

Recording Requested By,  
When Recorded, Return To:

Law Office of Timothy B. Sanford  
P.O. Box 8081  
Mammoth Lakes, CA 93546

---

**AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
VAL D'ISERE CONDOMINIUM PROJECT  
MAMMOTH LAKES, MONO COUNTY, CALIFORNIA**

**TABLE OF CONTENTS**

Page

**Recitals** .....1

**ARTICLE I**

**DEFINITIONS**

1.1 “Articles” .....2

1.2 “Assessment” .....2

1.3 “Association” .....2

1.4 “Balcony” .....2

1.5 “Board” or “Board of Directors” .....2

1.6 “Bylaws” .....2

1.7 “Common Area(s)” .....2

1.8 “Common Expenses” .....2

1.9 “Common Interest” .....2

1.10 “Condominium” .....3

1.11 “Condominium Plan” .....3

1.12 “Declaration” .....3

1.13 “Eligible Holder Mortgages” .....3

1.14 “Eligible Mortgage Holder” .....3

1.15 “Eligible Insurer or Guarantor” .....3

1.16 “Entry Balcony” .....3

1.17 “First Lender” .....3

1.18 “Map” .....3

1.19	“Member” .....	3
1.20	“Mortgage” .....	3
1.21	“Mortgagee” .....	3
1.22	“Mortgagor” .....	3
1.23	“Owner” or “Owners” .....	3
1.24	“Person” .....	4
1.25	“Project” .....	4
1.26	“Project Documents” .....	4
1.27	“Property” or “Properties” .....	4
1.28	“Quorum” .....	4
1.29	“Record Owner(s)” or “Record Holder(s) of Title” .....	4
1.30	“Restricted Common Area” .....	4
1.31	“Rules” .....	4
1.32	“Singular and Plural” .....	4
1.33	“Stairway” .....	4
1.34	“Storage Facilities” .....	4
1.35	“Unit” .....	4
1.36	“Unit Designation” .....	4
1.37	“Voting Power” .....	5

**ARTICLE II**

**DESCRIPTION OF PROJECT, DIVISION OF PROPERTY,  
AND CREATION OF PROPERTY RIGHTS**

2.1	Description of Project .....	5
-----	------------------------------	---

2.2	Division of Property.....	5
	A. Units.....	5
	B. Common Areas.....	6
	C. Restricted Common Areas .....	6
	D. Inserts and Flues.....	6
2.3	Rights of Entry and Use.....	6
2.4	Owner’s Right and Obligation to Maintain and Repair.....	7
2.5	Partition Prohibited.....	7

**ARTICLE III**

**ASSOCIATION, ADMINISTRATION, MEMBERSHIP  
AND VOTING RIGHTS**

3.1	Association to Manage Common Areas .....	8
3.2	Board of Directors.....	8
3.3	Membership .....	8
3.4	Transferred Membership.....	8
3.5	Voting Rights .....	8
3.6	Notification of Sale of Unit.....	8

**ARTICLE IV**

**ASSESSMENTS**

4.1	Creation of the Lien and Personal Obligation of Assessments.....	9
4.2	Purpose of Assessments.....	9
4.3	Assessments .....	9

A. Regular Assessments.....	9
B. Special Assessments.....	10
4.4 Restrictions on Regular or Special Assessments .....	10
4.5 Notice of Assessment Increase .....	11
4.6 Assessment Formula .....	11
A. Regular Assessments.....	11
B. Special Assessments.....	11
4.7 Effect of Nonpayment of Assessments .....	11
4.8 Transfer of Condominium by Sale or Foreclosure .....	12
4.9 Priorities; Enforcement; Remedies .....	12
4.10 Unallocated Taxes.....	13
4.11 Exemptions from Assessments .....	13

**ARTICLE V**

**DUTIES AND POWERS OF THE ASSOCIATION**

5.1 Duties .....	14
A. Maintenance .....	14
B. Insurance .....	14
C. Discharge of Liens .....	14
D. Assessments .....	14
E. Payment of Expenses.....	14
F. Enforcement.....	15
G. Security .....	15

H.	Copies of Association Records to Owners .....	15
5.2	Powers Exercised by the Board .....	15
A.	Utility Service .....	15
B.	Manager.....	15
C.	Adoption of Rules .....	15
D.	Access .....	15
E.	Assessments, Liens and Fines .....	15
F.	Enforcement.....	16
G.	Contracts .....	16
H.	Delegation .....	16
I.	Use of Recreational Facilities.....	16
J.	Manager’s Unit.....	16
K.	Unit 38.....	17
L.	Security.....	17
M.	Appointment of Trustee.....	17
N.	Legal Action.....	17
O.	Loans.....	17
P.	Borrowing from Reserves.....	17
Q.	Grant of Exclusive Use of Common Area .....	17
R.	Other Powers .....	17
5.3	Powers Exercised with Owner Approval.....	17

**ARTICLE VI**

**UTILITIES**

6.1 Owners Rights and Duties .....19  
6.2 Association’s Duties .....19

**ARTICLE VII**

**USE RESTRICTIONS**

7.1 Use of Units .....20  
7.2 Time Sharing.....20  
7.3 Nuisances .....20  
7.4 Vehicle Restrictions .....20  
7.5 Signs.....22  
7.6 Animals .....22  
7.7 Garbage and Refuse Disposal .....22  
7.8 Radio and Television Antennas .....22  
7.9 Renting and Leasing of Units .....23  
7.10 Architectural Control .....23  
7.11 Clothes Lines .....24  
7.12 Power Equipment and Vehicle Maintenance .....24  
7.13 Liability of Owners for  
Damage to Common Area .....24  
7.14 Basketball Standards .....24  
7.15 Firewood .....24  
7.16 Barbeques.....24

7.17	Keys and Contact Information .....	24
7.18	Storage of Property .....	24

**ARTICLE VIII**

**INSURANCE**

8.1	Insurance .....	25
	A. Hazard .....	25
	B. General Liability .....	26
	C. Workers' Compensation.....	26
	D. Directors and Officers.....	26
	E. Other Insurance .....	26
8.2	Amount, Term and Coverage; Review of Policies; Carriers .....	27
8.3	Payment of Deductible; Processing of Claims.....	27
	A. Payment of Premiums/Deductible .....	27
	B. Processing of Claims.....	27
8.4	Authority of Board.....	27
8.5	Owner Insurance .....	28
8.6	Additional Provisions Regarding Insurance Policies.....	29
	A. Subrogation .....	29
	B. Optional Provisions.....	29
8.7	Limitation of Liability Regarding Insurance .....	30
8.8	Notice of Change in Insurance Coverage .....	30

