. All County, State or Federal laws, codes and ordinances shall be complied with.

(3) No Unit or Exclusive Use Common Area shall be used or allowed to be used for any residential purpose, including but not limited to, a single-family residence and short-term rentals (e.g., Airbnb).

**(c) Specifically Prohibited Uses.**

No Condominium shall be used for any activity or purpose, in addition to those otherwise listed in this Declaration or the Master Association CC&R's, which is determined by the Board, in its sole and absolute discretion, to be objectionable as an intrusion into the environment of sound, odor, visual effect or physical impact which will disturb or tend to disturb other Owners, Lessees or Occupants in the Property or which is deemed to constitute a nuisance.

**(d) Nuisance.**

Noxious and offensive activities are prohibited in the Development. The Board is entitled to determine, in its sole and reasonable discretion, if any device, machinery, equipment, noise, odor, light, smoke, or activity constitutes a nuisance.

(1) Devices that create or constitute a nuisance may not be kept or operated within the Development. Such devices include, without limitation, the following:

- (A) Horns, whistles, bells, and other sound devices that create or emit loud noises; provided, however, security devices/systems may be installed and used within a Unit or a vehicle to protect the security of such Unit or vehicle and its contents, so long as reasonable care is taken to prevent consistently false alarms of, and annoying and disturbing noise from, such devices/systems.
- (B) Devices that create or emit loud noises or noxious odors (except equipment reasonably used by the Association in connection with its maintenance and repair responsibilities pursuant to this Restated Declaration).
- (C) Devices that unreasonably interfere with television or radio, cellular and/or wireless internet reception, and the reception of similar electronic transmissions, to another Unit.
- (D) Mechanical equipment installed in any Unit or Exclusive Use Common Area, including, but not limited to, HVAC equipment, that is not insulated and installed so as to prevent unreasonable noise or vibration.

(2) Activities that create or constitute a nuisance may not be undertaken or conducted within the Development. Such activities include, without limitation, the following:

- (A) Hanging, drying, or airing clothing, fabrics, or unsightly articles in any place visible from another Unit, the Common Area, or public streets abutting the Development, except as may be expressly permitted by law.
- (B) The creation of unreasonable levels of noise from parties, gatherings, social events, machinery, equipment, music, radios, television, or related devices.
- (C) Any activity which is a serious annoyance or nuisance to any Owner or Resident, or which may in any way interfere with any Owner's or Resident's quiet enjoyment and peaceful possession of such Owner's or Resident's Unit or Exclusive Use Common Area.
- (D) Any activity which may (i) increase the rate of insurance for the Association, the Common Area, or any Unit, (ii) result in cancellation of the insurance for the Association, the Common Area, or any Unit, (iii) obstruct or interfere with the rights of any Owners or Residents, (iv) violate any law or provision of this Restated Declaration or the other Governing Documents, or (v) constitute a nuisance or other threat to the health, safety, or welfare of any Owners or Residents of the Development.

**(e) Vehicles and Parking.**

(1) No Owner or Resident shall park any automobile or other motor vehicle in the Development, except in a parking space designated for the exclusive use of the Owner or Resident by the Condominium Plan, the Governing Documents or the Board. The use of any unassigned or guest parking spaces in the Common Area shall be subject to Rules relating to same, and such Rules may prohibit or restrict Owners and Residents from parking in such spaces. All parking spaces in the Development shall be used for the parking of operable motor vehicles designed as passenger vehicles only, provided that such vehicles do not exceed the dimensions of the

Owner's or Resident's parking space. Each Owner and Resident shall keep his or her parking space in a neat and clean condition, free of oil, grease, and other debris.

(2) No trailer, camper, mobile home, commercial vehicle, truck (other than a standard size pickup truck or sport utility vehicle), boat, or similar equipment, or recreational vehicle, shall be permitted to park or be stored anywhere within the Development, other than temporarily, unless placed or maintained in an area specifically designated for such purposes by the Board. Notwithstanding the foregoing, sedans or standard size pickup trucks that are used both for business and personal use may be parked within the Development, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive, as determined by the Board, and such vehicles do not contain any trade equipment or tools that are visible from the Common Area.

(3) No motor vehicles that are inoperable, unlicensed, noisy or smoky shall be maintained or operated within the Development. Further, no off-road vehicles shall be maintained or operated in the Development.

(4) No person shall construct, repair, service or maintain any motor vehicle within any portion of the Development, except for emergency repairs, to the extent necessary to remove the vehicle to a proper repair facility, or minor repairs requiring less than one (1) day's work. The washing of vehicles is prohibited within the Development.

(5) No parking overnight shall be permitted whatsoever, except for vehicles owned or leased by an Owner and, then, only within the designated parking areas for such purpose. No person shall park, leave, or abandon any vehicle 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 within the Development or constitutes a nuisance. Notwithstanding the foregoing, the temporary parking of delivery trucks, service vehicles, and other commercial vehicles being used in the furnishing of goods or services to the Association, Owners or Residents, and the parking of vehicles belonging to and being used by Owners, Residents,

and their Invitees for such loading and unloading purposes, shall be permitted.

(6) The Board, in its discretion, may adopt reasonable Rules consistent with the provisions of this subsection (e). The Association shall have the right and power to remove any vehicle within the Development parked in violation of this Restated Declaration or the Rules, in accordance with the provisions of Section 22658 of the Vehicle Code.

**(f) Noise and Sound Reduction.**

(1) Noise transmission between adjacent Units is to be expected. Such noise transmission may include, but is not limited to, sounds generated by: footfall; moving of furniture; Invitees/guests; machinery and equipment; plumbing and other utility systems; opening and closing of cabinets and drawers; 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. Notwithstanding the foregoing, no noise transmission shall be permitted at unreasonable levels.

(2) No loudspeakers shall be affixed to any wall, ceiling, shelving, or cabinets in a Unit in a manner that causes vibrations discernable in another Unit. Flat screen televisions, speakers, and similar type devices affixed to walls shall be acoustically isolated to minimize sound transmission to any adjacent 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.

(3) All Owners and Residents shall take all reasonable precautions to lower noise transference between Units and abide by any noise reduction ordinance or regulation of the City and/or County. No modification or alteration of a Unit shall be permitted that may increase noise transference.

(4) In the event a complaint is made regarding non-compliance with the foregoing noise and sound reduction provisions, the Owners involved shall endeavor to resolve the dispute without involvement of the

Association. If the Owners are unable to resolve the dispute between themselves, upon request, the Board will evaluate the complaint and determine the appropriate level of Association participation in the dispute resolution process, if any; it shall be incumbent upon the complaining Owner to provide substantial evidence of the alleged noise violation to the Board, at said Owner's sole cost and expense. In no event shall the Association be obligated to resolve a noise complaint to the satisfaction of a complaining Owner or other person, if the Board determines the noise complaint is a neighbor-to-neighbor dispute and/or involves a hyper-sensitivity to noise. Any mitigation of noise transference which is required of an Owner by the Association shall be the sole responsibility and at the sole cost of such Owner.

**(g) Smoking.**

No smoking of tobacco or any other substances shall be permitted in any portion of the Common Area (including, but not limited to, any Exclusive Use Common Area). If the City, County, or State of California adopts an ordinance or law allowing the Association to prohibit smoking in Units, the Board may, in its sole discretion, adopt and enforce a Rule prohibiting smoking in Units. If the City, County, or State of California adopts an ordinance or law that would prohibit or ban smoking in Units, all Owners, Residents, and their Invitees shall be required to comply with such ordinance or law, and the failure to do so shall be deemed a violation of this Restated Declaration.

In the event a complaint is made regarding smoking of tobacco or any other substance within a Unit, the parties involved shall endeavor to resolve the dispute without involvement of the Association. However, upon request, the Board will evaluate the complaint and determine the appropriate level of Association participation in the dispute resolution process, if any. Notwithstanding the foregoing, in no event shall the Association be obligated to resolve a complaint regarding smoking within a Unit to the satisfaction of a complaining party if the Board determines such complaint is a neighbor-to-neighbor dispute and/or involves a hyper-sensitivity to smoke.

**(h) Flammable, Toxic and Hazardous Substances.**

No Owner shall store gasoline, kerosene, cleaning solvents, or other flammable liquids or substances, or any toxic or hazardous materials, in any Unit or in the Common Area; provided, however, that reasonable amounts of these liquids, substances, or materials placed in appropriate containers and packaged for normal commercial/business use, such as for cleaning purposes, may be stored by an Owner within his or her Unit in compliance with all applicable laws and regulations.

**(i) Garbage and Recycling Disposal.**

All rubbish, trash, garbage, and recycling materials shall be regularly removed from a Unit and placed into containers designated within the Development for such disposal, and shall not be allowed to accumulate on the Property. Trash, garbage, recycling materials, and other waste shall be kept only in containers designed for such items, and such containers shall be kept in a clean and sanitary condition at all times; the Board may adopt Rules regulating the placement of such containers within the Common Area. 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 or Exclusive Use Common Area.

**(j) Machinery, Equipment and Tools.**

Provided that such use does not cause unreasonable levels of noise to a person of ordinary sensibilities and complies with the provisions of this Restated Declaration (and other Governing Documents), machinery, equipment, and tools may be maintained or operated within the Unit to the extent it is customary and necessary in connection with the commercial use of the Units.

**(k) Structural Integrity.**

No Owner may install, place, or store items within his or her Unit that exceed, individually or collectively, the maximum load that the Unit floor is designed to carry. Nothing may be done in any Unit or the Common Area that will impair the structural (including, but not limited to, the water seal or water tight condition) or acoustical integrity of any structure in the Development, or that may alter the plumbing, electricity, natural gas, or other facilities serving any other Unit or the Common Area.

**(l) Roof.**

No Owners, Residents, or their Invitees shall at any time for any reason whatsoever enter upon or attempt to enter upon the roof of any building at the Property without the prior written approval of the Association.

**Section 6.5 - Leasing of Units.**

**(a) General.**

The rental or leasing of any Unit shall be subject to the provisions of this Section 6.5. When the term “*rent*” is used in this Section 6.5, it shall be deemed to mean and include the rental and/or leasing of a Unit.

**(b) Lease Requirements.**

(1) Subject to the provisions of subsection (b) of this Section 6.5, an Owner may rent his or her Unit pursuant to a Lease that is: (A) in writing; and (B) subject in all respects to the Governing Documents, including, but not limited to, this Restated Declaration. A copy of any fully executed Lease for a Unit shall be provided to the Association by the Owner prior to a Tenant moving into the Owner’s Unit, and upon request by the Association.

(2) The Lease shall include a statement that any failure by the Tenant to comply with the Governing Documents will constitute a default under the Lease. The following paragraph, or a substantially similar paragraph, shall be included in each Lease:

*In accepting this Lease, Tenant acknowledges that Tenant has received, read, and understands the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Temecula Office Centre Property Owners Association and the rules, regulations, and policies of Temecula Office Centre Property Owners Association (the “Governing Documents”). Tenant agrees to comply with the terms of the Governing Documents, and acknowledges that any failure by Tenant, or Tenant’s employees, agents, guests, invitees and licensees, to comply with the terms of the Governing Documents shall constitute a default under this Lease and may result in the early termination of this Lease.*

(3) No sub-rental/sublease of a Unit shall be permitted without the Association's (a) prior written approval and (b) execution of the sublease agreement, and no Unit may be used for vacation rentals (for example only, listed on Airbnb, VRBO or a similar website) or rented to a corporate housing company.

(4) Each Owner shall be responsible for any and all violations of the Governing Documents committed by any Tenant of the Owner's Unit.

(5) Each Owner shall be deemed to have agreed to save, hold harmless, indemnify, and defend the Association and its Directors, officers, agents, representatives, and employees from and against any and all claims, demands, actions, causes of action, liabilities, damages, and expenses arising out of, or incurred as a result of, the rental/leasing of the Owner's Unit, together with all costs, expenses, and attorneys' fees resulting therefrom.

**(e) Exemptions; Enforcement.**

(1) If an Owner rents his or her Unit in violation of the provisions of this Section 6.5, the Owner shall be subject to disciplinary measures, including, but not limited to: (A) a monetary penalty in an amount to be determined by the Board; (B) other disciplinary measures; and/or (C) a Reimbursement Assessment in an amount equal to the costs incurred by the Association related to addressing such violation, including, without limitation, attorneys' fees and costs, irrespective of whether the Association is able to obtain a court order to evict the Tenant or otherwise effectuate the legal eviction of the non-compliant Tenant from the Owner's Unit.

**Section 6.6 - Architectural and Design Restrictions.**

Any change or modification to any Improvement visible from any street or from any other property within the Master Association shall require the prior written approval of the Master Association's Architectural Review Committee. Procedures for application for such approval shall be as set forth in the Master Association CC&R's and any guidelines or rules and regulations adopted by the Master Association for the same. By way or example, that would mean that prior written approval of the Master Association Architectural Review Committee would be required before the Association or any Owner, tenant or quest could paint the

exterior of any building, install an air conditioning unit on the roof of a building that would be visible from the street or other property within the Master Association or change the exterior landscaping upon the Property.

**(a) Electric Vehicle Charging Stations.**

(1) An Owner may install and use an electric vehicle charging station (a “*Charging Station*”) in a parking space that is specifically designated for use by a particular Owner, as may be applicable, subject to applicable provisions of the CICD Act and any reasonable restrictions imposed by the Association. The installation or use of any Charging Station that would alter or modify the Common Area must first be approved by the Architectural Review Committee, in accordance with the provisions of Article VIII of this Restated Declaration. This subsection is subject to any restrictions imposed by the Master Association. An Owner using a Charging Station shall be responsible for the electricity used by the Charging Station and shall reimburse the Association for same if the Charging Station is not separately metered to the Owner’s Unit.

(2) The Association shall have no obligation to resolve any disputes related to allegations or claims that any Owner or other person has used another Owner’s Charging Station without permission, or that any Owner or other person has damaged another Owner’s Charging Station. A Charging Station installed and/or used by an Owner at the Development, as permitted under this subsection (g), shall be considered an Owner’s personal property for which the Owner is solely responsible.

**(b) Solar Energy Systems.**

The installation and use of solar energy systems within the Development shall be subject to the provisions of Sections 714, 714.1, and 6700 of the Civil Code. No Owner shall have the right to install a solar energy system in the Common Area, except with the prior written approval of the Master Association. The Master Association may impose reasonable restrictions on the installation and use of solar energy systems within the Development; for purposes of this provision, reasonable restrictions are those restrictions 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.

**(c) Water Conservation in Landscaping and Pressure Washing.**

(1) The Association shall not prohibit or establish conditions that have the effect of prohibiting: (A) the use of low water-using plants as a group or as a replacement of existing turf; or (B) the use of artificial turf or any other synthetic surface that resembles grass. Further, the Association shall not prohibit or restrict compliance with either of the following: a water-efficient landscape ordinance adopted or in effect pursuant to subdivision (c) of Section 65595 of the Government Code; or any regulation or restriction on the use of water adopted pursuant to Section 353 or 375 of the Water Code. The foregoing provisions shall not prohibit the Association from applying landscaping Rules, to the extent the Rules fully conform with the foregoing provisions.

(2) Unless the Association uses recycled water, as defined in Section 13050 of the Water Code, for landscaping irrigation, the Association may not impose a monetary penalty, fine, or Assessment against an Owner for reducing or eliminating the watering of vegetation or lawns on his or her Unit during any period for which either (A) the governor of California has declared a state of emergency due to drought or (B) a the City or County or a local governmental agency has declared a local emergency due to drought; provided, however, an Owner who reduces or eliminates such watering shall be required to continue to maintain the vegetation and lawns on his or her Unit in a clean, sanitary and attractive condition.

(3) The Association may not require pressure washing of the exterior of a Unit or other Improvements upon a Unit during a state or local government declared drought emergency. For purposes of the foregoing provision, “pressure washing” shall mean the use of a high-pressure sprayer or hose and potable water to remove loose paint, mold, grime, dust, mud and dirt from surfaces and objects.

**(d) No Right to Light, View or Air.**

There is no protected light, view or air in the Development, and no Unit is assured the existence or unobstructed continuation of any particular light, view, or air. Any construction, the growth of landscaping, or other installation of Improvements by the Association, an Owner or the owners of other property in the vicinity of the Development may impair the light, view or air from any Unit, and each Owner shall be deemed to have consented to any such view impairment.

**(e) Signs.**

Except for any Property monument signs, Property directory signs, and identification signs to be located as determined by the Board (all of which must be approved in writing by the Board and shall be consistent with the Sign Criteria adopted by the Board, from time to time), no sign, banner, flag, billboard, or other advertising shall be erected, placed or maintained within the Property, without specific written approval by the Board, which shall in all cases be consistent with the Sign Criteria adopted by the Board from time to time. Any sign, including Property monument signs, directory signs and so forth must be approved by the Master Association prior to installation and in accordance with this Declaration.

**(f) Utility Lines and Antennas.**

(1) No sewer, drainage or utility lines shall be constructed, placed or maintained anywhere in or upon any Condominium other than within Condominiums or structures unless the same shall be placed or maintained underground or concealed in or under Condominiums or other structures.

(2) (The installation and use of a video or television antenna (an “*Antenna*”), including a satellite dish, that has a diameter or diagonal measurement of thirty-six (36) inches or less, and the attachment of that Antenna to a structure within the Development where the Antenna is not visible from any street or Common Area, shall be permitted, subject to the provisions of this subsection (f) and applicable state and federal law. The installation and use of an Antenna that has a diameter or diagonal measurement in excess of thirty-six (36) inches shall be prohibited within the Development. No

Owner shall have the right to install an Antenna in the Common Area, except with the prior written approval of the Association.

(3) The installation of a permitted Antenna shall require advance written approval of the Association. The application for approval of such installation or use shall be processed by the Association in the same manner as an application for approval of an architectural modification to the Property (in accordance with Article VIII of this Restated Declaration), and the issuance of a decision on the application shall not be willfully delayed.

(4) The Association may impose reasonable restrictions on the installation or use of an Antenna that has a diameter or diagonal measurement of thirty-six (36) inches or less. For purposes of this provision, “reasonable restrictions” means those restrictions that do not significantly increase the cost of the Antenna system, including all related equipment, or significantly decrease its efficiency or performance, and include, without limitation, the following: (A) a provision for the maintenance, repair, or replacement of roofs or other building components; and (B) requirements for installers of a video or television antenna to indemnify or reimburse the Association or its Members for loss or damage caused by the installation, maintenance, or use of the video or television antenna.

### **Section 6.7 - Restrictions on Unit Modification.**

This Section 6.7 includes provisions relating to certain restrictions related to the modification of Units. The following provisions shall be subordinate to the architectural and design control provisions of Article VIII of this Restated Declaration, unless otherwise provided in this Section 6.7.

#### **(a) Modifications in General.**

Subject to the Master Association, Governing Documents and applicable law, an Owner may make any Improvement or alteration within the boundaries of the Owner’s Unit that does not impair the structural integrity or mechanical systems, or lessen the support, of any portions of the Development. Any change in the exterior appearance of a Unit shall be in accordance with the Master Association, Governing Documents and applicable provisions of law.

**(b) Access for Disabled Persons.**

(1) Subject to the Master Association, Governing Documents and applicable law, an Owner may modify the Owner's 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, without limitation, modifications of the route from the public way to the door of the Unit if the Unit is on the ground floor or already accessible by an existing ramp or elevator.

(2) The modification rights granted in this subsection (b) are 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 the Unit shall: (i) not prevent reasonable passage by other Owners, Residents, or their Invitees; and (ii) shall be removed by the Owner when his or her Unit is no longer occupied by persons requiring those modifications who are blind, visually handicapped, deaf, or physically disabled, and in no event later than the date when title to the Unit is no longer held in the name of such Owner.

(D) Any Owner who intends to modify his or her Unit to facilitate such access shall submit plans and specifications to the Association for review to determine whether the modifications will comply with the foregoing provisions. The Association shall not deny approval of the proposed modifications without good cause.