**ARTICLE IX**

**DAMAGE OR DESTRUCTION; EMINENT DOMAIN**

9.1 Initial Board Determination; Notice .....30

9.2 Reconstruction without Election by Owners .....31

9.3 Repair or Reconstruction by Consent of Owners .....32

9.4 Assessments; Use of Reserves .....32

9.5 Obligation of Board When Rebuilding .....32

A. Obtaining Bids .....32

B. Time Period and Manner of Reconstruction .....33

C. Cost of Repair or Reconstruction .....33

9.6 Determination Not to Rebuild.....33

9.7 Interior Damage .....33

A. General Provisions .....33

B. Specific Provisions .....33

9.8 Negotiations with Insurer.....34

9.9 Condemnation .....34

**ARTICLE X**

**GENERAL PROVISIONS**

10.1 Enforcement .....34

10.2 Invalidity of Any Provision .....35

10.3 Term .....35

10.4 Amendments .....35

10.5 Encroachment Rights .....35

10.6	Rights of Lenders .....	35
	A. Copies of Project Documents.....	36
	B. Audited Statements .....	36
	C. Notice of Action .....	36
	D. Consent to Action.....	36
	E. Priority of Liens.....	38
	F. Distribution of Insurance or Condemnation Proceeds.....	38
	G. Restoration or Repair .....	38
	H. Termination.....	38
	I. Reallocation of Interests .....	38
10.7	Enforcement of Owner’s Compliance .....	38
10.8	Notice .....	39
10.9	Fair Housing.....	39

**ARTICLE XI**

**EASEMENTS**

11.1	Validity of Prior Easements .....	39
11.2	New Easements.....	39

**AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
VAL D'ISERE CONDOMINIUM PROJECT  
MAMMOTH LAKES, MONO COUNTY, CALIFORNIA**

This AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this \_\_\_\_ day of \_\_\_\_\_, 201\_ by and for the Val D'Isere Condominium Project ("the Project").

**RECITALS**

**A.** The Project is located in the Town of Mammoth Lakes, County of Mono, State of California and is described as follows:

Units 1 to 46, inclusive, and Lot A, of Val D'Isere, as per Map recorded in Book 8 of Subdivision Maps, Pages 12 through 12H, inclusive, in the Office of the County Recorder of Mono County.

**B.** The Project is encumbered by a Declaration of Covenants, Conditions and Restrictions recorded on October 4, 1972 at Vol. 144, Pages 117-172, inclusive, in the Office of the County Recorder of Mono County (the "Original Declaration").

**C.** The Project is further encumbered by an Amendment No. 1 of Declaration of Covenants, Conditions and Restrictions for Val D'Isere recorded on December 6, 1974 at Vol. 179, Pages 184-189, inclusive, in the Office of the County Recorder of Mono County (the "First Amendment").

**D.** The owners of the total common area interest of the Project now desire to amend the Original Declaration and the First Amendment by replacing them in their entirety with this declaration. This declaration shall constitute the entirety of the new Val D'Isere declaration upon its recordation with the office of the Mono County Recorder.

However, nothing in this declaration shall supersede, modify or impair those grants of easement contained in the original declaration, which grants of easement shall remain in full force and effect as stated therein.

NOW THEREFORE, the original declaration is hereby amended to read as follows:

## ARTICLE I

### DEFINITIONS

**1.1** "Articles" shall mean and refer to the Articles of Incorporation of the Association, as amended from time to time.

**1.2** "Assessment" shall mean that portion of the cost of maintaining, improving, repairing, operating and managing the property which is to be paid by each condominium owner as determined by the association.

**1.3** "Association" shall mean and refer to the Val D'Isere Owners' Association, a California nonprofit mutual benefit corporation, the members of which shall be the owners of condominiums in the Project.

**1.4** "Balcony" is as defined in Section 2.2.C.2.

**1.5** "Board" or "Board of Directors" shall mean and refer to the governing body of the association.

**1.6** "Bylaws" shall mean and refer to the bylaws of the association, as amended from time to time.

**1.7** "Common Area(s)" shall mean and refer to all of the property (excepting the individual condominium units), title to which is held by all of the owners in common. The common area includes, without limitation: land; the Association's unit, Unit 38 (formerly the manager's unit); the manager's unit; spa and other amenities; parking and driveway areas; exterior stairs, decks, balconies, patios and storage areas; bearing walls, columns, girders, ceiling joists, subfloors, unfinished floors, roofs, and foundations; common area water heaters; tanks, pumps, motors, flues and chutes; conduits, pipes, plumbing, wires and other utility installations (except the outlets thereof when located within the unit), required to provide power, light, telephone, water, sewerage, drainage and heat; all fire extinguishers, which shall be required in each unit as well as in appropriate locations in the common area; exterior sprinklers and sprinkler pipes; and all exterior windows and doors (including front entry doors, balcony doors and ski locker doors) and the screens, frames and seals for such windows and doors.

**1.8** "Common Expenses" means and includes the actual and estimated expenses of operating the common area and any reasonable reserve for such purposes as found and determined by the board and all other sums designated common expenses by or pursuant to the Project documents.

**1.9** "Common Interest" means the proportionate undivided interest in the common area that is a part of each condominium as set forth in this declaration.

**1.10 "Condominium"** shall mean an estate in real property as defined in Civil Code sections 783 and 4125, as those sections may be amended over time, consisting of an undivided interest in common in a portion of the property and a separate interest in space called a unit.

**1.11 "Condominium Plan"** shall mean and refer to the recorded plan of the condominiums built or to be built on the property which identifies the common area and each separate interest pursuant to Civil Code section 4285, as that section may be amended over time, a copy of which plan is recorded in Book 8 of Subdivision Maps, Pages 12-12H, inclusive, in the Office of the County Recorder of Mono County.

**1.12 "Declaration"** shall mean and refer to this declaration, as amended or supplemented from time to time.

**1.13 "Eligible Holder Mortgages"** shall mean mortgages held by "eligible mortgage holders".

**1.14 "Eligible Mortgage Holder"** shall mean a first lender who has requested notice of certain matters from the association in accordance with Section 10.6.C.

**1.15 "Eligible Insurer or Guarantor"** shall mean an insurer or governmental guarantor of a first mortgage who has requested notice of certain matters from the association in accordance with Section 10.6.C.

**1.16 "Entry Balcony"** is as defined in Section 2.2.C.2.

**1.17 "First Lender"** shall mean any person, entity, bank, savings and loan association, insurance company, or financial institution holding a recorded first mortgage on any condominium.

**1.18 "Map"** shall mean and refer to those combined maps and condominium plans referenced in Section 1.11 hereinabove.

**1.19 "Member"** shall mean and refer to a person entitled to membership in the association as provided in Section 3.3 herein.

**1.20 "Mortgage"** shall include a deed of trust as well as a mortgage.

**1.21 "Mortgagee"** shall include a beneficiary or a holder of a deed of trust as well as a mortgagee.

**1.22 "Mortgagor"** shall include the trustor of a deed of trust as well as a mortgagor.

**1.23 "Owner" or "Owners"** shall mean and refer to the record holder or holders of title, if more than one, of a condominium in the Project. This shall include any person having a fee simple title to any condominium, but shall not include persons or entities having any interest merely as security for the performance of an obligation.