**Section 6.8 - Grandfathering of Pre-Existing Conditions.**

The following conditions within any Unit or other portion of the Development are grandfathered and excepted from compliance with this Restated Declaration if such conditions were in compliance with both the Original Declaration as of the date of recordation of this Restated Declaration and the then current Rules of the Association: (1) ..... Such grandfathered conditions must otherwise comply with the requirements of this Restated Declaration. There shall be no grandfathering of any other conditions occurring or arising, after the date of recordation of this Restated Declaration.

Nothing contained in this Section 6.8 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 Original Declaration, the Governing Documents, or any law. In any dispute over whether a condition which violates this Restated Declaration was pre-existing and/or is grandfathered under this Section 6.8, the burden of proof will be on the Owner who is in violation of this Restated Declaration. Conditions which violate this Restated Declaration and are not grandfathered under this Section 6.8 shall be required to be corrected by the Owner in violation.

**ARTICLE VII  
MAINTENANCE AND REPAIR**

**Section 7.1 - Maintenance Standards.**

The Association shall maintain everything it is obligated to maintain in a clean, sanitary, and attractive condition. The Board shall determine, in its sole discretion, the level and frequency of maintenance of those portions of the Common Area and Improvements thereon for which the Association is responsible. Each Owner shall maintain everything the Owner is obligated to maintain in a clean, sanitary, and attractive condition. For purposes of this Article VII, “*maintain*” shall mean maintain, repair, and replace, unless the context clearly indicates otherwise.

## **Section 7.2 - General Maintenance Obligations.**

Except to the extent provided otherwise in this Restated Declaration, the Association shall maintain, repair, and replace the Common Area and the Owners shall maintain, repair, and replace all portions of their respective Units. Each Owner shall immediately notify the Association of any dangerous, defective, or other condition in the Owner's Unit which could cause injury to persons or property within the Development. Unless other arrangements are entered into with the Association, all Owner-installed Improvements, wherever located, must be maintained, repaired, and replaced by the Owner who installed the Improvements; if the Owner fails to properly maintain, repair, and/or replace those Improvements, or those Improvements were not installed in compliance with the requirements of this Restated Declaration, the Association may, in the Board's discretion, remove part or all of the Improvements, and levy the cost of such removal as a Reimbursement Assessment against the Owner.

## **Section 7.3 - Owner Maintenance Obligations.**

### **(a) Maintenance of Units.**

Each Owner shall be responsible, at the Owner's sole cost and expense, for the maintenance, repair, and replacement of all items within the Owner's Unit, except as may be otherwise expressly provided in this Restated Declaration, in accordance with the requirements of this Restated Declaration. All Condominiums and Improvements, whether occupied or unoccupied, shall at all times be maintained in their originally designed and constructed condition by their respective Owners in such a manner as to prevent their becoming unsightly by reason of unattractive growth, or the accumulation of rubbish or debris thereon. No Condominium shall be permitted to fall into disrepair.

### **(b) Failure to Maintain.**

If an Owner fails to maintain, repair, and/or replace any Improvement or other item the Owner is obligated for, the Association has the power, but not the duty, to perform the maintenance, repair, and/or replacement, including corrective janitorial work. In a situation that the Association determines to be an emergency, the Association may perform the maintenance, repair, and/or replacement immediately; in all other cases, the Association may perform the maintenance, repair, and/or replacement after notice and a disciplinary hearing in accordance with the provisions of the Bylaws. For purposes of the foregoing sentence, an

“emergency” is any situation where there is an imminent risk of injury to Persons or damage to property within the Development. The cost of any such corrective work shall be levied against the Owner as a Reimbursement Assessment.

**(c) Notification of Defective Conditions to Association.**

Owners are obligated to promptly notify the Association of any defective condition that is the responsibility of the Association to maintain, repair, or replace which is evident from within the Owner’s Unit or any Exclusive Use Common Area serving the Owner’s Unit. The Association may, in the Board’s sole discretion, hold an Owner responsible for any costs incurred by the Association, or for any damage to the Owner’s Unit, other Units or the Common Area, resulting from the Owner’s delay in reporting evidence of such defective condition to the Association.

**(d) Adoption of Specific Maintenance Requirements.**

The Board shall have the power to adopt, as Rules, specific guidelines and requirements for the maintenance of items within and a part of the elements of the Units in order to help ensure for the proper preservation and protection of the Common Area and/or the Development as a whole.

**Section 7.4 - Association Maintenance Obligations.**

The Association shall be responsible for the maintenance, repair, and/or replacement of those items for which the obligation is not allocated to the Owners in this Restated Declaration, subject to an Owner’s obligation to reimburse the Association for costs incurred by the Association for such maintenance, repair, and/or replacement due to damage caused by or resulting from the negligence, acts, omissions, or willful misconduct of the Owner, a Resident of the Owner’s Unit, or an Invitee of either. That responsibility includes, without limitation, all open areas and landscaping.

**(a) City Maintenance of Common Areas.**

Notwithstanding anything to the contrary herein, in the event the Association fails to adequately maintain the Common Areas, or areas within the Property, as set forth herein, the City shall have the right to give written notice of the deficiency to the Association. The Association shall have twenty (20) days after receipt of such notice to make the necessary correction. If the correction is not made within such twenty (20) day period,

the City may elect to take steps necessary to assure that the Common areas are maintained and cared for. To do this, the City shall serve a notice of its intent to enter the Property for this purpose. The City shall either personally serve the notice upon the Association or mail a copy of it by certified mail to the Association's last known address, or as shown on the tax rolls, at least fifteen (15) days in advance of the date when it intends to enter the Property. For this purpose, the City may enter upon the Property and perform such work as it considers reasonably necessary and proper to restore and maintain the Common Areas, or areas within the Property. The City may act either through its own employees or through an independent contractor. Thereafter, the City shall provide the Association with written notice of any and all expenses incurred in this regard together with any and all backup documentation related thereto, and the Association shall have thirty (30) days from the date of such written notice to reimburse the City. The Property shall be subject to a lien in favor of the city to secure any such expenses not promptly reimbursed by the Association as described above.

#### **Section 7.5 - Eradication of Wood-Destroying Pests.**

The Association shall be responsible for the prevention and eradication of infestation by wood-destroying pests and organisms (collectively, "*Pests*") in the Common Area. The Association may, if determined by the Board to be economically feasible, adopt plan for the inspection, prevention, and/or eradication of infestation by Pests within the entire Development, including both the Common Area and the Units. If the Association does not adopt such plan, each Owner shall be responsible for the inspection, prevention, and eradication of infestation by Pests within his or her Unit.

The Association may cause the temporary, summary removal of any Owner, Resident, or Invitee from a Unit for such periods and at such times as may be necessary for prompt, effective treatment of Pests. The Association shall give notice of the need to temporarily vacate a Unit to the Residents and Owners of such Unit not less than fifteen (15) days nor more than thirty (30) days prior to the date of the temporary relocation. The notice shall state the reason for the temporary relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment, and that the Residents will be responsible for their own accommodations during the temporary relocation. Notice by the Association shall be deemed complete upon either: (1) personal delivery of a copy

of the notice to the Residents of the Unit, and if the Owner of the Unit is not one of the Residents, Individual Delivery of a copy of the notice to the Owner; or (2) Individual Delivery to the Residents of the Unit at the address of the Unit, and if the Owner is not one of the Residents of the Unit, Individual Delivery of a copy of the notice to the Owner.

## **Section 7.6 - Damage to Units.**

### **(a) Owner Responsibility.**

Each Owner shall be responsible for repairing and restoring any damage to the Owner's Unit, whether such damage is caused by fire, water intrusion, or other casualty, including, but not limited to, the abatement of mold. This obligation shall apply no matter the cause or source of the damage, including, but not limited to, an Improvement or item located within the Common Area or another Unit, and whether or not an insurance policy carried by the Association may cover any portion of the cost to repair or restore such damage.

### **(b) Association Liability.**

The Association shall not be financially liable for any costs incurred by an Owner to repair or restore any damage to the Owner's Unit (including but not limited to any costs incurred by an Owner to perform the remediation of mold within the Owner's Unit), caused by or resulting from pipes, drains, conduits, appliances, equipment, electrical sources, roofs, or any other Improvement or item located within and a part of the Common Area, unless such damage was caused by the willful misconduct or negligence of the Association or any of its Directors, officers, agents, representatives, or employees. In no event shall the Association be liable for damage to a Unit caused by an Owner, Resident, or Invitee, or resulting from an Improvement or item which is located within another Unit and/or the responsibility of an Owner. Notwithstanding the foregoing, if the Association performs any maintenance, repair, or remediation work within a Unit to abate water or other substances, or damage, within the Unit in order to protect and preserve the Common Area or other items for which the Association is responsible, such action by the Association shall not be deemed to be an admission or acceptance of liability for any damage to an Owner's Unit.

**(c) Insurance.**

Each Owner shall maintain the insurance coverage and policies required of Owners under Section 9.3 of this Restated Declaration. An Owner shall be required to submit a claim against his or her personal insurance policy for any damage to his or her Unit, to the extent such damage is not covered by an insurance policy maintained by the Association pursuant to Section 9.1 of this Restated Declaration and/or the cost to repair or restore such damage is less than the deductible amount under the insurance policy or policies maintained by the Association pursuant to Section 9.1 of this Restated Declaration. There is no guarantee that any insurance policy maintained by the Association pursuant to this Restated Declaration will cover any damage to a Unit, and each Owner should presume that there will be no such coverage.

**(d) Owner-to-Owner Disputes.**

Nothing contained in this Section 7.6 shall be construed to limit the ability of an Owner to recover from any other Person (Owner, Resident, Invitee, or otherwise) costs incurred by such Owner in the repair and restoration of damage to the Owner's Unit caused by and/or the responsibility of such Person.

**(e) Personal Property.**

Each Owner and Resident shall be responsible, at his or her sole cost, to repair, restore, and replace any personal property located within the Owner's or Resident's Unit or Exclusive Use Common Area that is damaged, no matter the cause or source of such damage, including, but not limited to, furniture, rugs, light fixtures, appliances, electronics, clothing, art work, and all other items, belongings, and possessions of the Owner or Resident. Under no circumstance shall the Association have any liability for damage to the personal property of any Owner, Resident or Invitee.

**Section 7.7 - Temporary Relocation Costs.**

The costs of temporary relocation of an Owner or Resident during the repair and/or maintenance of (1) any portion of the Common Area or other areas of the Development within the responsibility of the Association, by the Association, or (2) any portion of a Unit due to damage to the Unit, from any cause or source, shall be borne solely by the Owner and Residents of the Unit affected. The Association shall have no responsibility for any lodging, food, transportation, parking, loss of

use, or other costs or expenses incurred by an Owner or Resident related to such temporary relocation.

## **ARTICLE VIII ARCHITECTURAL AND DESIGN CONTROL**

### **Section 8.1 - Architectural Review.**

Any change or modification to any Improvement visible from any street or from any other property within the Master Association shall require the prior written approval of the Master Association's Architectural Review Committee. Procedures for application for such approval shall be as set forth in the Master Association CC&R's and any guidelines or rules and regulations adopted by the Master Association for the same. By way or example, that would mean that prior written approval of the Master Association Architectural Review Committee would be required before the Association or any Owner, tenant or guest could paint the exterior of any building, install an air conditioning unit on the roof of a building that would be visible from the street or other property within the Master Association or change the exterior landscaping upon the Property.

## **ARTICLE IX INSURANCE**

### **Section 9.1 - Association Insurance Requirement.**

The Association shall obtain and maintain the policies of insurance described in this Section 9.1.

#### **(a) Fire and Casualty Insurance.**

The Association shall obtain and maintain a policy or policies of fire and casualty insurance with extended coverage, special form, without deduction for depreciation, for the full replacement value of insurable Improvements in the Common Area and property owned by the Association. The Association may, but is not required, to purchase earthquake insurance and other types of casualty insurance, in the Board's discretion, as described in this Restated Declaration.

**(b) General Liability Insurance.**

The Association shall obtain and maintain a policy or policies of commercial general liability insurance, including coverage for bodily injury, emotional distress, wrongful death, and property damage. Such insurance shall insure the Association, the Board, the Directors, the officers of the Association, the Owners, and any appointed manager, managing agent or management company of the Association against any liability to the public or to any Owner, Resident, or Invitee arising from the activities of the Association and the Owners on the Common Area and in any Unit owned by the Association. The general liability insurance required by this subsection (b) shall be in an amount of not less than two million dollars (\$2,000,000) per occurrence, or such other minimum coverage amount as may be required by the CICD Act to offer civil liability protection to the Owners from causes of action in tort arising solely by reason of an Owner's ownership interest in the Common Area.

**(c) Directors and Officers Liability Insurance.**

The Association shall obtain and maintain a policy or policies of insurance covering Directors and officers of the Association for negligent acts or omissions in that capacity. The insurance required by this subsection (c) shall be in an amount of not less than five hundred thousand dollars (\$500,000) per occurrence, or such other minimum coverage amount as may be required to offer individual liability protection to volunteer Directors and officers of the Association. Members of the Architectural Review Committee and other members of Association committees shall also be covered under the insurance required by this subsection (c).

**(d) Fidelity Insurance.**

The Association shall obtain and maintain a policy or policies of fidelity insurance coverage for any Person handling funds of the Association, whether or not such Persons are compensated for their services, in an amount no less than the estimated maximum of funds, including Reserve Accounts, in the custody of the Person during the term of the insurance. The aggregate amount of the fidelity insurance coverage may not be less than the sum equal to three (3) months of Regular Assessments plus the Reserve Accounts.

**(e) Other Insurance.**

The Association may obtain and maintain such other insurance policy or policies as the Board, in its sole discretion, deems reasonable and/or necessary.

Such other insurance coverage may include, without limitation: (1) worker's compensation insurance, to the extent necessary to comply with applicable laws; (2) flood insurance, if the Development is, or becomes, located in an area designated by an appropriate governmental agency as a special flood hazard area; (3) earthquake insurance; (4) demolition insurance, in an amount that is sufficient to cover any demolition that occurs following the total or partial destruction of the Development and a decision not to rebuild; (5) increased cost of construction and contingent liability insurance; and (6) insurance that meets the requirements for condominium developments established by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Government National Mortgage Association, during such time that any of these entities is known by the Board to be a Mortgagee or Owner of a Condominium in the Development.

**(f) Insurance Policy Review.**

The Board shall periodically, but not less than once each fiscal year, review the Association's insurance policies and make adjustments to the terms and conditions of such policies as the Board considers to be in the best interests of the Association. That review shall include an appraisal by a qualified appraiser of the current replacement costs of all Improvements and property covered under the Association's fire and casualty insurance policy, unless the Board is satisfied that the current dollar limit of such policy, coupled with the balance of the then current Reserve Accounts, is equal to or greater than the current replacement costs.

**(g) Failure to Acquire Insurance.**

The Association and its Directors and officers shall have no liability to any Owner or Mortgagee if, after a good faith effort, the Association is unable to obtain any insurance required under this Section 9.1 because: (1) the insurance is no longer commercially available; (2) the insurance, if commercially available, can be obtained only at a cost that the Board, in its sole discretion, determines to be unreasonable under the circumstances; or (3) the Members fail to approve any Regular Assessment increase or Special Assessment necessary to fund the premium for the insurance. In such event, the Board shall, as soon as is practicable, notify each Member and Mortgagee that the specific insurance will not be obtained or maintained.

## **Section 9.2 - Specific Association Insurance Provisions.**

The policies of insurance obtained and maintained by the Association shall be subject to the provisions of this Section 9.2.

### **(a) Insurance Premiums.**

Premiums for insurance policies obtained and maintained by the Association shall be common expenses paid from Regular Assessments and, as applicable, Special Assessments. Notwithstanding the foregoing, if there is an increase in the premium for any insurance policy obtained or maintained by the Association due to the negligence, willful acts, or omissions of an Owner, a Resident of the Owner's Unit, or an Invitee of either, such Owner shall be responsible for the increase in that premium, the cost of which shall be levied as a Reimbursement Assessment against the Owner after notice and a hearing before the Board.

### **(b) Notice of Change in Coverage.**

The Association shall, as soon as reasonably practicable, provide Individual Notice to all Members if any of the policies described in the Annual Budget Report have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, as to any of those policies. If the Association receives any notice of nonrenewal of a policy described in the Annual Budget Report, the Association shall immediately notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse.

### **(c) Beneficiaries.**

The Association's insurance policies shall be kept for the benefit of the Association, the Owners, and the Mortgagees, as their interests may appear of record, subject, however, to any loss payment requirements set forth in this Restated Declaration.

### **(d) Trustee for Policies.**

The Association, acting through the Board, shall be the trustee of the interests of all named insureds under the insurance policies obtained and maintained by the Association. All insurance proceeds under any of those policies shall be paid to the Board as trustee. The Board has the authority to negotiate loss settlements with insurance carriers; the Board is authorized to make a settlement

with any insurer for less than full coverage for any damage, so long as the Board acts in accordance with the standard of care for the Board and Directors established in the Bylaws and this Restated Declaration. Except as otherwise specifically provided in this Restated Declaration, the Board has the exclusive right to bind the Association and the Owners with respect to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of such insurance. The Board shall use proceeds received from any insurance policy carried by the Association for the repair, replacement, or restoration of the property for which the insurance was carried, or for such other purpose as may be permitted by this Restated Declaration.

**(e) Filing of Claims.**

Unless otherwise provided by law, no Owner may claim damage or loss against any insurance policy carried by the Association if such damage or loss would have been covered by an insurance policy required to be carried by the Owner pursuant to Section 9.3 of this Article IX and the Owner failed to purchase such insurance.

**(f) Deductibles.**

In the event of a property damage or loss claim for which proceeds are made available under an insurance policy carried by the Association, the responsibility for payment of any deductible applicable to such claim shall be as follows:

(1) An Owner shall be responsible for the cost of any deductible if the damage or loss covered under the claim relates solely to items owned by the Owner, or for which the Owner is responsible, including but not limited to items within the Owner's Unit. If the claim involves damage or loss to multiple Units, each of the affected Owners shall be responsible for a proportionate share of the cost of the deductible equal to the proportionate share that the value of the items owned by the Owner, or for which the Owner is responsible, included in the claim bears to the total claim amount.

(2) The Association shall be responsible for the cost of any deductible if the damage or loss covered under the claim relates solely to items owned or controlled by the Association, or for which the Association

is responsible, including but not limited to Improvements in the Common Area.

(3) If the claim involves damage or loss to one (1) or more Units and the Common Area, then the following shall occur: each of the affected Owners shall be responsible for a proportionate share of the cost of the deductible equal to the proportionate share that the value of the items owned by the Owner, or for which the Owner is responsible, included in the claim bears to the total claim amount; and the Association shall be responsible for a proportionate share of the cost of the deductible equal to the proportionate share that the value of the items owned or controlled by the Association, or for which the Association is responsible, included in the claim bears to the total claim amount.

(4) Notwithstanding the foregoing, if any Common Area damage or loss (including, but not limited to, any damage or loss to any Exclusive Use Common Area) is caused by the negligence, willful acts, or omissions of an Owner, a Resident of the Owner's Unit, or an Invitee of either, such Owner shall be liable for the cost of the deductible. In such case, the cost of the deductible shall be levied against the Owner as a Reimbursement Assessment, after notice and a hearing before the Board.

(5) The Board may deviate from the procedures set forth in this subsection (f) if, in the Board's sole discretion, such deviation is reasonable under the circumstances and compliant with the law.

**(g) Waiver of Subrogation.**

Any insurance maintained by the Association shall contain "waiver of subrogation" as to the Association and its Directors, officers, the Owners and Residents and Mortgagees, and, if obtainable, cross liability endorsements or severability of endorsements insuring each insured against the liability of each other insured.