**1.24 "Person"** means a natural person, a corporation, a partnership, a trustee, or other legal entity.

**1.25 "Project"** shall mean and refer to the entire real property described above in Recital A, including any property annexed or to be annexed, including all structures and improvements erected or to be erected thereon.

**1.26 "Project Documents"** shall mean this declaration, as amended from time to time, the exhibits, if any, attached thereto, together with the other basic documents used to create and govern the Project, including the map, the articles, the bylaws, and the condominium plan (but excluding unrecorded rules and regulations adopted by the board or the association).

**1.27 "Property" or "Properties"** means and includes the real property above described and all improvements erected thereon and all property, real, personal or mixed intended for or used in connection with the condominium.

**1.28 "Quorum"** means the number of units that must vote on a particular matter in order for the vote to be binding and effective.

**1.29 "Record Owner(s)" or "Record Holder(s) of Title"** means those whose ownership of a unit or units is evidenced by a document properly recorded with the Mono County Recorder.

**1.30 "Restricted Common Area"** shall mean and refer to those portions of the common area set aside for exclusive use of a unit owner or owners, pursuant to Section 2.2, and shall constitute "exclusive use common area" within the meaning of Civil Code section 4145, as that section may be amended over time.

**1.31 "Rules"** shall mean those association rules described in Section 5.2.C of this declaration.

**1.32 "Singular and Plural":** The singular and plural number and masculine, feminine and neuter gender shall each include the other where the context requires.

**1.33 "Stairway"** is as defined in Section 2.2.C.2.

**1.34 "Storage Facilities"** is as defined in Section 2.2.C.2.

**1.35 "Unit"** shall mean and refer to the elements of the condominium, as defined in Section 2.2.A, which is not owned in common with the owners of other condominiums in the Project.

**1.36 "Unit Designation"** means the number, letter, or combination thereof or other official designation(s) shown on the condominium plan. Each unit is identified by a separate number or letter on the condominium plan.

**1.37 “Voting Power”** means the total voting power of all of the record owners.

## **ARTICLE II**

### **DESCRIPTION OF PROJECT, DIVISION OF PROPERTY, AND CREATION OF PROPERTY RIGHTS**

**2.1 Description of Project:** The Project is a condominium Project consisting of the land, condominiums and all other improvements located thereon in accordance with the condominium plan.

**2.2 Division of Property:** The property is divided as follows:

**A. Units:** Each of the units as separately shown, numbered and designated in the condominium plan consists of the space bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows, window frames, doors and door frames and trim, of each unit, each of such spaces being defined and referred to herein as a "unit". Bearing walls located within the interior of a unit are common area, not part of the unit, except for the finished surfaces thereof. Chimneys and flues are common area; fireplaces, inserts and stoves, and smoke detectors are part of the unit and are not common area. Exposed beams in ceilings shall not be part of the unit except for finished surfaces thereof. Each unit includes the utility installations located within or without its boundaries that the owner has exclusive use of, including, without limitation: hot water heaters, space heaters and lighting fixtures which are located entirely within the unit they serve. Each unit includes both the portions of the building so described and the airspace so encompassed. The unit does not include those areas and those things which are defined as “common area” in Section 1.7. Each unit is subject to such encroachments as are contained in the building, whether the same now exist or may be later caused or created in any manner referred to in Section 10.5. In interpreting deeds and condominium plans, the then existing physical boundaries of a unit in the Project, 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 boundaries 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 plan or deed and those of the building. Each unit shall have appurtenant to it nonexclusive rights of ingress, egress, and support through the common area subject to the rights of each owner in any restricted common area appurtenant to that owner's condominium.

Each owner shall have, as appurtenant to the owner's unit, that proportionate undivided interest in the common area described in “Exhibit A” to this Declaration, as referenced in Section 4.6(A) of this Declaration. Each includes a unit and such undivided interest in the common area. The common interest appurtenant to each unit is permanent in character and cannot be altered without the consent of all of the owners affected, as expressed in an amended declaration. Such undivided common interest cannot be separated from the unit to which it is appurtenant, and any conveyance or transfer of the unit includes the undivided common interest, the owner's membership in the association, and any other benefits or burdens appurtenant to that owner's condominium.

**B. Common Areas:** The remainder of the property constitutes and shall be referred to herein as "common area" or "common areas", and includes, without limitation, all of the elements set forth in Section 1.7.

Each owner may use the common area in accordance with the purposes for which it is intended without hindering the exercise of or encroaching on the rights of any other condominium owners, subject to the rights of each owner in any restricted common area appurtenant to that owner's condominium.

**C. Restricted Common Areas:** The following described portions of the common area, referred to as "restricted common areas", are set aside and allocated for the exclusive use of the owner of the condominium to which they are attached or assigned by unit number as shown on the condominium plan, and are appurtenant to that condominium:

1. Exterior windows and doors, and any screens for such windows and doors;
2. Balconies, decks and stairways.
3. Those portions of the chimney structures, flues and/or stovepipes located within a unit.

**D. Inserts and flues:** In the event the Town of Mammoth Lakes, or any other governmental entity, requires the installation of inserts and/or flues into fireplaces and/or chimney structures, then the cost of such installation shall be borne by the owner(s) of the subject unit. In all other respects, both prior and subsequent to any such installation, chimney structures and flues shall be restricted common area. Fireplaces, stoves and inserts are not common area but are a part of each unit.

**2.3 Rights of Entry and Use:** The units and common area (including restricted common area) shall be subject to the following rights of entry and use:

**A.** The right of the association agents or employees to enter any unit to cure any violation of this declaration or the bylaws, provided that the owner has received notice and a hearing as required by the bylaws (except in the case of an emergency) and the owner has failed to cure the violation or take steps necessary to cure the violation within thirty (30) days after the finding of a violation by the association.

**B.** The access rights of the association to inspect, maintain, repair or replace improvements or property located in the common area as described in Section 5.2.D.

**C.** The rights of the owners and the association to install, maintain, repair, or replace utilities as described in Article VI.

**D.** The encroachment easements described in Section 10.5.

E. The rights of owners to make improvements or alterations authorized by Civil Code section 4760(a)(2), as that section may be amended over time, subject to the provisions of Section 7.10 to the extent applicable.