### **Section 9.3 - Owner Insurance Requirements.**

#### **(a) Property Damage and General Liability Insurance.**

Each Owner is responsible for insuring his or her personal property located within the Development. Each Owner is also responsible for insuring all finishes, fixtures, and Improvements in, and comprising of the Owner's Unit against fire and other casualty, including, but not limited to: interior walls and doors; ceiling, floor and wall surface materials; utility fixtures; cabinets; built-in appliances; heating and air-conditioning systems; and any equivalent replacements to the foregoing. Nothing in this Restated Declaration precludes any Owner from carrying public liability insurance as he or she may deem reasonable, however, such insurance coverage may not adversely affect or diminish any coverage under any of the Association's insurance policies. If any loss intended to be covered by insurance carried by or on behalf of the Association occurs and the proceeds payable are reduced due to insurance carried by an Owner, such Owner shall assign the proceeds of the Owner's insurance to the Association, to the extent of such reduction, for application to the same purposes as the reduced proceeds are to be applied.

#### **(b) Renter's and Landlord's Insurance.**

An Owner whose Unit is subject to a Lease shall require as a term of the Lease that the Tenant is required, at all times during the Tenant's tenancy and occupancy of the Owner's Unit, to obtain and maintain "renter's insurance" covering the replacement value of the Tenant's personal property and belongings located in the Unit from damage and loss. Such Owner shall also be required to maintain "landlord's insurance" during the period of the Lease, under an insurance policy that covers the Owner's Unit from financial losses connected with the Unit; such policy shall cover standard perils such as fire, and, to the extent commercially available, include coverage for accidental damage, malicious damage by tenants, and rent guarantee insurance.

#### **(c) Proof of Insurance.**

Duplicate copies of the insurance policies required under this Section 9.3 shall be submitted by an Owner to the Board upon request. Notwithstanding the foregoing, the Association shall not have the obligation to confirm that any Owner or Tenant carries the insurance required under this Section 9.3 and/or confirm the terms of any insurance purchased by an Owner or Tenant.

**(d) Lack of Insurance.**

The Association shall not be responsible for any damage or loss to an Owner's Unit, another Unit, or the Common Area for which the Owner is responsible and the Owner does not maintain sufficient insurance coverage for the cost of repair and restoration of such damage or loss.

**Section 9.4 - Injury or Damage Sustained Within a Unit.**

In the event any personal injury or property damage is sustained by any Person while physically within a Unit, the Owner who owns such Unit shall be liable for that injury or damage. Such Owner shall be required to indemnify, defend, and hold harmless the Association, the Association's Directors, officers, agents, representatives and employees, and the other Owners from and against any and all claims, actions, causes of action, expenses, costs, and liabilities resulting from or in connection with the personal injury or property damage, except to the extent that the negligence or willful misconduct of any of the foregoing indemnitees caused, or contributed to, the injury or damage. In the event of joint ownership of a Unit, the liability of the Owners of the Unit for such bodily injury and property damage shall be joint and several.

**ARTICLE X**

**DAMAGE OR DESTRUCTION**

**Section 10.1 - Restoration Defined.**

As used in this Article X, the term "*restore*" shall mean repairing, rebuilding and/or reconstructing Improvements damaged or destroyed as a result of a fire or other casualty to substantially the same condition and appearance in which they existed prior to such fire or other casualty damage.

**Section 10.2 - Insured Casualty.**

If any Improvement is damaged or destroyed from a risk covered by insurance maintained by the Association and the insurance proceeds are sufficient to cover the loss, then the Association, to the extent permitted under existing laws and except as otherwise provided under this Article X, shall restore the Improvement to the same condition as it was in immediately prior to the damage or destruction. The Association shall proceed with the filing and adjustment of all claims related to the

damage or destruction which arise under the Association's existing insurance policies. The insurance proceeds shall be paid to and held by either the Association or an insurance trustee designated by the Board, which shall be a commercial bank or other financial institution with trust powers in the County that agrees in writing to accept such trust. Said insurance proceeds shall be held and expended for the benefit of the Owners and their Mortgagees, as their respective interests appear on record.

### **Section 10.3 - Inadequate Insurance Proceeds or Uninsured Loss.**

If the insurance proceeds are insufficient to restore the damaged Improvement or the loss is uninsured, the Board shall add to any available insurance proceeds all Reserve Account funds designated for the repair or replacement of the damaged Improvement. If the total funds then available are sufficient to restore the damaged Improvement, the Improvement shall be restored. If the aggregate amount of insurance proceeds and such Reserve Account funds are insufficient to pay the total costs of restoration, a Special Assessment shall be levied by the Board up to the maximum amount permitted without the approval of the Members in accordance with the limitations set forth in this Restated Declaration and by law. If the total funds then available are sufficient to restore the damaged Improvement, the Improvement shall be restored. However, if the total funds available to the Association are still insufficient to restore the damaged Improvement, then the Board first shall attempt to impose a "Restoration Assessment" pursuant to Section 10.4, and, second, use a plan of alternative reconstruction pursuant to Section 10.5. If the Members do not approve such actions, then the provisions of Section 10.6 shall apply.

### **Section 10.4 - Restoration Assessment.**

If the total funds available to restore the damaged Improvement as provided in Section 10.3 are insufficient, then a meeting of the Members shall be called for the purpose of approving a Special Assessment to make up all or a part of the deficiency (the "*Restoration Assessment*"). If the amount of the Restoration Assessment approved by the Members and the amounts available pursuant to Section 10.3 are insufficient to restore the damaged Improvement, or if no Restoration Assessment is approved, the Association shall consider a plan of alternative reconstruction in accordance with Section 10.5.

Any Special Assessment and/or Restoration Assessment levied to cover a shortfall in available repair proceeds shall be allocated to each Owner based upon the ratio of the square footage of the Owner's Unit to the total square footage of all Units to be assessed, without regard to the extent of damage or destruction to any Owner's individual Unit.

**Section 10.5 - Alternative Reconstruction.**

The Board shall consider and propose plans to reconstruct the damaged Improvement making use of whatever funds are available to the Association pursuant to Section 10.3 and Section 10.4 (the "*Alternative Reconstruction*"). All proposals shall be presented to the Owners. If two-thirds (2/3) of the voting power of the Owners whose Units were materially damaged as determined by the Board (the "*Affected Owners*") and a majority of the voting power of the Members, including the Affected Owners, agree to any plan of Alternative Reconstruction, then the Board shall contract for the reconstruction of the damaged Improvement in accordance with the plan of Alternative Reconstruction, making use of whatever funds are then available to it. If no plan of Alternative Reconstruction is agreed to, then the provisions of Section 10.6 shall apply.

**Section 10.6 - Sale of All Units.**

If the damage renders one or more of the Units uninhabitable, and the Common Area Improvements will not be restored in accordance with the provisions of Sections 10.3, 10.4, and/or 10.5, the Board, as the attorney-in-fact for each Owner of a Unit, shall be empowered to sell the damaged Units in their then present condition on terms to be determined by the Board. The proceeds from the sale, together with the insurance proceeds received and any Reserve Account funds, after deducting therefrom the Association's sale expenses, including commissions, title and recording fees, legal costs, a contingency fund for dissolution of the Association, and payment of its debts and contingent liabilities, and that portion of the proceeds allocated for the removal of the damaged building(s), shall be distributed among the Owners and their respective Mortgagees in proportion to the respective fair market values of the Condominiums immediately prior to the date of the event causing the damage, as determined by an independent appraisal made by a qualified real estate appraiser selected by the Board. In the event of a sale of all Units, the Board shall then wind-up and dissolve the Association.

### **Section 10.7 - Restoration of Partition Rights.**

Notwithstanding anything to the contrary contained herein, if the damage has rendered any Unit uninhabitable and (1) within one year of the date of the occurrence of the damage, the Association has either not elected to repair the damage under the provisions of Sections 10.2, 10.3, 10.4, or 10.5 or has elected to repair the damage but has not commenced and diligently pursued the repair work or (2) the Association has not commenced and diligently pursued the sale of the Development as authorized under Section 10.6, the restriction against partition described in Section 2.12 of this Restated Declaration shall be null and void and any Owner may bring a partition action under the authority of the CICD Act.

### **Section 10.8 - Rebuilding Contract.**

If there is a determination to restore, the Board or its authorized representative shall obtain bids from at least two (2) licensed and reputable contractors and shall contract for the repair and reconstruction work with whomever the Board determines to be in the best interests of the Members. The Board shall have the authority to enter into a written contract with the contractor for such repair and reconstruction, and the repair and reconstruction funds shall be disbursed to the contractor according to the terms of the contract and in accordance with standard construction industry procedures. The Board shall take all steps necessary to assure the commencement and completion of the authorized repair and reconstruction at the earliest possible date. Such construction shall be commenced no later than one hundred eighty (180) days after the event requiring reconstruction, subject to delay due to extenuating circumstances outside of the Board's reasonable control and shall thereafter be diligently prosecuted to completion. Such construction shall return the Development to substantially the same condition and appearance in which it existed prior to the damage or destruction.

### **Section 10.9 - Interior Unit Repairs.**

Notwithstanding the foregoing provisions of this Article X, with the exception of any casualty or damage covered by insurance maintained by the Association, repair and restoration of any damage to the interior of any individual Unit, including, but not limited to, all fixtures, cabinets, and Improvements therein, together with the restoration and repair of all interior paint, wall coverings, and floor coverings, must be made by and at the sole expense of the Owner of the Unit so damaged, in a good and workmanlike manner. Notwithstanding the foregoing sentence, in the event that insurance proceeds are available under any fire and casualty insurance,

earthquake insurance, and/or other insurance policy maintained by the Association after all of the Common Area damage has been repaired and reconstructed, the Association shall be responsible to use such proceeds for the repair and restoration of the interior items within a damaged Unit or Units, including, but not limited to, the fixtures, Improvements, and alterations that are a part of the building's structure, and appliances, such as those used for refrigerating, ventilating, cooking, dishwashing, laundering, security, or housekeeping, to the extent applicable.

## **ARTICLE XI EMINENT DOMAIN**

### **Section 11.1 - Total Sale or Taking.**

If there is a total sale or taking of the Development, meaning a sale or taking that (1) renders more than fifty percent (50%) of the Units uninhabitable (such determination to be made by the Board in the case of a sale, and by the court in the case of a taking) or (2) that renders the Development as a whole uneconomical as determined by the vote or written consent of seventy-five percent (75%) of the Owners and their respective First Mortgagees whose Units will remain habitable after the taking, the right of any Owner to partition through legal action as described in Section 2.12 of this Restated Declaration shall revive immediately. However, the determination that there is a total sale or taking must be made before the proceeds from any sale or award are distributed. The proceeds of any such total sale or taking of the Development, together with the proceeds of any sale pursuant to any partition action, after payment of all expenses relating to the sale, taking or partition action, shall be paid to all Owners and to their respective Mortgagees as their interests appear in proportion to the ratio that the fair market value of each Owner's Unit bears to the fair market value of all Owners' Units.

### **Section 11.2 - Partial Sale or Taking.**

In the case of a partial sale or taking of the Development, meaning a sale or taking that is not a total taking as described in Section 11.1, the proceeds from the sale or taking shall be paid or applied in the following order of priority and any judgment of condemnation shall include the following provisions as part of its terms:

(a) To the payment of the expenses of the Association in effecting the sale or to any prevailing party in any condemnation action to whom such expenses are awarded by the court to be paid from the amount awarded; then

(b) To Owners and their respective Mortgagees as their interests may appear of record whose Units have been sold or taken in an amount up to the fair market value of such Units, as determined by the Court in the condemnation proceeding or by an independent qualified appraiser selected by the Board, less such Owner's share of expenses paid pursuant to the preceding subsection (a) (which share shall be allocated on the basis of the fair market value of the Condominium); after such payment, the recipient shall no longer be considered an Owner, and the Board or individuals authorized by the Board acting as attorney-in-fact of all Owners shall amend the Condominium Plan, the subdivision map (if necessary), and this Restated Declaration to eliminate from the Development the Unit so sold or taken and to adjust the undivided ownership interests of the remaining Owners in the Common Area based on the ratio that each remaining Owner's undivided interest bears to all of the remaining Owners' undivided interest in the Common Area; then

(c) To any remaining Owner and to his or her Mortgagees, as their interests may appear, whose Unit has been diminished in fair market value as a result of the sale or taking disproportionately to any diminution in value of all remaining Units but, as of a date immediately after any announcement of condemnation, in an amount up to the disproportionate portion of the total diminution in value; then

(d) To all remaining Owners and to their respective Mortgagees, as their interests may appear of record, the balance of the sale proceeds or award in proportion to the ratio that the fair market value of each remaining Owner's Unit bears to the fair market value of all remaining Owners' Units, as determined by the court in the condemnation proceeding or by an independent qualified appraiser selected by the Board.

### **Section 11.3 - Representation by Association.**

The Association shall represent the Owners and their respective Mortgagees in any condemnation proceedings involving the Development, and the Board may engage in negotiations, settlements, and agreements with the condemning authority for

acquisition of all or part of the Common Area. Each Owner, by acceptance of a deed to a Unit, irrevocably appoints the Association as his or her attorney-in-fact to represent the Owners in any such proceedings.

## **ARTICLE XII RIGHTS OF MORTGAGEES**

### **Section 12.1 - Mortgages Permitted.**

Any Owner may encumber his or her Condominium with a mortgage.

### **Section 12.2 - Subordination.**

Any Assessment lien established under the provisions of this Restated Declaration is expressly made subject to and subordinate to the rights of any first mortgage that encumbers any Unit, 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. The transfer of ownership of a Unit and its appurtenant percentage interest in the Common Area, as the result of the exercise of a power of sale or a judicial foreclosure involving a default under the first mortgage, shall extinguish the lien of Assessments which were due and payable prior to the transfer of the ownership interest. No transfer of an ownership interest, as the result of a foreclosure or exercise of a power of sale, shall relieve the new Owner, whether it be the former mortgagee or beneficiary of the first mortgage or another Person, from liability for Assessments thereafter becoming due or from the lien thereof. Notwithstanding the foregoing, if state statute requires the First Mortgagee or senior encumberer of a Unit to bear responsibility for a percentage and/or number of specific months of Assessments due and payable prior to the transfer of an ownership interest as the result of a foreclosure or exercise of a power of sale, such controlling statute shall obligate the First Mortgagee or senior encumberer to pay such Assessments in spite of any contrary provisions of this Section 12.2. All taxes, Assessments, and charges which may become liens prior to the first mortgage under local law shall relate only to the individual Condominiums and not to the Property as a whole.

### **Section 12.3 - Amendments.**

(a) No amendment to this Restated Declaration shall affect the rights of any Mortgagee under any mortgage made in good faith and for value and recorded before the recordation of any such amendment, unless a Mortgagee either joins in the execution of the amendment or approves it in writing as a part of such amendment.

(b) Unless a higher percentage is required by a specific provision of this Restated Declaration, the consent of Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the votes of Condominiums that are subject to mortgages held by Eligible Mortgage Holders must be obtained prior to adoption of any amendment of a material nature affecting any of the following matters:

- (1) Voting rights;
- (2) Assessment liens or the priority of Assessment liens;
- (3) Reserves for maintenance, repair, or replacement of the Common Area Improvements;
- (4) Responsibility for maintenance and repairs;
- (5) Allocation of interests in the Common Area or Exclusive Use Common Areas, or the right to their use;
- (6) Insurance requirements;
- (7) Definition of any Unit boundary;
- (8) Convertibility of Units into Common Area or vice versa;
- (9) Expansion or contraction of the Development or the addition, annexation, or withdrawal of property to or from the Development;
- (10) Restrictions on the leasing of Units;

(11) Restrictions on a Unit Owner's right to sell or transfer his or her Unit;

(12) Restoration or repair of the Development after damage or partial condemnation in a manner other than that specified in this Restated Declaration;

(13) Any provisions that expressly benefit Mortgagees or any insurers or guarantors of mortgages affecting Units; or

(14) Any action to terminate the legal status of the Development after substantial destruction or condemnation occurs.

(c) An Eligible Mortgage Holder who receives a written request to approve an amendment to this Restated Declaration pursuant to subsection (b) of this Section 12.3 and fails to submit a response to that request within thirty (30) days after receiving notice of the proposal shall be deemed to have approved the amendment in accordance with subsection (a) of this Section 12.3, provided the notice was delivered by certified or registered mail with a return receipt requested.

#### **Section 12.4 - Restriction on Certain Changes**

Unless at least two-thirds (2/3) of the Eligible Mortgage Holders and two-thirds (2/3) of the Owners have given their prior written approval, neither the Association nor the Owners shall be entitled:

(a) By act or omission, to seek to abandon or terminate the Development as a condominium project, except for abandonment provided by statute in case of substantial loss to the Units and Common Area.

(b) To change the pro rata interest or obligations of any Condominium 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 Condominium in the Common Area.

(c) To partition or subdivide any Condominium.

(d) By act or omission, to seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Association or the Owners shall not be deemed to be a transfer within the meaning of the foregoing provision.

(e) To use hazard insurance proceeds for losses to Units or the Common Area for other than the repair, replacement, or reconstruction of Improvements, except as provided by statute in case of substantial loss to the Units or Common Area.

(f) By act or omission, to change, waive, or abandon the provisions of this Restated Declaration, or the enforcement thereof, pertaining to architectural design or the exterior maintenance of the Common Area.

(g) To fail to maintain fire and extended coverage on insurable Improvements in the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost).

#### **Section 12.5 - Right to Examine Books and Records.**

The Association shall make available to First Mortgagees (and insurers and guarantors of any first mortgage), current copies of the Governing Documents and the books, records, and financial statements of the Association during normal business hours or under other reasonable circumstances. The Association may impose a fee for providing the foregoing, which may not exceed the reasonable cost to prepare and reproduce the requested documents. On receipt of a written request from a First Mortgagee, the Association shall provide the First Mortgagee with the review of the financial statement of the Association for the immediately preceding fiscal year, within a reasonable time frame.

#### **Section 12.6 - Distribution of Insurance and Condemnation Proceeds.**

No Owner, or any other party, shall have priority over any right of any First Mortgagees pursuant to their mortgages in case of distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of any Units or Common Area. Any provision to the contrary in this Restated Declaration, the Bylaws or other Governing Documents is to such extent void.

## **Section 12.7 - Notice to Mortgagees.**

(a) If any Owner is in default under any provision of this Restated Declaration or under any provision of the other Governing Documents and the default is not cured within sixty (60) days after written notice to that Owner, the Association, upon request, shall give to any First Mortgagee of such Owner a written notice of such default and of the fact that the sixty (60) day period has expired.

(b) Any mortgage holder, insurer, or guarantor may send a written request by certified mail to the Association stating both its name and address, and the address of the Condominium of which it holds, insures, or guarantees a mortgage, to receive timely written notice of any of the following:

- (1) Any condemnation or casualty loss that affects either a material portion of the Development or the Condominium securing the mortgage;
- (2) Any sixty (60) day delinquency in the payment of Assessments or charges owed by the Owner of any Unit encumbered by the holder's, insurer's, or guarantor's mortgage;
- (3) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and/or
- (4) Any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders.

## **Section 12.8 - Breaches of Restated Declaration.**

No breach of any provision of this Restated Declaration shall invalidate the lien of any mortgage made in good faith or for value, but all of the covenants, conditions, and restrictions contained in this Restated Declaration shall be binding on any Owner whose title is derived through foreclosure sale, trustee sale, or otherwise. Any Mortgagee shall have the right, but not the obligation, to cure any default or violation of this Restated Declaration by an Owner.

**Section 12.9 - Foreclosure.**

If any Condominium is encumbered by a first mortgage made in good faith and for value, the foreclosure of any Assessment lien shall not operate to affect or impair the lien of the first mortgage. On foreclosure of the first mortgage, any lien for delinquent Assessments shall be subordinate to the lien of the first mortgage, and the purchaser at the foreclosure sale shall take title free of responsibility for the Assessment lien, unless the then current law provides otherwise. On taking title, the purchaser of the Condominium shall only be obligated to pay Assessments or other charges that are levied or assessed by the Association on or after the date the purchaser acquires title to the Condominium. Any subsequently levied Assessments or other charges against the Condominium may include previously unpaid Assessments, provided that all Owners, including the purchaser and his or her successors and assigns, are required to pay their proportionate share of such unpaid Assessments, at the rates provided in this Restated Declaration. Any mortgagee who acquires title to a Condominium by foreclosure, by deed in lieu of foreclosure, or by assignment in lieu of foreclosure shall not be required to cure any breach of this Restated Declaration that is non-curable or of a type that is not reasonably practical or feasible to cure.

**Section 12.10 - Right to Furnish Information**

Any mortgagee may furnish information to the Association concerning the status of any mortgage.

**Section 12.11 - No Right of First Refusal.**

No right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey the Owner's Condominium is imposed by this Restated Declaration.

**ARTICLE XIII  
ENFORCEMENT AND DISPUTE RESOLUTION**

**Section 13.1 - Right to Enforce.**

The Association and any Owner may enforce the provisions of the Governing Documents in any legal or equitable action, pursuant to the procedures described in this Article XIII. Each Owner has a right of action against the Association for the Association's failure to comply with the Governing Documents. All actions taken

to enforce the provisions of the Governing Documents, whether by the Association or an Owner, shall be conducted in accordance with applicable law.

**Section 13.2 - Equitable Relief.**

Each Owner acknowledges and agrees that if any Person breaches any of the provisions of the Governing Documents, money damages may not be adequate compensation. As a result, each Owner agrees that in the event of a breach of the Governing Documents, the non-breaching party, in addition to any other remedy available at law or equity, shall be entitled to equitable relief, including, but not limited to, an order (1) compelling the breaching party to perform an act which the party is required to perform under the Governing Documents or which is necessary to bring the breaching party or the breaching party's Condominium into compliance with the Governing Documents or (2) prohibiting the breaching party from performing any act that violates the Governing Documents.

**Section 13.3 - No Enforcement Waiver.**

The failure to enforce any provision of the Governing Documents against an Owner shall not constitute a defense for any subsequent enforcement action brought against such Owner, even if such failure is for an extended period of time and shall not in any manner restrict or estop the right of the Association or any Owner to enforce the provisions of the Governing Documents at any future time.

**Section 13.4 - Violations Constitute a Nuisance.**

Any violation of the Governing Documents, as well as a violation of any law within the Development, is declared to be and shall constitute a nuisance.

**Section 13.5 - Internal Dispute Resolution.**

**(a) General Provisions.**

This Section 13.5 applies to a dispute between the Association and a Member involving their respective rights, duties, or liabilities under the Nonprofit Mutual Benefit Corporation Law, or the Governing Documents.

**(b) Basic Procedures.**

The following procedure shall apply to resolving a dispute by internal dispute resolution (“*IDR*”):

(1) IDR may be invoked by either the Association or an Owner.  
(2) A request invoking IDR shall be in writing. The written request for IDR shall contain the following:

(A) A request for IDR pursuant to this Section 13.5.

(B) A brief description of the dispute between the parties.

(3) Upon receipt of a written request for IDR, the party receiving the request shall respond in writing to the other party within thirty (30) days, indicating whether such party agrees to engage in the IDR process. If the party receiving the request fails to respond within such thirty (30) day period, the request for IDR shall be deemed to be denied.

(A) If IDR is invoked by a Member, the Association shall be required to participate in the IDR process.

(B) If IDR is invoked by the Association, the Member may elect not to participate in the IDR process.

(4) Upon receipt of a written request for IDR, the Board shall designate at least one (1) Director with whom the Member may meet and confer.

(5) The Association and the Member shall meet promptly at a mutually convenient time and place, explain their positions to each other, and confer in good faith in an effort to resolve the dispute. Each party may be assisted by an attorney or another person at their own cost when conferring.

**(c) Additional Procedures.**

The Board may adopt additional procedures for the IDR process, so long as such procedures are fair, reasonable, and expeditious. Such procedures may include the 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.

**(d) Resolution Requirements.**

(1) A resolution of the dispute agreed to by the Association and the Member shall be memorialized in writing and signed by the parties, including the Board designee on behalf of the Association.

(2) A written agreement reached in the IDR process binds the parties and is judicially enforceable if it is signed by both parties and both of the following conditions are satisfied:

(A) The agreement is not in conflict with law or the Governing Documents.

(B) The agreement is either consistent with the authority granted by the Board to its designee or the agreement is ratified by the Board.

(3) If the dispute is resolved other than by agreement of the Member, the Member shall have a right of appeal to the board.

**(e) No Fee.**

A Member of the Association shall not be charged a fee to participate in the IDR process.

**Section 13.6 - Alternative Dispute Resolution.**

**(a) General Provisions.**

This Section 13.6 applies to alternative dispute resolution (“*ADR*”). *ADR* shall mean and include mediation, arbitration, conciliation, and any other non-judicial procedure that involves a neutral party. *ADR* shall be a prerequisite to the commencement of a civil action or proceeding, other than a cross-complaint, to enforce the CICD Act, the Nonprofit Mutual Benefit Corporation Law, or the Governing Documents. 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 *ADR* pursuant to the requirements of this Section 13.6.

**(b) Applicability.**

This Section 13.6 applies only to an enforcement action 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 Code of Civil Procedure. This Section 13.6 does not apply to a small claims action. Except as otherwise provided by law, this Section 13.6 does not apply to an Assessment dispute.

**(c) Request for Resolution.**

(1) Any party to a dispute may initiate the ADR process by serving on all other parties to the dispute a request for resolution (a “*Request for Resolution*”). The Request for Resolution shall include all of the following:

- (A) A brief description of the dispute between the parties.
- (B) A request for ADR.
- (C) A notice that the party receiving the Request for Resolution is required to respond within thirty (30) days of receipt or the request will be deemed rejected.

(2) Service of the Request for Resolution shall be by personal delivery, first-class mail, express mail, facsimile transmission, or other means reasonably calculated to provide the party on whom the request is served actual notice of the request.

(3) A party on whom a Request for Resolution is served has thirty (30) days following service to accept or reject the request. If a party does not accept the request within that period, the request is deemed rejected by the party.

(4) If the party on whom a Request for Resolution is served accepts the request, the parties shall complete the ADR process within ninety (90) days after the party initiating the request receives the acceptance, unless this period is extended by written stipulation signed by both parties.

(5) The form of ADR chosen may be binding or nonbinding, with the voluntary consent of the parties. If the parties cannot agree on a form of ADR, then the form of ADR to be utilized shall be judicial reference, as described in Section 13.7.

**(d) Costs.**

The costs of the ADR shall be borne equally by the parties.

**(e) Failure to Participate in ADR.**

Failure of a Member of the Association to comply with the ADR requirements of this Section 13.6 may result in the loss of the Member's right to sue the Association or another Member of the Association regarding enforcement of the Governing Documents or applicable law.

**Section 13.7 - Judicial Reference.**

**(a) Disputes Subject to Judicial Reference.**

If the parties to a dispute who have agreed to use an ADR process pursuant to Section 13.6 cannot agree on a form of ADR, then the form of ADR to be utilized shall be judicial reference.

**(b) Appointment of Referee.**

Within thirty (30) days after it is determined that judicial reference will be used for the ADR process, the parties to the dispute shall select the referee. The referee shall be an attorney or retired judge, unless the parties agree otherwise. Any dispute regarding the selection of the referee shall be resolved by the entity providing the reference services or, if no entity is involved, by the court with appropriate jurisdiction.

**(c) Proceedings.**

The judicial reference shall be conducted in accordance with the applicable provisions of Sections 638 through 645.2 of the Code of Civil Procedure, and any successor statutes thereto. The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. The referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision. The parties shall use the procedures adopted by the American Arbitration Association for judicial reference or any other entity offering judicial reference dispute resolution procedures as may be

mutually acceptable to the parties. The parties shall complete the judicial reference process within ninety (90) days after the acceptance of the Request for Resolution, unless this period is extended by written stipulation signed by both parties.

**(d) Rules and Procedures.**

The following rules and procedures shall apply in all cases, unless the parties agree otherwise:

- (1) The proceedings shall be heard in the County.
- (2) The referee may require one or more pre-hearing conferences.
- (3) The parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.
- (4) The referee shall have the power to hear and dispose of motions in the same manner as a trial court judge.
- (5) The referee shall apply the rules of law, including the rules of evidence, unless expressly waived by both parties.
- (6) A stenographic record of the hearing shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals.
- (7) The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable.
- (8) The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

**(e) Costs.**

The costs of the judicial reference shall be borne equally by the parties.

**(f) Failure to Participate.**

If either party elects not to participate in the judicial reference proceeding because all necessary and appropriate parties will not participate, the Association or any Owner may bring an action in any court of competent jurisdiction to resolve the dispute.

**(g) Claims and Disputes Exempt from Judicial Reference.**

The following types of claims and disputes shall be exempt from the judicial reference provisions set forth in this Section 13.7:

- (1) An enforcement action that is not 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 Code of Civil Procedure.
- (2) A small claims action.
- (3) An Assessment dispute, except as otherwise provided by law.
- (4) An action unrelated to the enforcement of the CICD Act, the Nonprofit Mutual Benefit Corporation Law, or the Governing Documents against the Association or a Member.

**ARTICLE XIV  
AMENDMENTS**

This Restated Declaration may be amended by the Secret Ballot vote of Members representing at least fifty-one percent (51%) of the voting power of the Association; provided, however, that the specified percentage of Members necessary to amend a specific provision of this Restated Declaration shall not be less than the percentage of affirmative votes required for action to be taken under that provision.

Notwithstanding the foregoing, the Board shall have the power to amend this Restated Declaration without Member approval, upon adoption of a Board resolution authorizing such amendment, if such amendment is: (1) permitted by the

law to be adopted by the Board without Member approval; (2) required under any law; and/or (3) to correct a cross-reference in this Restated Declaration to the CICD Act or another law that was repealed and continued in a new provision. Such Board resolution shall be recorded with the amendment.

An amendment to this Restated 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 Restated Declaration and any other Person whose approval is required by this Restated Declaration (including but not limited to, as may be applicable, any Eligible Mortgage Holders); (2) that fact has been certified in a writing executed and acknowledged by the officer or officers designated by the Association for that purpose (if no one is designated, by the President of the Association); and (3) the amendment has been recorded in the County in which the Development is located. Within a reasonable time after an amendment to this Restated Declaration is recorded, the Association shall deliver to each Member, by Individual Delivery, a copy of the amendment, together with a statement that the amendment has been recorded.

## **ARTICLE XV**

### **MISCELLANEOUS PROVISIONS**

#### **Section 15.1 - Term.**

The covenants, conditions, and restrictions of this Restated Declaration shall run with and bind the Property and shall inure to the benefit of and shall be enforceable by the Association and the Owner of any Unit, and their respective legal representatives, heirs, successors, and assigns, for a term of fifty (50) years from the date of recordation of this Restated Declaration. Thereafter, these covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years, unless this Restated Declaration is rescinded by the written consent of Owners holding a majority of the then total voting power of the Association (and approved by Eligible Mortgage Holders in accordance with Section 12.4 of this Restated Declaration). The rescission shall be effective on recordation of a notice of rescission in the records of the County.

### **Section 15.2 - Headings, Number and Gender.**

The subject headings of the articles, sections, and subsections of this Restated Declaration are included for purposes of convenience and reference only and shall not affect the construction or interpretation of any of the provisions of this Restated Declaration. In this Restated Declaration, where applicable, references to the singular shall include the plural and references to the plural shall include the singular. References to the male, female, or neuter gender in this Restated Declaration shall include reference to all other such genders where the context so requires.

### **Section 15.3 - Liberal Construction.**

The provisions of this Restated Declaration shall be liberally construed and interpreted to effectuate its purpose of creating a uniform plan for the management, operation, and administration of a condominium project.

### **Section 15.4 - Severability.**

The provisions of this Restated Declaration shall be deemed independent and severable. In the event any provision contained in this Restated Declaration is held to be invalid, void, or unenforceable by any court of competent jurisdiction, the remaining provisions of this Restated Declaration shall be and remain in full force and effect.

### **Section 15.5 - Cumulative Remedies.**

Each remedy provided for in this Restated Declaration shall be cumulative and nonexclusive. Failure to exercise any remedy provided for in this Restated Declaration shall not, under any circumstances, be construed as a waiver of such remedy.

### **Section 15.6 - No Discrimination.**

No Owner shall execute or cause to be recorded any instrument that imposes a restriction on the sale, rental, or occupancy of the Owner's Unit on the basis of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information, nor shall any Owner discriminate against or harass any prospective purchaser, Tenant, or Resident of the Owner's Unit because of such bases. Notwithstanding the foregoing, selection preferences based on age in the sale or rental of an Owner's Unit, imposed in accordance with

Section 51 of the Civil Code or a federally approved housing program, as may be applicable, shall not constitute age discrimination.

**Section 15.7 - Attorneys' Fees.**

Except as otherwise provided in this Restated Declaration, in the event of any litigation or alternative dispute resolution procedure regarding the rights or obligations of the Association or any Person subject to this Restated Declaration, the prevailing party in such proceeding, in the discretion of the judge or decision-maker, shall be entitled to recover its reasonable attorneys' fees and costs. The foregoing provision shall also apply to attorneys' fees and costs incurred to collect upon any judgment entered as a result of such litigation or alternative dispute resolution procedure.

**Section 15.8 - Delivery of Documents and Information.**

Documents, notices, and other information to be delivered (1) to the Association by a Member, (2) to an individual Member by the Association, or (3) to all Members by the Association, pursuant to the Governing Documents or the CICD Act, shall be delivered in accordance with the methods permitted under, and the requirements of, the Bylaws and the CICD Act.

**ARTICLE XVI  
CONFLICTING PROVISIONS**

To the extent of any conflict between this Restated Declaration and the law, the law shall prevail. To the extent of any conflict between this Restated Declaration and the Articles or Bylaws, this Restated Declaration shall prevail. To the extent of any conflict between this Restated Declaration and a Rule, this Restated Declaration shall prevail, unless the Rule was adopted in compliance with the law.

**[END OF DOCUMENT]**

**EXHIBIT “A”**  
**LEGAL DESCRIPTION OF THE PROPERTY**

The Property consists of certain real property in the City of Temecula, County of Riverside, State of California, more particularly described as follows:

**PARCEL 11 OF PARCEL MAP 19580, IN THE CITY OF TEMECULA, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, FILED IN BOOK 154, PAGES 92 THROUGH 96, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER.**

**EXCEPTING THEREFROM ALL MINERAL RIGHTS MORE THAN 500 FEET BELOW THE SURFACE OF THIS PROPERTY, WAIVING THE RIGHT OF SURFACE ENTRY AS RESERVED BY A CORPORATION GRANT DEED RECORDED JANUARY 10, 1990 AS INSTRUMENT NO. 12010 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.**

**ASSESSOR’S PARCEL NO. 921-020-068-6**

**EXHIBIT “B”**  
**ASSESSMENT SCHEDULE**

(a) The Association shall determine the rate of Regular Assessments and Special Assessments (other than as described in Section 10.4 of this Restated Declaration) in accordance with this Exhibit “B”

(b) Each Unit shall bear an equal and uniform share of all common expenses and budget items, except for those common expenses and budget items set forth in subsection (c) of this Exhibit “B”

(c) Each Unit shall bear a variable and proportionate share for all common expenses and budget items. These common expenses and budget items shall be shared by each Unit based on the following percentages:

ALLOCATION OF ASSESSMENT UNITS

UNIT NUMBER	SQUARE FOOTAGE OF CONDO	PERCENTAGE	ASSESSMENT UNITS	NUMBER OF VOTES
A	3,222	5.49	549	549
B	3,184	5.43	543	543
C-1	1,615	2.75	275	275
C-2	1,664	2.84	284	284
D-1	1,978	3.37	337	337
D-2	1,929	3.29	329	329
E	3,257	5.55	555	555
F	3,176	5.41	541	541
G	3,176	5.41	541	541
H	3,245	5.53	553	553
I	2,502	4.26	426	426
J	2,187	3.73	373	373
K	3,214	5.48	548	548
L	4,095	6.98	698	698
M	4,095	6.98	698	698
N	4,095	6.98	698	698
O	3,851	6.56	656	656
P	3,851	6.56	656	656
Q-1	2,157	3.68	368	368
Q-2	2,184	3.72	372	372
<b>TOTAL</b>	<b>58,677</b>	<b>100.00</b>	<b>10,000</b>	<b>10,000</b>

**CERTIFICATE OF PRESIDENT AND SECRETARY  
OF  
TEMECULA OFFICE CENTRE PROPERTY OWNERS ASSOCIATION**

We, the undersigned, do hereby certify that:

1. We are the duly appointed and acting President and Secretary of Temecula Office Centre Property Owners Association (the “*Association*”), a California nonprofit mutual benefit corporation.

2. The foregoing *Amended and Restated Declaration of Covenants, Conditions and Restrictions for Temecula Office Centre Property Owners Association* (the “*Restated Declaration*”) was approved by at least a majority of the total voting power of the Association in accordance with the requirements of the Original Declaration and the CICD Act.

IN WITNESS WHEREOF, we have executed this Certificate of President and Secretary this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**TEMECULA OFFICE CENTRE PROPERTY OWNERS ASSOCIATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: President

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Secretary

“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 \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_, who  
proved to me on the basis of satisfactory evidence to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that  
he/she/they executed the same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf  
of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of  
California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
—  
Notary Public

“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 \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_, who  
proved to me on the basis of satisfactory evidence to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that  
he/she/they executed the same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf  
of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of  
California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

**TEMECULA OFFICE CENTRE PROPERTY  
OWNERS ASSOCIATION**

**EXHIBIT B**

(AMENDED AND RESTATED BYLAWS)

**DRAFT 1**

**AMENDED AND RESTATED**

**BYLAWS**

**OF**

**TEMECULA OFFICE CENTRE  
PROPERTY OWNERS ASSOCIATION**

**AMENDED AND RESTATED  
BYLAWS  
OF  
TEMECULA OFFICE CENTRE PROPERTY OWNERS ASSOCIATION**

Table of Contents

**ARTICLE I.....1**

**DEFINITIONS AND ORGANIZATIONAL INFORMATION.....1**

    Section 1.1 - Definitions and Interpretation. ....1

    Section 1.2 - Name and Location. ....1

    Section 1.3 - Formation and Purpose. ....1

    Section 1.4 - Reference to Statute. ....2

    Section 1.5 - Amendment and Restatement of Prior Bylaws.....2

**ARTICLE II .....2**

**DELIVERY OF DOCUMENTS AND INFORMATION .....2**

    Section 2.1 - Delivery to the Association.....2

    Section 2.2 - Individual Delivery / Individual Notice.....2

    Section 2.3 - General Delivery / General Notice. ....3

    Section 2.4 - Completion of Delivery. ....3

    Section 2.5 - Electronic Delivery. ....4

    Section 2.6 - Delivery Requirements for Certain Member Requests.....4

**ARTICLE III.....5**

**MEMBERSHIP, VOTING RIGHTS AND MEMBER DISCIPLINE .....5**

    Section 3.1 - Membership; Voting Rights.....5

    Section 3.2 - Furnishing Evidence of Membership.....5

    Section 3.3 - Eligibility to Vote. ....5

Section 3.4 - Member Discipline.....	6
Section 3.5 - Voting at Membership Meetings. ....	6
Section 3.6 - Cumulative Voting.....	7
Section 3.7 - Proxies Not Allowed.....	7
Section 3.8 - Record Dates. ....	7
<b>ARTICLE IV.....</b>	<b>8</b>
<b>ELECTIONS AND VOTING PROCEDURES.....</b>	<b>8</b>
Section 4.1 - Election and Voting Rules. ....	8
Section 4.2 - Inspector of Elections. ....	11
Section 4.3 - Procedure for Elections by Secret Ballot.....	11
Section 4.4 - No Use of Association Funds for Campaign Purposes.....	14
Section 4.5 - Electronic Balloting and Other Alternative Voting Procedures. ....	14
Section 4.6 – Election by Acclamation. ....	15
<b>ARTICLE V.....</b>	<b>15</b>
<b>MEETINGS OF MEMBERS.....</b>	<b>15</b>
Section 5.1 - Place of Meetings of Members. ....	15
Section 5.2 - Annual Meetings of Members. ....	15
Section 5.3 - Special Meetings of Members. ....	15
Section 5.4 - Notice. ....	16
Section 5.5 - Affidavit of Delivery of Notice.....	16
Section 5.6 - Quorum. ....	16
Section 5.7 - Adjourned Meetings.....	17
Section 5.8 - Effect of a Member’s Attendance at a Meeting.....	18
Section 5.9 - Action Without Meeting. ....	18
Section 5.10 - Approval Requirements under the Commercial and Industrial Common Interest Development Act.....	19