**2.4 Owner's Right and Obligation to Maintain and Repair:** Except for those portions of the Project which the association is required to maintain and repair, each condominium owner shall, at his sole cost and expense, maintain and repair his or her unit keeping the same in good condition. Each owner shall bear the cost of maintenance, repair and replacement of the following items within or serving such owner's unit, among others (as applicable): interior surfaces of all perimeter and interior walls, ceilings and floors (including carpeting, tile, wall paper, paint or other covering); garbage disposals, hot water heaters, ranges, refrigerators, dishwashers, washing machines, dryers, light fixtures and any and all other appliances of any nature whatsoever; heating and ventilating equipment exclusively servicing such unit (although such equipment may be located in part outside such unit); interior doors, including all hardware thereon; light bulbs; plumbing and other fixtures of any nature whatsoever; "built-in" features; and decorative features, and any furniture and furnishings. Owners shall take all reasonable steps to avoid risk of harm to other units including, without limitation, maintaining sufficient heat to avoid frozen pipes, maintaining water heaters in good repair to avoid flooding, and using precautions to avoid fires when emptying ashes from fire places and when using those barbeques permitted by Section 7.16. All electric utilities serving individual units shall be separately metered and shall be the expense of each individual owner. Electric utilities serving the general common elements shall be a common expense of the association. Each owner shall be responsible for the replacement of exterior door seals, fogged window and sliding glass door panes, and the removal of water stains on all such glass panes caused by sprinklers, in accordance with section 4.6.B.2. In addition, each owner shall keep those portions of the restricted common area to which he has exclusive easements rights clean and neat. Each owner shall have the exclusive right to paint, plaster, panel, tile, wax, paper, or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, window frames and doors bounding his unit. In the event an owner fails to maintain the interior of his unit in a manner which the board deems necessary to preserve the appearance and value of the property, the board may notify the owner of the work required and request it be done within sixty (60) days from the giving of such notice. In the event the owners fails to carry out such maintenance within said period, the board may, following notice and hearing as provided in the bylaws, cause such work to be done and the costs thereof shall immediately be paid by such owner to the association and until paid shall bear interest at the rate of ten percent (10%) per annum (but no greater than the maximum rate authorized by law).

**2.5 Partition Prohibited:** The common areas shall remain undivided as set forth above. Except as provided by Civil Code section 4610, as that section may be amended over time, or authorized under Section 9.9, no owner shall bring any action for partition of the common areas, it being agreed that this restriction is necessary in order to preserve the rights of the owners with respect to the operation and management of the Project. Judicial partition by sale of a single condominium owned by two (2) or more persons and division of the sale proceeds is not prohibited hereby, but partition of title to a single condominium is prohibited.

## ARTICLE III

### ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS

**3.1 Association to Manage Common Areas:** The management of the common area shall be vested in the association in accordance with this declaration and the bylaws. The owners of all the condominiums covenant and agree that the administration of the Project shall be in accordance with the provisions of this declaration, and of the articles and bylaws and rules of the association.

**3.2 Board of Directors:** The association shall be governed by a board of directors, who shall be elected in accordance with the bylaws of the association. The board of directors shall have all authority to govern and manage the affairs of the association consistent with applicable law, this declaration and the bylaws.

**3.3 Membership:** The owner of a condominium shall automatically, upon becoming the owner of same, be a member of the association, and shall remain a member thereof until such time as the ownership ceases for any reason, at which time the membership in the association shall automatically cease. Membership shall be held in accordance with this declaration, the articles and bylaws of the association.

**3.4 Transferred Membership:** Membership in the association shall not be transferred, encumbered, pledged, or alienated in any way, except upon the sale or encumbrance of the condominium to which it is appurtenant, and then only to the purchaser, in the case of a sale, or mortgagee, in the case of an encumbrance of such condominium. On any transfer of title to an owner's condominium, including a transfer on the death of an owner, membership passes automatically with title to the transferee.

A mortgagee does not have membership rights until it obtains title to the condominium by foreclosure or deed in lieu thereof. Any attempt to make a prohibited transfer is void. No member may resign his or her membership. On notice of a transfer, the association shall record the transfer on its books.

**3.5 Voting Rights:** Each unit shall be entitled to cast one vote on each question presented to the membership. Except as herein or in the bylaws provided to the contrary, a vote of a simple majority of the voting power of the association shall decide each question, provided that a quorum as defined in the bylaws exists.

**3.6 Notification of Sale of Unit:** Concurrently with the consummation of the sale of any unit or any portion thereof, under circumstances which the transferee becomes an owner thereof, the transferee shall notify the board in writing of such sale. Such notification shall set forth (i) the name of the transferee(s) and transferor(s), (ii) the number of the unit being transferred, (iii) the transferee's mailing and street addresses and, (iv) the date of sale. Prior to receipt of such notification, any and all communications or notices from the association, the board or any agents

thereof shall be deemed to be duly made and given to the transferee if duly and timely made and given to said transferee's transferor.

## ARTICLE IV

### ASSESSMENTS

**4.1 Creation of the Lien and Personal Obligation of Assessments:** Each owner of any condominium by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees: (1) to pay to the association regular assessments or charges, and special assessments for purposes permitted herein, such assessments to be established and collected as hereinafter provided; and (2) to allow the association to enforce any assessment lien established hereunder by nonjudicial proceedings under a power of sale or by any other means authorized by law. The regular and special assessments, together with interest, late charges, collection costs, and reasonable attorneys' fees, shall be a charge on the condominium and shall be a continuing lien upon the condominium against which each such assessment is made, the lien to become effective upon recordation of a notice of delinquent assessment. Each such assessment, together with interest, late charges, collection costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such condominium at the time when the assessment fell due. No owner shall be exempt from liability for payment of assessments by waiver of the use or enjoyment of any of the common areas or by the abandonment of the owner's condominium.

**4.2 Purpose of Assessments:** The assessments levied by the association shall be used exclusively to promote the economic interests, recreation, health, safety, and welfare of the owners in the Project, and to provide insurance, improvement, and maintenance of the common area for the common good of the Project.

#### **4.3 Assessments:**

**A. Regular Assessments:** The board shall establish and levy regular assessments in an amount that the board estimates will be sufficient to raise the funds needed to perform the duties of the association during each fiscal year, such assessments to be determined for each condominium in accordance with the formula set forth in Section 4.6 of this declaration. Subject to the provisions of this declaration, the board may change the amount of regular assessments or the frequency of the billing of such assessments at any time.

The regular assessment shall include a portion for reserves in such amounts as the board in its discretion considers appropriate to meet the costs of the future repair, replacement or additions to the major components that the association is obligated to maintain and repair. Reserve funds need not be deposited in a separate account, but must be separately accounted for on the books of the association. Except as provided in Section 12.3 of the bylaws, Section 5.2.O of this declaration and Civil Code sections 5510(b) and 5515 as those sections may be amended over time, reserve funds may not be expended for any purpose other than repairing, replacing or adding to the major components that the association is obligated to maintain without

the consent of owners holding a majority of the voting power at a duly held meeting or by written ballot.

**B. Special Assessments:** The board, at any time, may levy a special assessment in order to raise funds for unexpected operating or other costs, insufficient operating or reserve funds, or such other purposes as the board in its discretion considers appropriate. Except as provided in Sections 4.6.B and 9.4, special assessments shall be allocated among the units in the same manner and according to the same percentages as regular assessments. Special assessments may be collected in one (1) payment or periodically as the board shall direct.