Section 5.11 - Order of Business.....	19
<b>ARTICLE VI.....</b>	<b>20</b>
<b>BOARD OF DIRECTORS.....</b>	<b>20</b>
Section 6.1 - Nomination.....	20
Section 6.2 - Number and Qualifications.....	20
Section 6.3 - Election and Term of Office.....	21
Section 6.4 - Vacancies.....	22
Section 6.5 - Removal of Directors.....	22
Section 6.6 - Filling Vacancies.....	23
Section 6.7 - Compensation of Directors.....	23
<b>ARTICLE VII.....</b>	<b>23</b>
<b>MEETINGS OF THE BOARD OF DIRECTORS.....</b>	<b>23</b>
Section 7.1 - General Board Meeting Requirements.....	23
Section 7.2 - Regular Meetings of Board.....	25
Section 7.3 - Special Meetings of Board.....	25
Section 7.4 - Executive Session Meetings of Board.....	26
Section 7.5 - Emergency Meetings of Board.....	27
Section 7.6 - Waiver of Notice.....	27
Section 7.7 - Quorum and Adjournment.....	27
Section 7.8 - Board Meeting Minutes.....	27
Section 7.9 - Conflicts of Interest.....	28
<b>ARTICLE VIII.....</b>	<b>29</b>
<b>POWERS AND DUTIES OF THE BOARD OF DIRECTORS.....</b>	<b>29</b>
Section 8.1 - Powers and Duties.....	29
Section 8.2 - Selected Financial Review Duties.....	33
Section 8.3 - Annual Budget Report.....	33

Section 8.4 - Annual Policy Statement.....35

Section 8.5 - Prohibited Acts.....37

**ARTICLE IX.....37**

**OFFICERS .....37**

Section 9.1 - Designation. ....37

Section 9.2 - Election of Officers.....38

Section 9.3 - Removal of Officers.....38

Section 9.4 - Filling of Vacancies.....38

Section 9.5 - Compensation of Officers.....38

Section 9.6 - President.....38

Section 9.7 - Vice President. ....39

Section 9.8 - Secretary.....39

Section 9.9 - Treasurer. ....39

**ARTICLE X.....40**

**COMMITTEES.....40**

Section 10.1 - Committees of the Board. ....40

Section 10.2 - Advisory Committees. ....41

**ARTICLE XI.....42**

**ASSOCIATION RECORDS .....42**

Section 11.1 - Records Inspection.....42

Section 11.2 - Membership Lists.....46

Section 11.3 - Use of Association Records.....47

**ARTICLE XII .....47**

**MISCELLANEOUS.....47**

Section 12.1 - Checks, Drafts and Documents.....47

Section 12.2 - Execution of Documents.....	48
Section 12.3 - Operating Account. ....	48
Section 12.4 - Reserve Funds.....	48
Section 12.5 - Gifts.....	48
Section 12.6 - Fiscal Year. ....	49
Section 12.7 - Headings, Number and Gender.....	49
<b>ARTICLE XIII.....</b>	<b>49</b>
<b>AMENDMENTS TO BYLAWS.....</b>	<b>49</b>
<b>ARTICLE XIV.....</b>	<b>50</b>
<b>CONFLICTING PROVISIONS.....</b>	<b>50</b>
<b>CERTIFICATE OF SECRETARY.....</b>	<b>51</b>

**AMENDED AND RESTATED  
BYLAWS  
OF  
TEMECULA OFFICE CENTRE PROPERTY OWNERS ASSOCIATION**

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**ARTICLE I  
DEFINITIONS AND ORGANIZATIONAL INFORMATION**

**Section 1.1 - Definitions and Interpretation.**

Unless otherwise provided in these Amended and Restated Bylaws of Temecula Office Centre Property Owners Association (these “*Bylaws*”), the capitalized terms used herein have the same meanings as in the Restated Declaration. The “*Restated Declaration*” shall mean and refer to the *Amended and Restated Declaration of Covenants, Conditions and Restrictions for Temecula Office Centre Property Owners Association* recorded on \_\_\_\_\_, 20\_\_ as Document/Instrument No. \_\_\_\_\_ in the official records of Riverside County, California (the “*County*”), and any amendments thereto. For purposes of these Bylaws, “*Separate Interest*” shall mean and refer to a “separate interest” as defined in the Commercial and Industrial Common Interest Development Act.

**Section 1.2 - Name and Location.**

The name of the corporation is Temecula Office Centre Property Owners Association. The principal office of the Association, if any, shall be located in the County.

**Section 1.3 - Formation and Purpose.**

The Association is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law. The specific and primary purpose of the Association shall be as set forth in the Articles. Unless the Governing Documents provide otherwise, the Association may exercise the powers granted to a nonprofit mutual benefit corporation, as enumerated in Section 7140 of the Corporations Code. The Association may further exercise the powers granted to an “association” under the Commercial and Industrial Common Interest Development Act.

### **Section 1.4 - Reference to Statute.**

Wherever reference is made in these Bylaws 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.

### **Section 1.5 - Amendment and Restatement of Prior Bylaws.**

These Bylaws are intended to amend, restate, and replace, in their entirety, any and all bylaws of the Association in existence prior to the effective date of these Bylaws.

## **ARTICLE II**

### **DELIVERY OF DOCUMENTS AND INFORMATION**

#### **Section 2.1 - Delivery to the Association.**

If a provision of the Commercial and Industrial Common Interest Development Act requires that a document be delivered to the Association, the document shall be delivered to the person designated in the Annual Policy Statement to receive documents on behalf of the Association. If no person has been designated in the Annual Policy Statement to receive documents on behalf of the Association, the document shall be delivered to the President or Secretary of the Association.

A document delivered pursuant to this Section 2.1 may be delivered by any of the following methods: (1) e-mail, facsimile, or other electronic means, if the Association has assented to that method of delivery; (2) personal delivery, if the Association has assented to that method of delivery; or (3) first-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service center. If the Association accepts a document by personal delivery, it shall provide a written receipt acknowledging delivery of the document.

#### **Section 2.2 - Individual Delivery / Individual Notice.**

If a provision of the Commercial and Industrial Common Interest Development Act requires that the Association deliver a document by “individual delivery” or “individual notice”, the document shall be delivered by one of the following methods: (1) first-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier, and the document shall be addressed to the recipient at the address last shown on the books of the

Association; or (2) e-mail, facsimile, or other electronic means, if the recipient has consented, in writing, to that method of delivery.

Upon receipt of a request by a Member identifying a secondary address for delivery of notices of the following types, the Association shall deliver an additional copy of those notices to the secondary address identified in the request: (1) the Annual Budget Report and Annual Policy Statement; and (2) other documents required under the Commercial and Industrial Common Interest Development Act to be delivered to the Member's secondary address, including but not limited to certain documents regarding Assessment payment and delinquency and documents relating to the serving of a notice of default.

### **Section 2.3 - General Delivery / General Notice.**

If a provision of the Governing Documents requires that the Association deliver a document by "general delivery" or "general notice", the document shall be provided by one or more of the following methods: (1) any method provided for delivery of an Individual Notice pursuant to Section 2.2 of these Bylaws; (2) inclusion in a billing statement, newsletter, or other document that is delivered by one of the methods provided in this Section 2.3; (3) posting the printed document in a prominent location that is accessible to all Members, if the location has been designated for the posting of general notices by the Association in the Annual Policy Statement; or (4) if the Association broadcasts television programming for the purpose of distributing information on Association business to its Members, by inclusion in the programming.

Notwithstanding the foregoing, if a Member requests to receive General Notices by Individual Delivery, all General Notices to that Member given under this Section 2.3 shall be delivered pursuant to Section 2.2 of these Bylaws. The option of a Member to request to receive General Notices by Individual Delivery shall be described in the Annual Policy Statement.

### **Section 2.4 - Completion of Delivery.**

If a document is delivered by mail, delivery is deemed to be complete on deposit into the United States mail. If a document is delivered by electronic means, delivery is complete at the time of transmission.

### **Section 2.5 - Electronic Delivery.**

If the Association or a Member has consented to receive information by electronic delivery, and a provision of the Commercial and Industrial Common Interest Development Act or Governing Documents requires that the information be in writing, that requirement is satisfied if the information is provided in an electronic record capable of retention by the recipient at the time of receipt; an electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record. The consent to receive information by electronic delivery may be revoked, in writing, by the recipient.

### **Section 2.6 - Delivery Requirements for Certain Member Requests.**

To be effective, any of the following Member requests shall be delivered in writing to the Association in accordance with Section 2.1 of these Bylaws:

- (a) A request to change the Member's information in the Association's membership list.
- (b) A request to add or remove a second address for delivery of Individual Notices to the Member.
- (c) A request for Individual Delivery of General Notices to the Member, or a request to cancel a prior request for Individual Delivery of General Notices.
- (d) A request to opt out of the Association's membership list, as described in Section 11.2 of these Bylaws, or a request to cancel a prior request to opt out of the membership list.
- (e) A request to receive a full copy of a specified Annual Budget Report or Annual Policy Statement.
- (f) A request to receive Association reports in full, pursuant to the Commercial and Industrial Common Interest Development Act, or a request to cancel a prior request to receive those reports in full.

## **ARTICLE III**

### **MEMBERSHIP, VOTING RIGHTS AND MEMBER DISCIPLINE**

#### **Section 3.1 - Membership; Voting Rights.**

The Association shall have one (1) class of voting membership. All Owners shall be Members and shall be entitled to one (1) vote for each Separate Interest owned. When more than one (1) Person holds an interest in any Separate Interest, all such Persons shall be Members; the vote for such Separate Interest shall be exercised as those Persons among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Separate Interest. If any Owner casts a vote on behalf of the Owner's Separate Interest, it will be conclusively presumed for all purposes that such Owner was acting with the authority and consent of all other Owners of such Owner's Separate Interest. Once a vote is cast, it shall be irrevocable.

Notwithstanding the foregoing, if title to a Separate Interest is held by a legal entity that is not a natural person, the governing authority of that legal entity shall have the power to appoint a natural person to be a Member for purposes of voting on behalf of said Owner. Evidence of the right of a person to vote on behalf of such Owner shall be provided to the Association upon such Owner's assumption of ownership interest in the Separate Interest, upon a change in the person entitled to vote on behalf of such Owner, and upon request of the Association. The Association shall perpetually require proof of the foregoing voting rights and authority from an Owner that is not a natural person.

#### **Section 3.2 - Furnishing Evidence of Membership.**

To establish a Person's status as a Member, the Board may require such Person to provide the Association with evidence of membership qualification in the form of a copy of a recorded grant deed, a certified statement with supporting documentation, a currently effective policy of title insurance, and/or such other document(s) that the Board may reasonably require.

#### **Section 3.3 - Eligibility to Vote.**

Only persons who are Members on the date that ballots are distributed are entitled to vote on any issue or matter presented to the Members for approval by ballot. Only persons who are Members on the record date fixed for determining eligibility

to vote may vote on any issue or matter presented to the Members for a non-ballot vote.

### **Section 3.4 - Member Discipline.**

The Association, through the Board, has the power to impose disciplinary measures against a Member for a violation of the Governing Documents by the Member, a Resident of the Member's Separate Interest, or an Invitee of either, through the imposition of monetary penalties and/or the suspension of membership privileges (such as the suspension of Common Area recreational facility or amenity use privileges). The Association, through the Board, also has the power to impose a Reimbursement Assessment against a Member as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to the Common Area caused by the Member, a Resident of the Member's Separate Interest, or an Invitee of either. When imposing disciplinary measures against a Member, the Association shall adhere to the following procedure:

- (a) The Board shall notify the Member in writing of the Board's intent to meet to consider or impose discipline upon the Member, by either personal delivery or Individual Delivery 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 damage to the Common Area 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. The Board shall meet in executive session, unless the Member requests that the Board meet in open session.
- (b) If the Board imposes discipline on the Member or imposes a monetary charge on the Member for damage to the Common Area, the Board shall provide the Member a written notification of the decision, by either personal delivery or Individual Delivery, within fifteen (15) days following the action. The decision of the Board shall be final and binding on the Member.

### **Section 3.5 - Voting at Membership Meetings.**

Voting at any membership meeting may be in person and, as applicable, by Secret Ballot (as defined in the Restated Declaration). Elections regarding Assessments legally requiring a vote, election of Directors, removal of Directors, amendments to Governing Documents, or the grant of Exclusive Use Common Area, as well as

an election on any topic that is expressly identified in the Governing Documents or the Commercial and Industrial Common Interest Development Act as required to be held by Secret Ballot, shall be held by Secret Ballot in accordance with the procedures set forth in these Bylaws and the Commercial and Industrial Common Interest Development Act. Said procedures shall apply to votes cast directly by the Members, but do not apply to votes cast by delegates or other elected representatives, as may be applicable.

**Section 3.6 - Cumulative Voting.**

Each Member entitled to vote at any election of Directors where two (2) or more positions are to be filled shall have the right to cumulate such Member's votes by giving one (1) candidate a number of votes equal to the number of Directors to be elected, multiplied by the number of votes to which the Member is entitled, or by distributing the Member's votes on the same principle among as many candidates as that Member desires.

**Section 3.7 - Proxies Not Allowed.**

Voting by proxy shall not be allowed.

**Section 3.8 - Record Dates.**

The Board may fix, in advance, a date as the record date for the purpose of determining the Members entitled to notice of meeting of Members and to vote, as follows:

(a) The Board may fix, in advance, a date as the record date for the purpose of determining the Members entitled to notice of any meeting of Members. Such record date shall not be more than ninety (90) days nor less than ten (10) days before the date of the meeting. If no record date is fixed, Members at the close of business on the business day preceding the day on which notice is given are entitled to notice of a meeting of Members. A determination of Members entitled to notice of a meeting of Members shall apply to any adjournment of the meeting, unless the Board fixes a new record date for the adjourned meeting.

(b) The Board may fix, in advance, a date as the record date for the purpose of determining the Members entitled to vote at a meeting of Members where said vote will not be held by Secret Ballot. Such record date shall not be more than sixty (60) days before the date of the meeting. Such record date shall also apply in the case of

an adjournment of the meeting, unless the Board fixes a new record date for the adjourned meeting. If no record date is fixed, Members on the day of the meeting who are otherwise eligible to vote are entitled to vote at the meeting of Members or, in the case of an adjourned meeting, Members on the day of the adjourned meeting who are otherwise eligible to vote are entitled to vote at the adjourned meeting of Members.

(c) For the purpose of determining the Members entitled to cast written ballots (whether at a meeting or without a meeting), Members on the day the first written ballot is mailed or solicited are entitled to cast written ballots.

## **ARTICLE IV ELECTIONS AND VOTING PROCEDURES**

### **Section 4.1 - Election and Voting Rules.**

(a) The Association may adopt Rules, in accordance with the procedures prescribed by the Commercial and Industrial Common Interest Development Act, that are separate and apart from these Bylaws and do all of the following:

(1) Ensure that if any candidate or Member advocating a point of view is provided access to Association media, newsletters, or Internet websites during a campaign, for purposes that are reasonably related to that election, equal access shall be provided to all candidates and Members advocating a point of view, including those not endorsed by the Board, for purposes that are reasonably related to the election. The Association shall not edit or redact any content from these communications but may include a statement specifying that the candidate or Member, and not the Association, is responsible for that content.

(2) Ensure access to Common Area meeting space, if any exists, during a campaign, at no cost, to all candidates, including those who are not incumbents, and to all Members advocating a point of view, including those not endorsed by the Board, for purposes reasonably related to the election.

(3) Specify the qualifications for candidates for the Board and any other elected position, and procedures for the nomination of candidates, consistent

with the provisions of these Bylaws. A nomination or election procedure shall not be deemed reasonable if it disallows any Member of the Association from nominating himself or herself for election to the Board.

(4) Specify the qualifications for voting, the voting power of each Member, the authenticity, validity, and effect of proxies, and the voting period for elections, including the times at which polls will open and close, consistent with the provisions of these Bylaws.

(5) Specify a method of selecting one (1) or three (3) independent third parties as inspector or inspectors of elections (the “*Inspector*” or “*Inspectors*”) utilizing one of the following methods:

- (i) Appointment of the Inspector or Inspectors by the Board.
- (ii) Election of the Inspector or Inspectors by the Members of the Association.
- (iii) Any other method for selecting the Inspector or Inspectors.

(6) Allow the Inspector or Inspectors to appoint and oversee additional persons to verify signatures and to count and tabulate votes as the Inspector or Inspectors deem appropriate, provided that such persons are independent third parties.

(7) Require retention of, as Association election materials, both a candidate registration list and a voter list. The voter list shall include name, voting power, and either the physical address of the voter’s separate interest, the parcel number, or both. The mailing address for the ballot shall be listed on the voter list if it differs from the physical address of the voter’s separate interest or if only the parcel number is used. The association shall permit members to verify the accuracy of their individual information on both lists at least 30 days before the ballots are distributed. The association or member shall report any errors or omissions to either list to the inspector or inspectors who shall make the corrections within two business days.

(b) Notwithstanding any other provision of law, the Rules adopted pursuant to this Section 4.1 may provide for the nomination of candidates from the floor of membership meetings or nomination by any other manner. Those Rules may also permit write-in candidates for Secret Ballots. In the event that the Rules adopted pursuant to this section are silent, nominations from the floor and/or write-in candidates shall not be permitted.

(c) Notwithstanding any other law, the Rules adopted pursuant to this section shall do all of the following:

(1) Prohibit the denial of a ballot to a Member for any reason other than not being a Member at the time when ballots are distributed.

(2) Prohibit the denial of a ballot to a person with general power of attorney for a Member.

(3) Require the ballot of a person with general power of attorney for a Member to be counted if returned in a timely manner.

(4) Require the Inspector or Inspectors of elections to deliver, or cause to be delivered, at least 30 days before an election, to each Member both of the following documents:

(A) The ballot or ballots.

(B) A copy of the election operating rules. Delivery of the election operating rules may be accomplished by either of the following methods:

(i) Posting the election operating rules to an internet website and including the corresponding internet website address on the ballot together with the phrase, in at least 12-point font: “The rules governing this election may be found here;” or

(ii) Individual delivery.

(d) Election operating Rules adopted pursuant to this Section shall not be amended less than ninety (90) days prior to an election.”

#### **Section 4.2 - Inspector of Elections.**

The Association shall select an independent third party or parties as an Inspector or Inspectors for any election by Secret Ballot; the number of Inspectors shall be one (1) or three (3). For purposes of this Section 4.2, an independent third party includes, but is not limited to, a volunteer poll worker with the County registrar of voters, a licensee of the California Board of Accountancy, or a notary public. An independent third party may be a Member, but may not be a Director, a candidate for Director, or be related to a Director or to a candidate for Director by blood, marriage, adoption, or domestic partnership.

The Inspector or Inspectors shall do all of the following: (1) determine the number of memberships entitled to vote and the voting power of each; (2) receive Secret Ballots; (3) hear and determine all challenges and questions in any way arising out of or in connection with the right to vote; (4) count and tabulate all votes; (5) determine when the polls shall close, consistent with the Governing Documents; (6) determine the tabulated results of the election; and (7) perform any acts as may be proper to conduct the election with fairness to all Members in accordance with the Commercial and Industrial Common Interest Development Act, the Corporations Code, and all applicable Rules of the Association regarding the conduct of the election that are not in conflict with the Commercial and Industrial Common Interest Development Act.