#### **4.4 Restrictions on Regular or Special Assessments:**

**A.** Annual increases in regular assessments for any fiscal year shall not be imposed unless the Board has complied with paragraphs (1), (2), (4), (5), (6), (7) and (8) of subdivision (b) of Civil Code section 5300 with respect to that fiscal year, or has obtained the approval of a majority of a quorum of members at a member meeting or election.

**B.** The board may not impose a regular assessment on any condominium which is more than 20% greater than the regular assessment for the immediate preceding fiscal year or levy a special assessment to defray the cost of any action or undertaking on behalf of the association which in the aggregate exceeds 5% of the budgeted gross expenses of the association for that fiscal year, without the vote or written assent of members casting a majority of the votes at a meeting or election of the association at which a quorum is present, either in person or by proxy. For purposes of this Section 4.4, a "quorum" means more than fifty percent (50%) of the members of the Association.

**C.** Notwithstanding the foregoing, the board, without membership approval, may increase regular assessments or levy special assessments necessary for an emergency situation. For purposes of this section, an emergency situation is 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 property or any part of it for which the association is responsible where a threat to personal safety on the property is discovered, or
3. an extraordinary expense necessary to repair or maintain the property 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 proforma operating budget, provided, however that prior to the imposition or collection of the assessment, 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 the assessment.

This Section 4.4 incorporates the statutory requirements of Civil Code sections 5600-5610, as that sections may be amended over time. If these sections of the Civil Code are

amended in any manner, this Section 4.4 automatically shall be amended in the same manner without the necessity of amending this declaration.

**4.5 Notice of Assessment Increase:** The association shall provide individual notice pursuant to Civil Code section 4040 to the members of any increase in the regular or special assessments of the association, not less than 30 nor more than 60 days prior to the assessment becoming due.

**4.6 Assessment Formula:**

**A. Regular Assessments:** All regular assessments shall be as determined by the board and shall be levied proportionately among the units in accordance with the “Schedule of Fractional Interests in Common Area” attached hereto and incorporated herein as “Exhibit A.”

**B. Special Assessments:** Except as provided in Sections 4.4 and 4.6.B.3, all special assessments shall be as determined by the board. All special assessments shall be levied equally among the units except as follows:

**1.** Special assessments may be levied by the board against an owner to reimburse the association for costs incurred in bringing the owner and such owner’s unit into compliance with the Project documents.

**2.** Special assessments may be levied by the board against an owner (i) to fund the cost of any repair or replacement of the common area (including restricted common area) necessitated, as determined in the discretion of the board, by the actions of that owner; and (ii) to fund a modification to common area that is requested by an owner, is limited to that owner’s unit only, and is approved by the board in accordance with Section 7.10. Funding for the replacement of exterior door seals, fogged window and sliding door glass panes, the cleaning of all such glass panes, and the removal of water stains on all such glass panes caused by sprinklers, shall either be paid for directly by the individual owner or through a special assessment to the requesting owner, without limiting the scope of this section to just those circumstances. The board shall have the discretion to require payment of any special assessment authorized by this section prior to having any such work done.

**3.** Special assessments may be levied against a discrete segment of the owners (more than one) if approved by both all the owners and by the owners to be specially assessed in accordance with Section 5.3.B.5 for the purpose of approving a modification to restricted common area that benefits only that segment of owners so long as the special assessment is proportionately divided among each of the Owners that benefit from the modifications.

**4.7 Effect of Nonpayment of Assessments:** Any assessment not paid within thirty (30) days after the due date shall be delinquent, and shall bear interest at the rate of ten percent (10%) per annum (but no greater than the maximum amount allowed by law) commencing thirty (30) days after the due date until paid, and shall incur a late payment penalty in the amount of twelve percent (12%) of the delinquent assessment or ten dollars, whichever is greater.

**4.8 Transfer of Condominium by Sale or Foreclosure:** Each holder of a first mortgage on a condominium who comes into possession of the condominium by virtue of foreclosure of the mortgage, or any purchaser at a foreclosure sale under a first deed of trust, will take the condominium free of any claims for unpaid assessments and fees, late charges, fines, or interest levied in connection therewith against the condominium which accrue prior to the time such holder takes title to the condominium, except for claims for a pro rata share of such assessments or charges to all Project condominiums including the mortgaged condominium, and except for assessment liens recorded prior to the mortgage.

In any transfer of a condominium a grantor shall remain liable to the association for all unpaid assessments against the condominium up to the date of the record transfer. The grantee shall be entitled to a statement from the association dated as of the date of record transfer, setting forth the amount of the unpaid assessments against the grantor due to the association, and the condominium so transferred shall not be subject to a lien for unpaid assessments in excess of the amount set forth in the statement, provided, however, the grantee shall be liable for any such assessments that become due after the date of the record transfer. Under no circumstances shall transfers not evidenced by the proper recordation of a document of transfer with the Mono County Recorder be effective to alter or discharge the liability of the transferor under this declaration. Members of the association shall remain members for all purposes until the date of recordation of a valid document of transfer.

**4.9 Priorities; Enforcement; Remedies:** If an assessment is delinquent, the association may record a notice of delinquent assessment and establish a lien against the condominium of the delinquent owner prior and superior to all other liens except (1) all taxes, bonds, assessments, and other levies which, by law, would be superior thereto, and (2) the lien or charge of any prior mortgage of record made in good faith and for value. The notice of delinquent assessment shall state the amount of the assessment, collection costs, attorney's fees, late charges, and interest, a description of the condominium against which the assessment and other sums are levied, the name of the record owner, and the name and address of the trustee authorized by the association to enforce the lien by sale. The notice shall be signed by any officer of the association, any attorney of the association, or any management agent retained by the association.

An assessment 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 Civil Code section 2934(a), as that section may be amended over time. Any sale shall be conducted in accordance with the provisions of Sections 2924, 2924b, 2924c, 2924f, 2924g, and 2924h of the Civil Code, as those sections may be amended over time, or any successor statutes thereto, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. Nothing herein shall preclude the association from bringing an action directly against an owner for breach of the personal obligation to pay assessments.

Fines and penalties for violation of restrictions are not "assessments", and are not enforceable by assessment lien.

The association, acting on behalf of the condominium owners, shall have the power to bid for the condominium at foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same. Where the purchase of a foreclosure condominium will result in a five percent (5%) or greater increase in assessments, the purchase shall require the vote or written consent of a majority of the total voting power of the association. During the period a condominium is owned by the association, following foreclosure: (1) No right to vote shall be exercised on behalf of the condominium; (2) no assessment shall be assessed or levied on the condominium; and (3) each other condominium shall be charged, in addition to its usual assessment, its share of the assessment that would have been charged to such condominium had it not been acquired by the association as a result of foreclosure. Suit to recover a money judgment for unpaid common expenses, rent, and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

After acquiring title to the condominium at foreclosure sale following notice and publication, the association may execute, acknowledge, and record a deed conveying title to the condominium which deed shall be binding on the owners, successors, and all other parties.

The board may temporarily suspend the voting rights and the right to use recreational facilities of a member who is in default in payment of any assessment, after notice and hearing, as provided in the bylaws.

In acting to collect delinquent assessments, the association shall at all times comply with Civil Code sections 5650 through 5740, as those sections may be amended over time.

**4.10 Unallocated Taxes:** In the event that any taxes are assessed against the common area, or the personal property of the association, rather than against the condominiums, said taxes shall be included in the assessments made under the provisions of Section 4.1 and, if necessary, a special assessment may be levied against the condominiums in an amount equal to said taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

**4.11 Exemptions from Assessments:** Any condominium which does not include a structural improvement for human occupancy as the result of one of the circumstances addressed in Article IX shall be exempt from the payment of that portion of any assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of the structural improvement. The exemption may include:

- (1) Roof replacement;
- (2) Exterior maintenance;
- (3) Walkway and carport lighting;
- (4) Refuse disposal, if any;
- (5) Domestic water supplied to living units, if any;
- (6) Insurance on completed units;
- (7) Insurance on uncompleted units.

The foregoing exemption shall be in effect until the earliest of the following events:

- (1) A notice of completion of the structural improvements has been recorded;

- (2) Occupation or use of the condominium; or
- (3) Completion of all elements of the residential structure which the Association is obligated to maintain.

## ARTICLE V

### DUTIES AND POWERS OF THE ASSOCIATION

**5.1 Duties:** In addition to the duties enumerated in its bylaws, or elsewhere provided for in this declaration, and without limiting the generality thereof, the association shall perform the following duties:

**A. Maintenance:** Subject to the applicable terms of Sections 2.4, 4.6.B and 7.10, the association shall maintain, repair, replace, restore, operate and manage all of the common area and all of the restricted common area and all facilities, including utility facilities as described in Section 6.2, improvements, furnishings, equipment and landscaping thereon, and all property that may be acquired by the association, provided that each owner shall maintain the restricted common area appurtenant to that owner's condominium in a neat and clean condition. Maintenance shall include (without limitation): Painting, maintaining, cleaning, repairing and replacing of all common areas and restricted common areas, including exterior stairs, decks, balconies, and exterior doors, and landscaping and recreational facilities. The responsibility of the association of maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or neglect of an owner, or his guests, tenants or invitees, or by acts of the owner's or his guests', tenants' or invitees' pets. Such repairs shall be made by the responsible owner, provided the board approves the person actually making the repairs and the method of repair. If the responsible owner fails to take the necessary steps to make the repairs within a reasonable time under the circumstances, the association shall make the repairs and charge the cost thereof to the responsible owner in accordance with Section 4.6.B.2, which cost shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by law) until paid in full. If an owner disputes his or her responsibility for the repairs, the owner shall be entitled to notice and a hearing as provided in the bylaws before any charge may be imposed.

**B. Insurance:** The association shall maintain such policy or policies of insurance as are required by Article VIII of this declaration.

**C. Discharge of Liens:** The association shall discharge by payment, if necessary, any lien against the common area, and charge the costs thereof to the member or members responsible for the existence of the lien (after notice and a hearing, as provided in the bylaws).

**D. Assessments:** The association shall fix, levy, collect, and enforce assessments as set forth in Article IV hereof.

**E. Payment of Expenses:** The association shall pay all expenses and obligations incurred by the association in the conduct of its business including, without limitation,

all licenses, taxes, or governmental charges levied or imposed against the property of the association.

**F. Enforcement:** The association shall enforce this declaration.

**G. Security:** The association shall provide reasonable security for the common area.

**H. Copies of Association Records to Owners:** The association shall provide copies of association records to owners in accordance with the provisions of Civil Code sections 5200 through 5260 as those sections may be amended from time to time.

**5.2 Powers Exercised by the Board:** In addition to the powers enumerated in its articles of incorporation, bylaws, or elsewhere provided herein, and without limiting the generality thereof, the association acting by and through the board shall have the following powers:

**A. Utility Service:** The association shall have the authority (but not the obligations) to obtain, for the benefit of all of the condominiums, all water, gas, electric, television and refuse collection service.

**B. Manager:** The association shall have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the association, except for those responsibilities exclusively reserved for the board of directors, including, without limitation the responsibility to levy fines, impose discipline, hold hearings, file suit, record or foreclose liens, or make capital expenditures; provided that any contract with a firm or person appointed as a manager or managing agent shall not exceed a one (1) year term.

**C. Adoption of Rules:** The association may adopt reasonable rules not inconsistent with this declaration relating to the use of the common area and all facilities thereon, and the conduct of owners and their tenants and guests with respect to the property and other owners. These rules may include provisions for fines and disciplinary actions in accordance with Section 5.2.F of this declaration. All such rules shall be adopted in accordance with the provisions of Civil Code sections 4340 through 4370 as those sections may be amended from time to time.

**D. Access:** For the purpose of performing construction, inspection, maintenance, or emergency repair for the benefit of the common area or the owners in common, the association's agents or employees shall have the right, to enter any unit or to enter any portion of the common area at reasonable hours. Such entry shall be made with as little inconvenience to the owners, renters and/or authorized guests as practicable, and any damage caused thereby shall be repaired at the expense of the association.

**E. Assessments, Liens and Fines:** The association shall have the power to levy and collect assessments in accordance with the provisions of Article IV hereof. The association may impose fines or take disciplinary action against any owner for failure to pay assessments or for violation of any provision of the Project documents. Penalties may include but

are not limited to: fines, temporary suspension of voting rights, rights to the use of recreational facilities, or other appropriate discipline, provided the member is given notice and a hearing as provided in the bylaws before the imposition of any fine or disciplinary action.

**F. Enforcement:** The association shall have the authority to enforce this declaration as per section 10.7.

**G. Contracts:** The association shall have the power to contract for goods and/or services for the common area(s), facilities and interests of the association, subject to the limitations contained in the bylaws, or elsewhere set forth in the Project documents.

**H. Delegation:** The association shall have the power to delegate its authority and powers to committees, officers, or employees of the association, or to a manager employed by the association, provided that the board shall not delegate its responsibility:

1. To make expenditures for capital additions or improvements chargeable against the reserve funds;

2. To conduct hearings concerning compliance by an owner or his tenant, lessee, guest, or invitee with the declaration, bylaws, or rules and regulations promulgated by the board;

3. To make a decision to levy monetary fines, impose special assessments against individual condominiums, temporarily suspend an owner's rights as a member of the association, or otherwise impose discipline;

4. To make a decision to levy regular or special assessments; or

5. To make a decision to bring suit, record a claim of lien, or institute foreclosure proceeding for default in payment of assessments.

**I. Use of Recreational Facilities:** The association shall have the power to limit both the number of an owner's tenants or guests who may use the recreational facilities, and the hours of operation of the recreational facilities, provided that all limitations apply equally to all owners, unless imposed for disciplinary reasons, after notice and hearing.