An Inspector shall perform all duties impartially, in good faith, to the best of the Inspector’s ability, and as expeditiously as is practical. If there are three (3) Inspectors, the decision or act of a majority of the Inspectors shall be effective in all respects as the decision or act of all. Any report made by the Inspector or Inspectors is *prima facie* evidence of the facts stated in the report.

#### **Section 4.3 - Procedure for Elections by Secret Ballot.**

(a) The Association shall provide general notice of the procedure and deadline for submitting a nomination for election to the Board of Directors at least thirty (30) days before any deadline for submitting a nomination. Individual notice shall

be delivered pursuant to Civil Code §6514 if individual notice is requested by a Member.

(b) The Association shall provide general notice of all of the following at least thirty (30) days before the ballots are distributed:

(1) The date and time by which, and the physical address where, ballots are to be returned by mail or handed to the Inspector or Inspectors of elections.

(2) The date, time, and location of the meeting at which ballots will be counted.

(3) The list of all candidates' names that will appear on the ballot.

(4) Individual notice of the above paragraphs shall be delivered pursuant to Civil Code §6514 if individual notice is requested by a Member.

(c) Secret Ballots and two (2) pre-addressed envelopes with instructions on how to return the Secret Ballots shall be mailed by first-class mail or delivered by the Association to every Member not less than thirty (30) days prior to the deadline for voting. In order to preserve confidentiality, a voter may not be identified by name, address, or Separate Interest on the Secret Ballot. The Association shall use as a model those procedures used by California counties for ensuring confidentiality of vote by Secret Ballots, including all of the following:

(1) The Secret Ballot itself is not signed by the voter but is inserted into an envelope that is sealed. This envelope is inserted into a second envelope that is sealed. In the upper left-hand corner of the second envelope, the voter shall sign the voter's name, indicate the voter's name, and indicate the address of the Separate Interest that entitles the voter to vote.

(2) The second envelope is addressed to the Inspector or Inspectors, who will be tallying the votes. The envelope may be mailed or delivered by hand to a location specified by the Inspector or Inspectors, which location can include the office of the managing agent or management company for the

Association, as may be applicable. The Member may request a receipt for delivery.

(d) A quorum shall be required only if so stated in the Governing Documents or other provisions of law. If a quorum is required, each Secret Ballot received by the Inspector shall be treated as a Member present at a meeting for purposes of establishing a quorum.

(e) Except for the meeting to count the votes required in subsection (e) of this Section 4.3, an election may be conducted entirely by mail.

(f) In an election to approve an amendment of the Governing Documents, the text of the proposed amendment shall be delivered to the Members with the Secret Ballot.

(g) All votes shall be counted and tabulated by the Inspector or Inspectors, or the designee of the Inspector or Inspectors, in public at a properly noticed open meeting of the Board or Members. Any candidate or other Member of the Association may witness the counting and tabulation of the votes. No person, including a Member of the Association or an employee of the Association's management company, shall open or otherwise review any Secret Ballot prior to the time and place at which the Secret Ballots are counted and tabulated; provided, however, the Inspector, or the designee of the Inspector, may verify the Member's information and signature on the outer envelope prior to the meeting at which Secret Ballots are tabulated. Once a Secret Ballot is received by the Inspector, it shall be irrevocable.

(h) The tabulated results of the election shall be promptly reported to the Board, shall be recorded in the minutes of the next meeting of the Board, and shall be available for review by Members of the Association. Within fifteen (15) days of the election, the Board shall give General Notice of the tabulated results of the election.

(i) The sealed Secret Ballots, signed voter envelopes, voter list, proxies, and candidate registration list shall at all times shall be in the custody of the Inspector or Inspectors or at a location designated by the Inspector or Inspectors until after the tabulation of the vote, and until the time allowed by the Governing Documents

for challenging the election has expired, at which time custody shall be transferred to the Association. If there is a recount or other challenge to the election process, the Inspector or Inspectors shall, upon written request, make the Secret Ballots, signed voter envelopes, voter list, proxies, and candidate registration list available for inspection and review by an Association Member or the Member's authorized representative. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.

#### **Section 4.4 - No Use of Association Funds for Campaign Purposes.**

Association funds shall not be used for campaign purposes in connection with any Association Board election. Further, funds of the Association shall not be used for campaign purposes in connection with any other Association election, except to the extent necessary to comply with duties of the Association imposed by law. For the purposes of this Section 4.4, "campaign purposes" includes, but is not limited to, the following: (1) expressly advocating the election or defeat of any candidate that is on the Association election ballot; and (2) including the photograph or prominently featuring the name of any candidate on a communication from the Association or the Board, excepting the ballot, ballot materials, or a communication that is legally required, within thirty (30) days of an election (provided, however, this is not a campaign purpose if the communication is one for which Rules adopted pursuant to Section 4.1 of these Bylaws). Unless otherwise provided by the Commercial and Industrial Common Interest Development Act, the foregoing restrictions on the use of Association funds for campaign purposes shall apply only to the election and removal of Directors.

#### **Section 4.5 - Electronic Balloting and Other Alternative Voting Procedures.**

Notwithstanding anything to the contrary contained in these Bylaws, should the Commercial and Industrial Common Interest Development Act permit electronic balloting and voting for any of those Association elections required to be held by Secret Ballot pursuant to Section 3.5 of these Bylaws, or any other Association votes, the Association shall be permitted to utilize such electronic voting procedures. Further notwithstanding anything to the contrary contained in these Bylaws, should the Commercial and Industrial Common Interest Development Act permit the Association to adopt other alternate procedures for voting, including but not limited to the use of written ballots instead of Secret Ballots for the election of Directors (or any other matters) or not requiring the use of an Inspector for certain votes, the Association may adopt and use such statutory alternate procedures in

lieu of any conflicting procedures in these Bylaws. Further, notwithstanding anything to the contrary contained in these Bylaws, should the Commercial and Industrial Common Interest Development Act permit election by acclamation in uncontested Association elections, the Association shall be permitted to utilize such election by acclamation procedures.

**Section 4.6 – Election by Acclamation.**

Notwithstanding anything to the contrary contained in these Bylaws, if permitted by California law and done in compliance with all applicable laws and regulations, any uncontested election of directors shall not be required to be held by secret ballot when, as of the close of nominations, the number of qualified candidates is not more than the number of vacancies to be elected, as determined by the inspector or inspectors of the elections, and the Board, at its option, votes to consider the qualified candidates elected by acclamation.

**ARTICLE V  
MEETINGS OF MEMBERS**

**Section 5.1 - Place of Meetings of Members.**

Meetings of the Members shall be held on the Property or such other suitable place within the County as is practicable and convenient to the Members, as may be designated by the Board of Directors.

**Section 5.2 - Annual Meetings of Members.**

The annual meeting of Members shall be held in April of each year on a day and at a time to be determined by the Board; provided, however, the annual meeting shall not be held on a federal holiday. At each annual meeting, there shall be elected by Secret Ballot of the Members a Board of Directors of the Association, in accordance with the requirements of these Bylaws. The Members may also transact such other business of the Association as may properly come before them.

**Section 5.3 - Special Meetings of Members.**

Special meetings of the Members for any lawful purpose may be called by the Board or the President of the Association. In addition, special meetings of the Members for any lawful purpose may be called by five percent (5%) or more of the

Members, by a request in writing to the Association addressed to the President, Vice President, or Secretary of the Association, subject to the following: (1) within twenty (20) days after receipt of such request signed by Members representing at least five percent (5%) of the total voting power of the Association, the Board shall cause notice to be given, by Individual Delivery to the Members entitled to vote, that a special meeting of the Members will be held; and (2) the meeting shall be held at a time fixed by the Board, but not less than thirty-five (35) days nor more than ninety (90) days after the receipt of the request. No business shall be transacted at a special meeting of the Members, except as stated in the notice for such meeting.

#### **Section 5.4 - Notice.**

It shall be the duty of the Secretary of the Association, or the designee of the Secretary, to send a notice of each annual or special meeting of the Members to each Member of record. Except as provided in Section 5.3 of these Bylaws, the notice shall be sent by Individual Delivery at least ten (10) days but not more than ninety (90) days prior to such meeting, stating the place, date, and time of the meeting and the business to be transacted at the meeting, subject to the requirements of Section 7511 of the Corporations Code. The notice may set forth time limits for speakers and nominating procedures for the meeting. The notice of any meeting at which Directors are to be elected shall include the names of all those who are nominees at the time the notice is given to the Members. Notwithstanding the foregoing, any approval of the Members of a proposal described under subdivision (f) of Section 7511 of the Corporations Code, other than unanimous approval by those Members entitled to vote, shall be valid only if the general nature of the proposal so approved was stated in the notice of the meeting or in any written waiver of notice.

#### **Section 5.5 - Affidavit of Delivery of Notice.**

An affidavit of giving of any notice or report in accordance with these Bylaws, executed by the Secretary of the Association or any transfer agent, shall be *prima facie* evidence of the giving of the notice or report.

#### **Section 5.6 - Quorum.**

Except as otherwise provided in these Bylaws, the presence in person or by Secret Ballot of at least twenty-five percent (25%) of the voting power of the Association shall constitute a quorum of the Members. If a quorum is present, the affirmative

vote of the majority of the voting power represented at the meeting, entitled to vote, and voting on any matter shall be the act of the Members, unless the vote of a greater number of the Members is required by law or by the Governing Documents. The Members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment notwithstanding the withdrawal of enough Members to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the Members required to constitute a quorum, or, if required by law or the Governing Documents, the vote of a greater number of the Members. In the absence of a quorum, any meeting of Members may be adjourned from time to time by a vote of a majority of the Members represented in person but no other business may be transacted. Notwithstanding the foregoing, if a meeting of Members is actually attended, in person by Members having less than one-third (1/3) of the voting power of the Association, then the only matters that may be voted on at such meeting are those matters of which the general nature was given in the notice pursuant to Section 5.4 of these Bylaws.

#### **Section 5.7 - Adjourned Meetings.**

If any meeting of Members cannot be organized because a quorum is not present, a majority of the Members who are present, in person, may adjourn the meeting to a time neither less than five (5) days nor more than forty-five (45) days from the time the original meeting was called, at which meeting the quorum requirement shall be the presence in person or, as applicable, by Secret Ballot of the Members holding at least fifteen percent (15%) of the voting power of the Association. Adjournment of a meeting of Members due to absence of quorum shall not be required, and shall be subject to the foregoing approval of Members. An adjourned meeting may be held without notice thereof as provided under Section 5.4 of these Bylaws, so long as that notice is given by announcement at the meeting at which such adjournment is taken; however, if after adjournment, a new date, time, or place is fixed for the adjourned meeting, Individual Notice of the date, time, and place of such adjourned meeting shall be given to the Members.

If an adjourned meeting of Members cannot be organized because at least fifteen percent (15%) of the voting power of the Association is not present, a majority of the Members who are present in person may adjourn the meeting to a time neither less than five (5) days nor more than forty-five (45) days from the time the adjourned meeting was called, at which second adjourned meeting there shall be no

quorum requirement. Such second adjourned meeting may be held without notice thereof as provided under Section 5.4 of these Bylaws, so long as that notice is given by announcement at the meeting at which such second adjournment is taken; however, if after adjournment, a new date, time, or place is fixed for the second adjourned meeting, Individual Notice of the date, time, and place of such adjourned meeting shall be given to the Members.

If an adjourned meeting of Members cannot be organized due to a lack of member approval to adjourn the meeting, the Association shall not be required to hold an adjourned meeting, irrespective of the subject matter of the original meeting. Should a lack of quorum prevent new Directors from being elected, the Directors in office at the time of the original meeting shall hold office until their successors are elected at the next annual meeting of Members or at a special meeting of Members called for such purpose, in accordance with Section 6.3 of these Bylaws.

At an adjourned meeting, the Members may transact any business which might have been transacted at the original meeting. No action by the Members on any such matter shall be effective if the votes cast in favor are fewer than the minimum number of votes required by law or by the Governing Documents to approve such an action. If an adjourned meeting is attended, in person by Members having less than one-third (1/3) of the voting power of the Association, then the only matters that may be voted on at such meeting are those matters of which the general nature was given in the notice pursuant to Section 5.4 of these Bylaws.

#### **Section 5.8 - Effect of a Member's Attendance at a Meeting.**

Attendance of a Member at a meeting shall constitute a waiver of notice of and presence at the meeting, except when the Member objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Notwithstanding the foregoing, attendance at a meeting is not a waiver of any right to object to the consideration of matters required to be included in the notice of the meeting but not so included, if the objection is expressly made at the meeting.

#### **Section 5.9 - Action Without Meeting.**

Any action which may be taken, other than the election or removal of Directors, at any regular or special meeting of Members may be taken without a meeting if the Association distributes a written ballot (including, as may be applicable, a Secret

Ballot) to every member entitled to vote on the matter, in accordance with Section 7513 of the Corporations Code, so long as such action complies with the requirements of these Bylaws and the Commercial and Industrial Common Interest Development Act. The written ballot shall set forth the proposed action, provide an opportunity to specify approval or disapproval of any proposal, and provide a reasonable time within which to return the written ballot to the Association. Approval by written ballot pursuant to this Section 5.9 shall be valid only when the number of votes cast by written ballot within the time period specified equals or exceeds the quorum required, if any, to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve at a meeting at which the total number of votes cast was the same as the number of votes cast by written ballot.

All solicitations by written ballot shall indicate the number of responses needed to meet the quorum requirement, if any, and, with respect to written ballots other than for the election or removal of Directors, shall state the percentage of approvals necessary to pass the measure submitted. The solicitation must specify the time by which the written ballot must be received in order to be counted. A written ballot submitted pursuant to this Section 5.9 may not be revoked.

#### **Section 5.10 - Approval Requirements under the Commercial and Industrial Common Interest Development Act.**

If a provision of the Commercial and Industrial Common Interest Development Act requires that an action be approved by a majority of all Members, the action shall be approved or ratified by an affirmative vote of a majority of the votes entitled to be cast. If a provision of the Commercial and Industrial Common Interest Development Act requires that an action be approved by a majority of a quorum of the Members, the action shall be approved or ratified by an affirmative vote of a majority of the votes represented and voting in a duly held election in which a quorum is represented, which affirmative votes also constitute a majority of the required quorum.

#### **Section 5.11 - Order of Business.**

Meetings of Members shall be conducted in accordance with a recognized system of parliamentary procedure or any parliamentary procedures the Association may adopt. The Board shall permit any Member to speak at any meeting of the

Members of the Association; a reasonable time limit for all Members to speak at a meeting of the Association shall be established by the Board.

## **ARTICLE VI BOARD OF DIRECTORS**

### **Section 6.1 - Nomination.**

Members in good standing may nominate themselves for election to the Board. Nominations shall be made at a time so as to permit the inclusion of a list of such nominations in the notice to Members of the meeting at which such election will be held. Notwithstanding any other provision of law, the Rules adopted pursuant to Section 4.1 may provide for the nomination of candidates from the floor of membership meetings or nomination by any other manner. Those Rules may also permit write-in candidates for Secret Ballots. In the event that the Rules adopted pursuant to this section are silent, nominations from the floor and/or write-in candidates shall not be permitted.

### **Section 6.2 - Number and Qualifications.**

- (a) The property, business and affairs of the Association shall be governed and managed by a Board of Directors composed of three (3) persons.
- (b) Each Director must at all times: (1) be a Member of the Association; (2) not be delinquent in the payment of any Regular Assessment or Special Assessment; and (3) not have a past criminal conviction that would either prevent the Association from purchasing fidelity bond coverage or terminate the Association's existing fidelity bond coverage. Notwithstanding the foregoing, a Director shall not be disqualified for failure to be current in payment of Regular Assessments or Special Assessments if the Director has paid the Assessments under protest, or if the person has entered into a payment plan for repayment of the Assessments. Further, a person must be an Owner of a Separate Interest for at least one (1) year before he/she will be eligible to serve on the Board.
- (c) Notwithstanding the provisions of subsection (b) of this Section 6.2, if title to a Separate Interest is held by a legal entity that is not a natural person, the governing authority of that legal entity shall have the power to appoint a natural

person to be a Member for purposes of running for and serving on the Board. In order for such entity to be eligible to designate a natural person to be a Member to serve on the Board, the entity must at all times not be delinquent in the payment of any Regular or Special Assessments. Further, such entity must be an Owner of a Separate Interest for at least one (1) year before it will be eligible to designate a natural person to be a Director to serve on the Board. Notwithstanding the foregoing, the entity who has designated a natural person to be a Director can elect to engage in internal dispute resolution prior to being disqualified for failing to meet the foregoing qualifications.

(d) In addition to the qualifications set forth in subsections (b) and (c) of this Section 6.2, no candidate or Director shall have a joint ownership interest in (either directly or indirectly) the same Separate Interest as another properly nominated candidate or incumbent Director.

(e) If any Member seeks to be a candidate for election to the Board, or serve on the Board, but does not meet the foregoing qualifications, the Member (or, in the case of a Member who is not a natural person, the person whom such Member designates) can elect to engage in internal dispute resolution prior to being disqualified for failing to meet the foregoing qualifications.

(f) The Association may include additional qualifications for nomination of and/or serving as Directors in its Rules, as permitted by law.

### **Section 6.3 - Election and Term of Office.**

At each annual meeting of the Members, new Directors shall be elected by Secret Ballot by the Members. All positions on the Board of Directors shall be filled at the annual meeting. If an annual meeting is not held, or if the Board is not elected at the annual meeting, the Board may be elected at any special meeting of the Members held for that purpose.

The term of office of each Director shall be one (1) year. Notwithstanding this term of office, each Director shall hold office until (1) the expiration of the term for which the Director has been elected and (2) a successor to the Director has been elected, subject to the Director vacancy and removal provisions of Sections 6.4 and 6.5 of these Bylaws; the foregoing provisions shall automatically apply to each

Director. The Association's Rules may impose limits on the number of terms which a Director may serve, if allowed by law.

#### **Section 6.4 - Vacancies.**

A Director may resign at any time by giving written notice to the President or the Secretary of the Association, or the Board, and that Director's position will be deemed vacant as of the effective resignation date contained in such notice. Any Director who ceases to meet the qualifications for a Director set forth in Section 6.2 of these Bylaws, or qualifications that were otherwise in effect at the beginning of the Director's then current term of office, may be deemed to have resigned from the Board upon the occurrence of the non-qualifying event and upon the affirmative vote of a majority of the remaining qualified Directors to declare the non-qualified Director's seat vacant in accordance with the Corporations Code. A vacancy in a Director's office shall also be deemed to exist in the event of a Director's death or removal, or in the event the Members fail to elect the full number of authorized Directors to fill open seats at any meeting at which such election is to take place.

#### **Section 6.5 - Removal of Directors.**

At a meeting of the Members, any one (1) individual Director (subject to the provisions of this Section 6.5, below) or the entire Board may be removed prior to the expiration of their terms of office with or without cause by the affirmative vote of Members representing a majority of the voting power. At a meeting of the Members, any one (1) individual Director or the entire Board may be removed prior to the expiration of their terms of office with or without cause by the affirmative vote of Members representing a majority of a quorum of the Association. For the purposes of this subsection 6.5 and notwithstanding any contrary provision in the Governing Documents, "quorum" shall mean more than fifty percent (50%) of the Members. Unless the entire Board of Directors is removed from office, no Director who was elected by cumulative voting may be removed when the votes cast against removal, or not consenting in writing to the removal, would be sufficient to elect such Director if voted cumulatively at an election at which the same total number of votes were cast (or, if the action is taken by written ballot, all memberships entitled to vote were voted) and the entire number of Directors authorized at the time of the Director's most recent election were then being elected.