**J. Manager's unit:** Anything in this declaration or the bylaws or articles to the contrary notwithstanding, the association, upon appropriate resolution of the board, shall have the power and authority, with the vote or written consent of a majority of members, to purchase a condominium (the "manager's unit") to be occupied by the manager(s) of the Project. In such case, during the period the manager's unit is owned by the association:

1. No right to vote shall be exercised on behalf of the manager's unit;

2. No assessment shall be assessed or levied on the manager's unit; and

**3.** Each other condominium shall be charged, in addition to its usual assessment, its share of the assessment that would have been charged to the manager's, but for the provisions of this section.

**K. Unit 38:** The association, acting by and through the board, shall have the power to own, manage, maintain, operate and/or rent Unit 38 at the Project, subject only to the provisions of Sections 5.3(A)(2) and 5.3(B)(2) of this Declaration.

**L. Security:** The association shall have the power (but not the obligation) to contract for security service for the common area.

**M. Appointment of Trustee:** The association, has the power to appoint or designate a trustee to enforce assessment liens by sale as provided in Section 4.9 and in Civil Code section 5675(c), as that section may be amended over time.

**N. Legal Action:** The association shall have the power to institute, defend, settle or intervene in, through litigation, arbitration, mediation, administrative proceedings, or negotiations, claims for damages, property rights or water rights common to the owners, or affecting or pertaining to common areas or separate interests which the association is obligated to maintain or repair or which are integrally related to the common areas.

**O. Loans:** The association shall have the power to borrow money, except as noted in Section 5.3.A.2.

**P. Borrowing from Reserves:** The association shall have the power to borrow from its reserves subject to the limitations set forth in Civil Code section 5515 as that section may be amended from time to time.

**Q. Grant of Exclusive Use of Common Area:** The association shall have the power to grant exclusive use of any portion of the common area to a member in those situations described in Civil Code section 4600(b).

**R. Other Powers:** In addition to the powers contained herein, the Association may exercise the powers granted to a nonprofit mutual benefit corporation under the Corporations Code.

**5.3 Powers Exercised with Owner Approval:** The association shall have the following powers if and to the extent authorized by the approval of the following proscribed number of owners:

**A. Powers requiring the approval of at least Seventy-Five percent (75%) of the voting power of the association:**

**1.** The power to convey, transfer or sell any interest in any of the association's real property; except in situations following the association's purchase of a condominium, in the event of a grant of exclusive use of an portion of the Common Area to a

member in those situations described in Civil Code section 4600(b), or in any of the circumstances contemplated by Article IX.

2. The power to mortgage, pledge, deed in trust, or hypothecate any or all of the association's real property as security for money borrowed or debts incurred. Unsecured borrowing does not require approval of owners.

3. The power to dedicate all or any part of the common area to any public agency, authority, or utility for such purposes and subject to such conditions as may be approved by the owners

4. The power to amend the declaration to change the assessment formulas in Section 4.6, change the owners' proportionate interest in distributions of hazard insurance proceeds or condemnation awards in Section 9.9, change the voting rights in Section 3.5, or change the limitations on the renting of units in Section 7.9.

5. The power to terminate the legal status of the association (except in the event of substantial destruction or condemnation).

**B. Powers requiring the approval of at least a majority of the voting power of the association:**

1. The power to grant easements where appropriate for utilities, cable television/radio/internet and sewer facilities over, on or under the common area.

2. The power to purchase any condominium at the Project (via foreclosure or otherwise), and the power for the subsequent sale of any such unit owned by the association;

3. The power to acquire any non-common area benefits for all owners to be funded by increases to annual assessments such as, without limitation, cable TV, internet access, athletic or golf club privileges.

4. The power to amend the declaration to change the insurance requirements of Article VIII.

5. The power to approve improvements benefitting only a discrete segment of the units, and to approve the special assessment to pay for such improvements authorized by Section 4.6.B.3; except that such approval shall also require the approval of a majority of those units to be benefitted by and subject to the special assessment.

6. The power to amend this Declaration in accordance with Section 10.4, except as provided in Section 10.6.D.

7. The power to terminate the Project in the circumstances contemplated by Section 10.6.I.

**C. Powers requiring the approval of at least a majority of a quorum of fifty percent of the voting power of the association:**

1. An increase in annual assessments amounting to more than twenty percent (20%) of the association's budget for the prior fiscal year, in accordance with Section 4.4;

2. Special assessments in one fiscal year amounting to more than five percent (5%) in the aggregate of the association's budgeted gross expenses for that fiscal year, in accordance with Section 4.4.

3. Incurring aggregate expenditures in any fiscal year other than that for accumulated reserves for capital improvements in excess of ten percent (10%) of the budgeted gross expenses of the association for that fiscal year.

**ARTICLE VI**

**UTILITIES**

**6.1 Owners Rights and Duties:** The rights and duties of the owners of condominiums within the Project with respect to sanitary sewer, water, drainage, electric, gas, television, radio and internet receiving, telephone equipment, cables and lines, exhaust flues, and heating facilities (hereinafter referred to, collectively, as "utility facilities") shall be as follows:

A. Whenever utility facilities are installed within the property, which utility facilities or any portion thereof lie in or on unit owned by other than the owner of a unit served by said utility facilities, the owners of any unit served by said utility facilities shall have the right of reasonable access for themselves or for utility companies to repair, replace, and generally maintain said utility facilities as and when necessary, due to failure or inability of the board to take timely action to make such repairs or perform such maintenance.

B. Whenever utility facilities are installed within the property, which utility facilities serve more than one (1) unit, the owner of each unit served by said utility facilities shall be entitled to the full use and enjoyment of such portions of said utility facilities as service his or her unit.

C. In the event of a dispute between owners with respect to the repair or rebuilding of said utility facilities, or with respect to the sharing of the cost thereof, then, upon written request of one (1) of such owners addressed to the association, the matter shall be submitted to arbitration pursuant to the rules of the American Arbitration Association, and the decision of the arbitrator(s) shall be final and conclusive on the parties.

**6.2 Association's Duties:** The association shall maintain all utility facilities located in the common area except for those facilities maintained by utility companies, public, private, or municipal, and those maintained by the owners as described in Section 2.4. The association shall pay all charges for utilities facilities supplied to the Project except for those metered or charged separately to the units.

## ARTICLE VII

### USE RESTRICTIONS

In addition to all of the covenants contained herein, the use of the property and each condominium therein is subject to the following:

**7.1 Use of Units:** No unit shall be occupied and used except for residential purposes by the owners, their tenants, and social guests, and no trade or business shall be conducted therein, except that a residential unit may be used as a combined residence and executive or professional office by the owner thereof, so long as such use does not interfere with the quiet enjoyment by other unit occupants. No tent, shack, residential vehicle, trailer, outbuilding or structure of a temporary character shall be used at any time as a residence, either temporarily or permanently.