### **Section 6.6 - Filling Vacancies.**

Vacancies on the Board caused by any reason other than the removal of a Director by a vote of the Members of the Association shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum. Any vacancy on the Board not filled by the Directors may be filled by vote of the Members at the next annual meeting of the Members, or at a special meeting of the Members called for such purpose. A vacancy caused by the removal of a Director by the Members shall be filled by the vote of the Members. The term of office of each Director elected or appointed to fill a vacancy created by the resignation, death, or removal of the Director's predecessor shall be the balance of the unserved term of such Director's predecessor.

### **Section 6.7 - Compensation of Directors.**

Directors shall not receive any salary or compensation for their services as Directors; provided, however: (1) nothing contained in these Bylaws shall be construed to preclude any Director from serving the Association in some other capacity and receiving compensation for same; and (2) any Director may be reimbursed for actual expenses incurred in the performance of such Director's duties.

## **ARTICLE VII MEETINGS OF THE BOARD OF DIRECTORS**

### **Section 7.1 - General Board Meeting Requirements.**

(a) The Board shall not take action on any item of business outside of a Board meeting. The term "item of business" when used in these Bylaws shall mean any action within the authority of the Board, except those actions that the Board has validly delegated to any other Person or Persons, managing agent, officer of the Association, or committee of the Board comprising less than a quorum of the Board, unless the context clearly indicates otherwise. A Board "meeting" means either of the following: (1) a congregation, at the same time and place, of a sufficient number of Directors to establish a quorum of the Board, to hear, discuss, or deliberate upon any item of business that is within the authority of the Board; or (2) a teleconference, where a sufficient number of Directors to establish a quorum

of the Board, in different locations, are connected by electronic means, through audio or video, or both.

(b) A teleconference meeting of the Board shall be conducted in a manner that protects the rights of Members of the Association and otherwise complies with the requirements of the Commercial and Industrial Common Interest Development Act. Participation by Directors in a teleconference meeting constitutes presence at that meeting as long as all Directors participating are able to hear one another, as well as Members of the Association speaking on matters before the Board.

(c) Any Member may attend Board meetings, except when the Board adjourns to, or meets solely in, executive session. As specified in this Section 7.1, a Member of the Association shall be entitled to attend a teleconference meeting or the portion of a teleconference meeting that is open to Members, and that meeting or portion of the meeting shall be audible to the Members in a location specified in the notice of the meeting. The Board shall permit any Member to speak at any meeting of the Association or the Board, except for meetings of the Board held in executive session; a reasonable time limit for all Members of the Association to speak to the Board at a Board meeting, or before a meeting of the Association, shall be established by the Board.

(d) Notwithstanding Section 7211 of the Corporations Code, the Board shall not conduct a meeting via a series of electronic transmissions, including, but not limited to, electronic mail, with the exception that electronic transmissions may be used as a method of conducting an emergency Board meeting if all Directors, individually or collectively, consent in writing to that action, and if the written consent or consents are filed with the minutes of the meeting. These written consents may be transmitted electronically.

(e) The Board may not discuss or take action on any item at a nonemergency meeting unless the item was placed on the agenda included in the notice that was distributed for the meeting. The Board may take action on any item of business not appearing on a meeting agenda under any of the following conditions, if the Board openly identifies the item to the Members in attendance at the meeting:

(1) Upon a determination made by a majority of the Board present at the meeting that an emergency situation exists. An emergency situation exists if there

are circumstances that could not have been reasonably foreseen by the Board, that require immediate attention and possible action by the Board, and that, of necessity, make it impracticable to provide notice.

(2) Upon a determination made by the Board by a vote of two-thirds (2/3) of the Directors present at the meeting, or, if less than two-thirds (2/3) of total membership of the Board is present at the meeting, by a unanimous vote of the Directors present, that there is a need to take immediate action and that the need for action came to the attention of the Board after the meeting agenda was distributed.

(3) The item appeared on an agenda that was distributed for a prior meeting of the Board that occurred not more than thirty (30) calendar days before the date that action is taken on the item and, at the prior meeting, action on the item was continued to the meeting at which the action is taken.

(f) Notwithstanding anything to the contrary contained in these Bylaws, should the Commercial and Industrial Common Interest Development Act permit the Board to hear, discuss, or deliberate upon any item of business outside of a meeting, the Board shall be empowered to take such action without a meeting pursuant to the applicable provisions of the Commercial and Industrial Common Interest Development Act.

### **Section 7.2 - Regular Meetings of Board.**

Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a resolution adopted by a majority of a quorum of the Directors; provided, however, that such meetings shall be held no less than once every three (3) calendar months. General Notice of the time and place of regular meetings of the Board shall be given to the Members at least four (4) days prior to the date set for such meeting, and the notice shall contain the agenda for the meeting.

### **Section 7.3 - Special Meetings of Board.**

Special meetings of the Board may be called by the President of the Association, or by any two (2) Directors other than the President, upon four (4) days' notice to each Director by first-class mail or forty-eight (48) hours notice delivered personally or by telephone, including a voice messaging system or other system or

technology designed to record and communicate messages, facsimile transmission, electronic mail, or other electronic means, to the extent a Director has provided authority to the Association's Board to utilize electronic means for notice purposes. General Notice of the time and place of special meetings of the Board shall be given to the Members at least four (4) days prior to the date set for such meeting, and the notice shall contain the agenda for the meeting.

#### **Section 7.4 - Executive Session Meetings of Board.**

(a) The Board may adjourn to, or meet solely in, executive session to consider: (1) litigation in which the Association is or may become involved; (2) matters relating to the formation of contracts with third parties; (3) Member discipline; (4) personnel matters; and (5) to meet with a Member, upon the Member's written request, regarding the Member's payment of Assessments (as specified in the Commercial and Industrial Common Interest Development Act).

(b) The Board shall adjourn to, or meet solely in, executive session to: (1) discuss Member discipline, if requested by the Member who is the subject of the discussion, and that Member shall be entitled to attend the executive session; (2) discuss a payment plan pursuant to the Commercial and Industrial Common Interest Development Act; or (3) decide whether to foreclose on a lien pursuant to the Commercial and Industrial Common Interest Development Act.

(c) If a nonemergency Board meeting is held solely in executive session, the Association shall give General Notice of the time and place of the meeting at least two (2) days prior to the meeting, and the notice shall contain an agenda that generally notes the matters to be discussed in executive session.

(d) Any matter discussed in executive session shall be generally noted in the minutes of the immediately following meeting that is open to the Members.

(e) Any matter discussed in executive session is confidential in nature and cannot be disclosed by a Director to any Members or other persons who are not Directors; provided, however, executive session matters can be discussed by an individual Director with outside attorneys, accountants, contractors, and other professional consultants and experts advising the Board, if approved in advance by the Board.

### **Section 7.5 - Emergency Meetings of Board.**

An emergency Board meeting may be called by the President of the Association, or by any two (2) Directors other than the President, if there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the Board, and which of necessity make it impracticable to provide notice as required by these Bylaws and the Commercial and Industrial Common Interest Development Act. If a Board meeting is an emergency meeting, the Association is not required to give notice of the time and place of the meeting.

### **Section 7.6 - Waiver of Notice.**

Notice of a meeting need not be given to a Director who provided a waiver of notice or consent to holding the meeting or an approval of the minutes thereof in writing, whether before or after the meeting, or who attends the meeting without protesting, prior to the meeting or at its commencement, the lack of notice to that Director. Such waivers, consents, and approvals shall be filed with the corporate records of the Association or made a part of the minutes of the meetings.

### **Section 7.7 - Quorum and Adjournment.**

Except as otherwise expressly provided herein, at all meetings of the Board, a majority of the authorized number of Directors, or two (2) Directors, shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board. If there is less than a quorum present at any meeting of the Board, the majority of those Directors present may adjourn the meeting to another time and place. If the meeting is adjourned for more than twenty-four (24) hours, notice of an adjournment to another time and place shall be given prior to the time of the adjourned meeting to the Directors who were not present at the time of the adjournment. Each Director present and voting at a meeting of the Board shall have one (1) vote on each matter presented to the Board for action at that meeting. No Director may vote at any meeting of the Board by proxy.

### **Section 7.8 - Board Meeting Minutes.**

The minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any Board meeting, other than an executive session, shall be available to Members within thirty (30) days of the meeting. The Annual Policy Statement shall inform the Members of their right to obtain copies of Board meeting minutes and of how and where to do so.

## **Section 7.9 - Conflicts of Interest.**

(a) Notwithstanding any other law, the provisions of Sections 7233 and 7234 of the Corporations Code shall apply to any contract or other transaction authorized, approved, or ratified by the Board or a committee of the Board.

(b) A Director shall not be entitled to vote, and shall not vote, on any of the following matters:

(1) Discipline of the Director.

(2) An Assessment against the Director for damage to the Common Area.

(3) A request, by the Director, for a payment plan for delinquent Assessments.

(4) A decision whether to foreclose on a lien on a Separate Interest owned by the Director.

(5) Review of a proposed physical change to: (A) a Separate Interest owned by the Director, or to the Common Area by the Director; or (B) a Separate Interest owned by another Person, or to the Common Area by another Person, that would have a direct impact, visual or otherwise, on a Separate Interest owned by the Director and/or any Exclusive Use Common Area designated for the use of the Director.

(6) A grant of Exclusive Use Common Area to the Director.

(c) In the case of a Director who serves on the Board on behalf of a Member that is a Person other than a natural person, the foregoing restrictions on voting by the Director shall also apply with regard to the Member whom such Director represents.

(d) Nothing in this Section 7.9 limits any other provision of law or the Governing Documents that governs a decision in which a Director may have an interest.

**ARTICLE VIII**  
**POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

**Section 8.1 - Powers and Duties.**

The Board of Directors has the powers and duties necessary for the administration of the business and affairs of the Association and may do all such acts and things as are not by law or by these Bylaws directed to be exercised and done exclusively by the Members. The powers and duties of the Board shall include, but not be limited to, the following:

- (a) The power and duty to select, appoint, supervise, and remove all officers, agents, and employees of the Association, to prescribe such powers and duties for them as may be consistent with law and the Governing Documents and to fix their compensation.
- (b) The power and duty to conduct, manage and control the affairs and business of the Association, and to make such Rules and Regulations for same consistent with law and as the Board may deem necessary or advisable.
- (c) The power but not the duty to change the principal office for the transaction of the business of the Association from one location to another within the County, and to designate any place within the County for the holding of any annual or special meeting or meetings of Members consistent with the provisions of these Bylaws.
- (d) The power but not the duty to borrow money as may be needed in connection with the discharge by the Association of its powers and duties, and the power but not the duty to cause to be executed and delivered, in the Association's name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, or other evidences of debt and securities for same, subject to any restrictions set forth in the Articles or the Restated Declaration.
- (e) The power and duty to fix and levy Assessments sufficient for the Association to perform its obligations under the Governing Documents and the Commercial and Industrial Common Interest Development Act, and to enforce collection thereof in accordance with the Governing Documents and the Commercial and Industrial Common Interest Development Act.

(f) The power and duty to enforce the provisions of the Restated Declaration, these Bylaws, the Rules and Regulations, any other Governing Documents, as well as any agreements and contracts of the Association.

(g) The power and duty to contract for and pay for insurance for the Association in accordance with the provisions of the Restated Declaration, and review, not less frequently than annually, all insurance policies and bonds obtained by the Board on behalf of the Association.

(h) The power and duty to contract and pay for: (i) maintenance, repair, and replacement of Improvements in the Common Area in accordance with the Association's responsibility for same as set forth in the Restated Declaration, including but not limited to Common Area building components, landscaping, and utility facilities; (ii) materials, supplies, and services relating to the Common Area, including but not limited to utility services for Common Area facilities; (iii) materials, supplies, and services relating to the Separate Interests, as may be applicable and subject to any limitations set forth in the Governing Documents; and (iv) employment of personnel as necessary to provide for proper operation of the Property.

(i) The power but not the duty to delegate its powers according to law, and, subject to the approval of the Members, to adopt bylaws.

(j) The power but not the duty to grant or quitclaim easements, licenses, or rights of way in, on, or over the Common Area for purposes not inconsistent with the intended use of the Property as a common interest development, in accordance with the Restated Declaration.

(k) The power but not the duty to employ a manager, managing agent, or management company, and/or contract with independent contractors and other persons, to perform all or any part of the duties and responsibilities of the Board under the Governing Documents and at law, except for the responsibility to hold hearings, cause legal actions to be filed and perform other duties of the Board that are not delegable under law or the Governing Documents. Notwithstanding the foregoing, and subject to the provisions of Section 8.5 of these Bylaws, the Board shall endeavor to negotiate the following provisions in any contract entered into by the Association: (1) the contract shall not exceed a one (1) year term; (2) the

Association shall have the right to terminate the contract without cause upon ninety (90) days advance notice, without being required to pay any cancellation penalty; and (3) the Association shall have the right to terminate the contract for cause on thirty (30) days written notice or less, without being required to pay any cancellation penalty.

(l) The power but not the duty to designate such advisory and other committees as the Board shall desire, and to establish the purposes and powers of each such committee created, consistent with the provisions of Article X of these Bylaws.

(m) The power but not the duty to authorize the Association to pay a judgment or fine levied against the Association or any present or former Director, officer, employee, or agent of the Association, to the extent and under the circumstances provided in the Restated Declaration.

(n) The power and duty to authorize the Association to pay expenses and obligations incurred by the Association in the conduct of its business, including without limitation all licenses, taxes, and governmental charges levied or imposed against the Property.

(o) The power and duty to cause to be kept: (1) a complete record of all Board acts and Association business; (2) adequate and correct books and records of Association accounts and Assessments; (3) minutes of the proceedings of committees (to the extent such committees prepare minutes, and as required by state statute); (4) a record of Member names and mailing addresses; and (5) a record of all leased or rented Separate Interests and the tenants/lessees under such lease or rental agreement.

(p) The power and duty to discharge by payment, if necessary, any lien against the Common Area and assess the cost of such lien to the Member or Members responsible for the existence of the lien (after notice and hearing as required by the Governing Documents and the Commercial and Industrial Common Interest Development Act).

(q) The power but not the duty to employ and engage consultants and experts, including without limitation legal and accounting service providers, to advise the

Board regarding its powers and duties described in the Governing Documents and other Association matters as the Board may determine to be necessary.

(r) The power and duty to file any statements and forms required by the Secretary of State and/or the Franchise Tax Board of the State of California with respect to the Association and its business activities.

(s) The power and duty, at least once every three (3) years, to cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components that the Association is obligated to repair, replace, restore, or maintain as part of a study of the Reserve Account Requirements of the Development, if the current replacement value of the major components is equal to or greater than one-half (1/2) of the gross budget of the Association, excluding the Association's Reserve Account for that period. The reserve study and resulting reserve funding plan shall include, at a minimum, the following:

(1) Identification of the major components that the Association is obligated to repair, replace, restore, or maintain that, as of the date of the study, have a remaining useful life of less than 30 years.

(2) Identification of the probable remaining useful life of the components identified in paragraph (1) as of the date of the study.

(3) An estimate of the cost of repair, replacement, restoration, or maintenance of the components identified in paragraph (1).

(4) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the components identified in paragraph (1) during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.

(5) A reserve funding plan that indicates how the association plans to fund the contribution identified in paragraph (4) to meet the Association's obligation for the repair and replacement of all major components with an expected remaining life of 30 years or less, not including those components that the Board has determined will not be replaced or repaired.

### **Section 8.2 - Selected Financial Review Duties.**

In addition to those powers and duties set forth in Section 8.1 of these Bylaws, and any other powers and duties of the Board provided by law or the Governing Documents, the Board of Directors has the specific following powers and duties related to the review of the Association's financial records:

(a) The power and duty to review, on at least a monthly basis: (1) a current reconciliation of the Association's operating accounts; a (2) current reconciliation of the Association's Reserve Accounts; (3) the current year's actual operating revenues and expenses compared to the current year's budget; (4) the latest account statements prepared by the financial institutions where the Association has its operating and Reserve Accounts; (5) an income and expense statement for the Association's operating accounts and Reserve Accounts; and (6) the check register, monthly general ledger, and delinquent assessment receivable reports.

(b) The power and duty to review the study of the Reserve Account Requirements of the Development, or cause it to be reviewed, annually, and consider and implement necessary adjustments to the Board's analysis of the Reserve Account Requirements as a result of that review.

(c) The power and duty to cause a review of the financial statement of the Association to be prepared in accordance with generally accepted accounting principles by a licensee of the California Board of Accountancy for any fiscal year in which the gross income to the Association exceeds seventy-five thousand dollars (\$75,000), a copy of which shall be distributed to the Members by Individual Delivery within one hundred twenty (120) days after the close of such fiscal year.

### **Section 8.3 - Annual Budget Report.**

The Association, through the Board, shall distribute to all Members an Annual Budget Report thirty (30) to ninety (90) days before the end of each fiscal year, as follows:

(a) The Annual Budget Report shall include, at a minimum, the following information:

- (1) A pro forma operating budget, showing the estimated revenue and expenses on an accrual basis.
- (2) A summary of the association's reserves.
- (3) A summary of the reserve funding plan adopted by the Board. The summary shall include notice to the Members that the full reserve study plan is available upon request, and the Association shall provide the full reserve plan to any Member upon request.
- (4) A statement as to whether the Board has determined to defer or not undertake repairs or replacement of any major component with a remaining life of thirty (30) years or less, including a justification for the deferral or decision not to undertake the repairs or replacement.
- (5) A statement as to whether the Board, consistent with the reserve funding plan, has determined or anticipates that the levy of one or more Special Assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor. If so, the statement shall also set out the estimated amount, commencement date, and duration of the Special Assessment.
- (6) A statement as to the mechanism or mechanisms by which the Board will fund reserves to repair or replace major components, including Assessments, borrowing, use of other Association assets, deferral of selected replacements or repairs, or alternative mechanisms.
- (7) A general statement addressing the procedures used for the calculation and establishment of the reserves to defray the future repair, replacement, or additions to those major components that the Association is obligated to maintain.
- (8) A statement as to whether the Association has any outstanding loans with an original term of more than one (1) year, including the payee, interest rate, amount outstanding, annual payment, and when the loan is scheduled to be retired.

(9) A summary of the Association's property, general liability, earthquake, flood and fidelity insurance policies, as applicable. For each policy, the summary shall include: (i) the name of the insurer; (ii) the type of insurance; (iii) the policy limit; and (iv) the amount of the deductible, if any. To the extent that any of the required information is specified in the insurance policy declaration page, the Association may meet its obligation to disclose that information by making copies of that page and distributing it with the Annual Budget Report.

(b) The Annual Budget Report shall be made available to the Members by Individual Delivery.

(c) The Association shall deliver either: (1) the full Annual Budget Report; or (2) a summary of the Annual Budget Report. If a summary of the Annual Budget Report is provided by the Association, that summary shall include a general description of the content of the Annual Budget Report, and instructions on how to request a complete copy of the Annual Budget Report at no cost to the Member shall be printed in at least 10-point boldface type on the first page of the summary. Notwithstanding the foregoing, if a Member has requested to receive the Annual Budget Report in full, the Association shall deliver the full report to the Member, rather than a summary of the Annual Budget Report.

#### **Section 8.4 - Annual Policy Statement.**

Within thirty (30) to ninety (90) days before the end of each fiscal year, the Board shall distribute an Annual Policy Statement that provides the Members with information about Association policies, as follows:

(a) The Annual Policy Statement shall include all of the following information:

(1) The name and address of the person designated to receive official communications to the Association.

(2) A statement explaining that a Member may submit a request to have notices sent to up to two (2) different specified addresses.

(3) The location, if any, designated for posting of a General Notice.

(4) Notice of a Member's option to receive General Notices by Individual Delivery.

(5) Notice of a Member's right to receive copies of Board meeting minutes and of how and where to do so.

(6) The statement of Assessment collection policies.

(7) A statement describing the Association's policies and practices in enforcing lien rights or other legal remedies for default in the payment of Assessments.

(8) A statement describing the Association's discipline policy, if any, including any schedule of penalties for violations of the Governing Documents.

(9) A summary of dispute resolution procedures.

(10) A summary of any requirements for Association approval of a physical change to the Property.

(11) The mailing address for overnight payment of Assessments.

(12) Any other information that is required by law or the Governing Documents or that the Board determines to be appropriate for inclusion.

(b) The Annual Policy Statement shall be made available to the Members by Individual Delivery.

(c) The Association shall deliver either: (1) the full Annual Policy Statement; or (2) a summary of the Annual Policy Statement. If a summary of the Annual Policy Statement is provided by the Association, that summary shall include a general description of the content of the Annual Policy Statement, and instructions on how to request a complete copy of the Annual Policy Statement at no cost to the Member shall be printed in at least 10-point boldface type on the first page of the summary. Notwithstanding the foregoing, if a Member has requested to receive the Annual Policy Statement in full, the Association shall deliver the full report to the Member, rather than a summary of the Annual Policy Statement.

### **Section 8.5 - Prohibited Acts.**

The Board of Directors shall not take any of the following actions, except with the vote or written consent of a majority of the total voting power of the Association:

(a) Entering into a contract with a third party wherein the third party will furnish goods or services for the Common Area or the Association for a term longer than one (1) year, subject to the provisions of subsection (k) of Section 8.1 of these Bylaws, with the following exceptions:

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

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

(3) Lease agreements for laundry room fixtures and equipment not to exceed five (5) years' duration.

(4) Agreements for cable television, satellite television, alarm systems and Internet services and equipment, on a "bulk" or "non-bulk" basis, not to exceed five (5) years' duration.

## **ARTICLE IX OFFICERS**

### **Section 9.1 - Designation.**

The principal officers of the Association shall be a President, a Vice President, a Secretary, and a Treasurer, all of whom shall be elected by the Board of Directors, and all of whom must be Directors. The Board of Directors may appoint a second vice president, an assistant treasurer, an assistant secretary, and such other officers as in their judgment may be necessary, who must also be Directors. Except for the President, any Director may hold more than one office. Any Director who does not hold an officer position shall be deemed to be a "member at large" of the Board.

### **Section 9.2 - Election of Officers.**

The officers of the Association shall be elected annually by the Board of Directors at the organizational meeting of each new Board of Directors, which shall be held immediately after each annual meeting or as soon thereafter as may be reasonably practical. Each officer shall hold office at the pleasure of the Board of Directors until such officer shall resign, be removed or otherwise be disqualified to serve.

### **Section 9.3 - Removal of Officers.**

Upon an affirmative vote of a majority of the entire Board of Directors, any officer may be removed, either with or without cause. Any officer may resign at any time by giving written notice to the Board or to the President or Secretary of the Association. Any such resignation shall take effect at the date of receipt of such notice or at any later time specified therein; unless otherwise specified in the resignation notice, acceptance of such resignation by the Board shall not be necessary to make the resignation effective.

### **Section 9.4 - Filling of Vacancies.**

A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled by the Board at any regular meeting of the Board of Directors, or at any special meeting of the Board called for such purpose. The period of time for any office filled in this manner shall be for the unexpired term of the officer replaced.

### **Section 9.5 - Compensation of Officers.**

No officer shall receive any compensation for services performed in the conduct of the Association's business, provided that: (1) nothing herein contained shall be construed to preclude any officer from serving the Association in some other capacity and receiving compensation for same; and (2) any officer may be reimbursed for the officer's actual expenses incurred in the performance of such officer's duties.

### **Section 9.6 - President.**

The President shall be the chief executive officer of the Association. The President shall preside at all meetings of the Association and of the Board of Directors. The President shall have all of the general powers and duties which are usually vested in the office of the President of a California corporation. The President shall, subject to the control of the Board of Directors, have general supervision,

direction, and control of the day-to-day business of the Association. The President shall be an *ex officio* member of all standing committees, and shall have such other powers and duties as may be prescribed by the Board or the Governing Documents.

### **Section 9.7 - Vice President.**

In the absence or disability of the President, the Vice President shall perform all the duties of the President, and when so acting shall have all the powers of, and be subject to all the restrictions upon, the President. The Vice President shall have such other powers and perform such other duties as from time to time may be prescribed by the Board or the Governing Documents.

### **Section 9.8 - Secretary.**

The Secretary, or the Secretary's designee, shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Members, at the principal office of the Association or at such other place as the Board may order. The Secretary, or the Secretary's designee, shall have charge of such books and papers as the Board may direct, and the Secretary shall, in general, perform all of the duties incident to the office of Secretary of a California corporation. The Secretary, or the Secretary's designee, shall give, or cause to be given, notices of meetings of the Members of the Association and of the Board, as required by these Bylaws. The Secretary, or the Secretary's designee, shall maintain a record book of current Members, listing the names, mailing addresses, telephone numbers and other contact information of Members, as furnished to the Association. The Secretary, or the Secretary's designee, shall also maintain a record book of all leased or rented Separate Interests and the tenants/lessees under such lease or rental agreement. The Secretary shall have such other powers and duties as from time to time may be prescribed by the Board or the Governing Documents.

### **Section 9.9 - Treasurer.**

The Treasurer shall be the chief financial officer of the Association and shall have responsibility for Association funds and securities and for keeping, or causing to be kept, full and accurate accounts, tax records, and business transactions of the Association, including accounts of all assets, liabilities, receipts, and disbursements, in books belonging to the Association. The Treasurer, or the Treasurer's designee, shall be responsible for the deposit of all and other valuable effects in the name, and to the credit, of the Association moneys in such

depositories as may from time to time be designated by the Board. The Treasurer, or the Treasurer's designee, shall disburse the funds of the Association as directed by the Board of Directors, in accordance with the Governing Documents and the law, and render to the President and Directors, upon request, an account of all of such Treasurer's transactions as Treasurer and of the financial conditions of the Association. The Treasurer shall have such other powers and perform such other duties as may be prescribed by the Board or the Governing Documents.

## **ARTICLE X COMMITTEES**

### **Section 10.1 - Committees of the Board.**

(a) The Board may, by resolution adopted by a majority of the number of Directors then in office, provided that a quorum is present, create one or more committees of the Board (each, an "*Executive Committee*"), each consisting of two (2) or more Directors, to serve at the pleasure of the Board. Appointments to Executive Committees shall be by a majority vote of the Directors then in office. The Board may appoint one (1) or more Directors as alternate members of such committee, who may replace any absent member at any meeting of the committee.

(b) An Executive Committee, to the extent provided in the resolution of the Board, shall have all the authority of the Board, except with respect to:

(1) The approval of any action which also requires approval of the Members or approval of a majority of all Members.

(2) The filling of vacancies on the Board or in any committee which has the authority of the Board.

(3) The amendment or repeal of these Bylaws or the adoption of new Bylaws.

(4) The amendment or repeal of any resolution of the Board which by its express terms is not amendable or repealable.

- (5) The appointment of committees of the Board or the members thereof.
- (6) Any other matters described in Section 7212 of the Corporations Code as not being within the authority of an Executive Committee.
- (c) An Executive Committee shall not include as members persons who are not Directors.
- (d) Each Executive Committee shall have a chairperson. Meetings and actions of Executive Committees consisting of a quorum of the Board shall be governed by, and held and taken in accordance with, the provisions of Article VII of these Bylaws, with such changes in context as are necessary to substitute the Executive Committee and its members for the Board and its members. The time for regular meetings of an Executive Committee may be determined either by resolution of the Board or by resolution of the committee, and special meetings of an Executive Committee may be called by resolution of the Board or by the chairperson of the Executive Committee. Minutes shall be kept of each meeting of any Executive Committee, and shall be filed with the Association's records.
- (e) Unless otherwise expressly provided in the Board resolution authorizing and empowering an Executive Committee, all corporate powers exercised by an Executive Committee shall be exercised under the ultimate direction of the Board.
- (f) The Board may adopt Rules not inconsistent with the provisions of these Bylaws for the governance of any Executive Committee.

### **Section 10.2 - Advisory Committees.**

- (a) The Board may, by resolution adopted by a majority of the number of Directors then in office, provided that a quorum is present, create one or more committees that do not exercise the authority of the Board (each, an "***Advisory Committee***"), each consisting of Members of the Association or Directors, or both, to serve at the pleasure of the Board. Appointments to Advisory Committees shall be by a majority vote of the Directors then in office. The Board may appoint one (1) or more persons as alternate members of such committee, who may replace any absent member at any meeting of the committee.

(b) Subject to the Governing Documents, Advisory Committees shall not have any authority of the Board, but shall serve in an advisory capacity to the Board on such matters as shall be delegated to the committee by the Board; provided, however, the Architectural Review Committee formed pursuant to the Restated Declaration shall have the powers given to it under the Restated Declaration.

(c) Each Advisory Committee shall have a chairperson to preside over the committee meetings. Regular meetings of Advisory Committees may be determined either by resolution of the Board or by resolution of the committee; special meetings of Advisory Committees may also be called by resolution of the Board or by the chairperson of the committee. The Architectural Review Committee shall keep meeting minutes and file those minutes in the Association's records.

(d) The Board of Directors may adopt Rules not inconsistent with the provisions of these Bylaws for the governance of any Advisory Committee.

## ARTICLE XI

### ASSOCIATION RECORDS

#### **Section 11.1 - Records Inspection.**

Upon written request by a Member, the Association shall make available Association records for inspection and copying by a Member of the Association, or the Member's designated representative, as follows (the "*Association Records*"):

(a) Financial documents contained within the Association's Annual Budget Report and Annual Policy Statement;

(b) Interim financial statements, periodic or as compiled, containing any of the following: (i) balance sheet; (ii) income and expense statement; (iii) budget comparison; (iv) a general ledger of transactions over a period of time;

(c) State and federal tax returns;

(d) Reserve account balances and records of payments made from reserve accounts;

- (e) Check registers;
- (f) Executed contracts not otherwise privileged under law;
- (g) Written Board approval of vendor or contractor proposals or invoices;
- (h) Information concerning the compensation paid to employees, vendors, or contractors;
- (i) Association's Governing Documents;
- (j) Schedule of monetary penalties (fines) for violations of the Governing Documents;
- (k) Agenda and minutes of meetings of the Members, the Board, and any executive committees appointed by the Board pursuant to Corporations Code Section 7212; excluding, however, minutes and other information from executive sessions of the Board;
- (l) Returned ballots, signed voter envelopes, the voter list of names, parcel numbers, and voters to whom ballots were to be sent, proxies, and the candidate registration list. Signed voter envelopes may be inspected but may not be copied.
- (m) Membership lists, including names, property addresses, mailing addresses, and email addresses but not including information for Members; and
- (n) Escrow documents provided to a Member (i.e., Governing Documents, document disclosures, violation notices regarding that Member's Unit/Lot, construction defects, etc.).

The Association shall produce and make available for inspection, the Association records within thirty (30) calendar days upon receipt of the Member's written request ("*Timeframe*"). A Member of the Association may designate another person to inspect and copy the specified Association Records on the Member's behalf. The Member shall be required to make any such designation in writing to the Association.

(o) The Association shall make Association Records available for inspection and copying in the Association's business office within the Development. If the Association does not have a business office within the Development, the Association shall make the Association Records available for inspection and copying at a place agreed to by the requesting Member and the Association. If the Association and the requesting Member cannot agree upon a place for inspection and copying, or if the requesting Member submits a written request directly to the Association for copies of specifically identified Association Records, the Association may satisfy the requirement to make the Association Records available for inspection and copying by delivering copies of the specifically identified records to the Member by Individual Delivery within the allocated Timeframe.

(p) The Association may withhold or redact information from the Association Records if any of the following are true:

(1) The release of the information is reasonably likely to lead to identity theft. For the purposes of this Article XI, "identity theft" means the unauthorized use of another person's personal identifying information to obtain credit, goods, services, money, or property. Examples of information that may be withheld or redacted include bank account numbers of Members or vendors, social security or tax identification numbers, and check, stock, and credit card numbers.

(2) The release of the information is reasonably likely to lead to fraud in connection with the Association.

(3) The information is privileged under law. Examples include documents subject to attorney-client privilege or relating to litigation in which the Association is or may become involved, and confidential settlement agreements.

(4) The release of the information is reasonably likely to compromise the privacy of an individual Member of the Association.

(5) The information contains any of the following:

(A) Records of goods or services provided a la carte to individual Members of the Association for which the Association received monetary consideration other than Assessments.

(B) Records of disciplinary actions, collection activities, or payment plans of Members other than the Member requesting the records.

(C) Any person's personal identification information, including, without limitation, social security number, tax identification number, driver's license number, credit card account numbers, bank account number, and bank routing number.

(D) Minutes and other information from executive session meetings of the Board, except for executed contracts not otherwise privileged.

(E) Personnel records. Notwithstanding the foregoing, except as provided by the attorney-client privilege, the Association may not withhold or redact information concerning the compensation paid to employees, vendors, or contractors; provided, however, information for individual employees of the Association, as may be applicable, shall be set forth by job classification or title, not by the employee's name, social security number, or other personal information.

(F) Interior architectural plans, including security features, for individual Separate Interests.

(q) The Association may bill the requesting Member for the direct and actual cost of copying and mailing requested documents. The Association shall inform the Member of the amount of the copying and mailing costs, and the Member shall agree to pay those costs, before copying and sending the requested documents.

(r) The following documents are "***Enhanced Association Records***": invoices, receipts, and canceled checks for payments made by the Association, purchase orders approved by the Association, credit card statements for credit cards issued in the name of the Association, statements for services rendered, and reimbursement requests submitted to the Association.

In addition to the direct and actual costs of copying and mailing Enhanced Association Records, the Association may bill the requesting Member for the time actually and reasonably involved in redacting an Enhanced Association Record. The Association shall inform the Member of the estimated costs, and the Member

shall agree to pay those costs, before retrieving the requested documents. If the Enhanced Association Record includes a reimbursement request, the person submitting the reimbursement request shall be solely responsible for removing all personal identification information from the request.

(s) If the Association denies or redacts records, upon request by the requesting Member, the Association shall provide a written explanation specifying the legal basis for withholding or redacting the requested records.

(t) Requesting parties shall have the option of receiving specifically identified records by electronic transmission or machine-readable storage media as long as those records can be transmitted in a redacted format that does not allow the records to be altered. The cost of duplication shall be limited to the direct cost of producing the copy of a record in that electronic format. The Association may deliver specifically identified records by electronic transmission or machine-readable storage media as long as those records can be transmitted in a redacted format that prevents the records from being altered.

(u) Neither the Association nor any officer, director, employee, agent, or volunteer of the Association shall be liable for damages to a Member of the Association or any third party as the result of identity theft or other breach of privacy because of the failure to withhold or redact that Member's information, unless the failure to withhold or redact the information was intentional, willful, or negligent.

### **Section 11.2 - Membership Lists.**

(a) A Member of the Association may opt out of the sharing of that Member's name, Separate Interest address, mailing address and e-mail address with other Members by notifying the Association in writing that the Member prefers to be contacted via the alternative process described in subdivision (c) of Section 8330 of the Corporations Code. This opt out shall remain in effect until changed by the Member.

(b) A Member requesting the Association's membership list shall state the purpose for which the list is requested, which purpose shall be reasonably related to the requester's interest as a Member. If the Association reasonably believes that

the information in the list will be used for another purpose, it may deny the Member access to the list.

**Section 11.3 - Use of Association Records.**

(a) The Association Records, and any information from them, may not be sold, used for a commercial purpose, or used for any other purpose not reasonably related to a Member's interest as a Member. The Association may bring an action against any Person who violates this provision for injunctive relief and for actual damages to the Association caused by the violation.

(b) Nothing contained in this Article XI is to be construed to limit the right of the Association to damages for misuse of information obtained from the Association Records, or to limit the right of the Association to injunctive relief to stop the misuse of this information.

(c) The Association shall be entitled to recover reasonable costs and expenses, including reasonable attorney's fees, in a successful action to enforce its rights under this Section 11.3.

**ARTICLE XII  
MISCELLANEOUS**

**Section 12.1 - Checks, Drafts and Documents.**

All checks, drafts, orders for payment of money, notes, and other evidences of indebtedness issued in the name of or payable to the Association shall be signed or endorsed in the manner and by the person or persons as the Board shall determine by resolution, subject to the provisions of the Governing Documents and the Commercial and Industrial Common Interest Development Act.

### **Section 12.2 - Execution of Documents.**

The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Association, and such authority may be general or confined to specific instances. Unless so authorized by the Board of Directors, no officer, Director, agent, committee member, or employee of the Association shall have any power or authority to bind the Association by any contract or engagement, or to pledge the Association's credit or to render it liable for any purpose or in any amount.

### **Section 12.3 - Operating Account.**

There shall be established and maintained one (1) 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 in accordance with the Restated Declaration. Disbursements from the operating account shall be for the general need of the operation of the Association and the Development, including, but not limited to, wages, repairs, payment of vendors, betterments, maintenance, utilities, and other operating expenses of the Development, as may be applicable.

### **Section 12.4 - Reserve Funds.**

The Board shall not expend funds designated as reserve funds 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 to repair, restore, replace, or maintain and for which the reserve fund was established. Notwithstanding the foregoing, 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, pursuant to the provisions of the Commercial and Industrial Common Interest Development Act. The signatures of at least two (2) Directors shall be required for the withdrawal of moneys from the Association's Reserve Accounts.

### **Section 12.5 - Gifts.**

The Board, in its sole discretion, may accept on behalf of the Association any contribution, gift, bequest, or devise for any general or special purpose of the Association.

**Section 12.6 - Fiscal Year.**

The fiscal year of the Association shall begin on the first day of January and end on the last day of December of every calendar year but is subject to change from time to time as the Board of Directors shall determine by Board resolution.

**Section 12.7 - Headings, Number and Gender.**

The subject headings of the articles, sections, and subsections of these Bylaws are included for purposes of convenience and reference only and shall not affect the construction or interpretation of any of the provisions of these Bylaws. In these Bylaws, where applicable, references to the singular shall include the plural and references to the plural shall include the singular. References to the male, female, or neuter gender in these Bylaws shall include reference to all other such genders where the context so requires.

**ARTICLE XIII  
AMENDMENTS TO BYLAWS**

These Bylaws may be amended by the Secret Ballot vote of Members representing at least fifty-one percent (51%) of the voting power of the Association; provided, however, that the specified percentage of Members necessary to amend a specific provision of these Bylaws shall not be less than the percentage of affirmative votes prescribed for action to be taken under that provision. Notwithstanding the foregoing, the Board shall have the power to amend these Bylaws without Member approval, upon adoption of a Board resolution authorizing such amendment, if such amendment is: (1) permitted by the law to be adopted by the Board without Member approval; (2) required under any law; and/or (3) to correct a cross-reference in these Bylaws to the Commercial and Industrial Common Interest Development Act or another law that was repealed and continued in a new provision. Individual Notice of any amendment to these Bylaws shall be given to all Members upon certification by the Secretary of the Association of such amendment.

**ARTICLE XIV  
CONFLICTING PROVISIONS**

To the extent of any conflict between these Bylaws and the law, the law shall prevail. To the extent of any conflict between these Bylaws and the Articles or Restated Declaration, the Articles or Restated Declaration shall prevail. To the extent of any conflict between these Bylaws and a Rule, these Bylaws shall prevail unless the Rule was adopted in compliance with the law.

**[End of Document]**

**CERTIFICATE OF SECRETARY  
OF  
TEMECULA OFFICE CENTRE PROPERTY OWNERS ASSOCIATION**

I, the undersigned, do hereby certify that:

1. I am the duly appointed and acting Secretary of Temecula Office Centre Property Owners Association (the “*Association*”), a California nonprofit mutual benefit corporation.

2. The foregoing *Amended and Restated Bylaws of Temecula Office Centre Property Owners Association* (the “*Bylaws*”), were: (i) duly adopted by at least 51% of the total voting power of the Association by Secret Ballot in accordance with applicable statutory requirements;

3. Capitalized terms used in these Bylaws that are not defined herein shall have the meanings given to them in the “Restated Declaration” defined in Section 1.1 of the Bylaws.

IN WITNESS WHEREOF, I have hereunto subscribed my hand this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Secretary