**7.2 Time Sharing:** No condominiums or any portions thereof in the Project shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time sharing agreement, plan, program, or arrangement, including, without limitation, any so-called "vacation license", "travel club", "extended vacation", or other membership or time interval ownership arrangement. The term "time sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess the condominiums or any portion thereof in the Project rotates among various persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like kind use privileges, according to a fixed or floating interval or period of time of twenty-five (25) consecutive calendar days or less. Provided, this section shall not be construed to limit the personal use of any condominium or any portions thereof in the Project by any owner or his or her or its social or familial guests.

**7.3 Nuisances:** No noxious, illegal, or seriously offensive activities shall be carried on in or upon any unit or in any part of the property, nor shall anything be done thereon which may be or may become a serious annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of an owner's condominium or which shall in any way increase the rate of insurance for the Project, or cause any insurance policy to be canceled or to cause a refusal to renew the same, or which will impair the structural integrity of any building. Without limiting the generality of the foregoing, barking dogs and loud music are examples of nuisances prohibited by this section.

**7.4 Vehicle Restrictions:** No commercial vehicle, truck (other than standard size pickup truck or standard size van) or boat, and no inoperable vehicle or similar equipment shall be permitted to remain upon any area within the property, other than on a temporary basis. The continuous placement of a vehicle or similar equipment for less than forty-eight hours shall be deemed "temporary" for purposes of this section; the continuous placement of any vehicle or similar equipment for more than forty-eight hours in a thirty day period shall be prohibited. Commercial vehicles shall not include sedans (or standard size vans or pickup trucks) which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the board. No noisy

or smoky vehicles shall be operated upon the property. No unlicensed motor vehicles shall be operated upon the property.

No unlicensed motorcycles or snowmobiles shall be allowed on the Project except on a trailer, subject to the following rules regarding trailers. No RV, camper or mobile home (collectively, "RV") may be used for sleeping in or for any other non-transportation use. RV's and trailers are permitted on the Project so long as they fit into a normal size parking space (9.5 feet by 20 feet). If an RV or trailer does not fit into a normal size parking space, it may be parked on the Project only if the project manager approves of it, in the exercise of his/her discretion, at a location as may be determined by the manager.

Because there is only sufficient parking at the Project for two parking spaces per unit, the association has the discretion to limit owners from using more than two spaces at any time.

The association may install a sign at each vehicular entrance to the Project containing a statement that public parking is prohibited and that all vehicles not authorized to park on the Project will be removed at the owner's expense. Any such sign shall contain the telephone number of the local traffic law enforcement agency and shall not be less than 17 x 22 inches in size with lettering not less than one (1) inch. The association may cause the removal of any vehicle wrongfully parked on the property, including a vehicle owned by an occupant. Prior to removal of any vehicle owned by a homeowner or authorized guest, the association will make a reasonable, good faith effort to locate the owner and request that the vehicle be removed voluntarily. If the identity of the registered owner of the vehicle is known or readily ascertainable, the manager, president of the association or his or her designee shall, within a reasonable time thereafter, notify the owner of the removal in writing by personal delivery or first class mail. In addition, notice of the removal shall be given to the local traffic law enforcement agency immediately after the vehicle has been removed. The notice shall include a description of the vehicle, the license plate number and the address from where the vehicle was removed. If the identity of the owner is not known or readily ascertainable and the vehicle has not been returned to the owner within one hundred twenty (120) hours after its removal, the association immediately shall send or cause to be sent a written report of the removal by mail to both the California Department of Justice in Sacramento, California and to the Mammoth Lakes Police Department and shall file a copy of the notice with the proprietor of the public garage in which the vehicle is stored. The report shall be made on a form furnished by the Department of Justice and shall include a complete description of the vehicle, the date, time and place the vehicle was removed, the amount of mileage on the vehicle at the time of removal, the grounds for removal and the name of the garage or place where the vehicle is stored. Notwithstanding the foregoing, the association may cause the removal, without notice, of any vehicle interfering with snow removal, any vehicle parked in a marked fire lane, within fifteen (15) feet of a fire hydrant, in a parking space designated for handicapped without proper authority or in a manner which interfered with any entrance to, or exit from, the Project or any lot, parking space, or designated pathway located thereon. The association shall not be liable for any damages incurred by the vehicle owner because of the removal in compliance with this section or for any damage to the vehicle caused by the removal, unless such damage resulted from the intentional or negligent act of the association or any person causing the removal of or removing

the vehicle. If requested by the owner of the vehicle, the association shall state the grounds for the removal of the vehicle.

The association may establish rules and regulations from time to time for the parking of vehicles in the common areas.

**7.5 Signs:** No commercial signs shall be displayed to the public view on any units or on any portion of the property except such signs as are approved by the board or by a committee appointed by the board, except that one (1) (only) "For Sale" or "For Rent" sign per unit shall be allowed, provided it does not exceed three (3) square feet in size, and provided it is located in a window if reasonably possible. No non-commercial signs more than nine (9) square feet in size, and no non-commercial flags or banners more than fifteen (15) square feet in size, shall be displayed to the public view on any units or on any portion of the property except as are approved by the board or by a committee approved by the board. The display of all other non-commercial signs, flags and banners shall be allowed as authorized by sections 4705 and 4710 of the Civil Code, as such sections may be amended.

**7.6 Animals:** No animals of any kind shall be raised, bred, or kept in any unit, or on any portion of the property; except pets kept in cages or aquariums and two (2) usual and ordinary pets, such as dogs or cats, provided they are kept under control at all times. Notwithstanding the foregoing, no pet may be kept on the property which is obnoxious or annoying to other owners or occupants. No pet shall be allowed in the common area except as may be permitted by rules of the board. No owner shall allow his or her dog to enter the common area except on a leash. After making a reasonable attempt to notify the animal's owner, the association may cause any unleashed dog found within the common area to be removed to a pound or animal shelter under the jurisdiction of the Town of Mammoth Lakes, or the County of Mono, by calling the appropriate authorities, whereupon the owner may, upon payment of all expenses connected therewith, repossess the dog. Animal owners shall prevent their pet from soiling all portions of the common area and shall promptly clean up any mess left by their pet. Both animal owners and owners of the unit occupied by the animal owner shall be jointly and severally responsible for any damage caused by their pet.

**7.7 Garbage and Refuse Disposal:** All rubbish, trash, and garbage shall be regularly removed from the property, and shall not be allowed to accumulate thereon or become an attractive nuisance to animals. Trash, garbage, and other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. The association shall be responsible for removal of garbage from the central pick-up point(s).

**7.8 Radio and Television Antennas:** No alteration to or modification of a central radio and/or television antenna/satellite system or cable television system, whichever is applicable, if developed by a cable television franchisee and as maintained by the association or said franchisee, shall be permitted. No owner may be permitted to construct and/or use and operate his own external radio and/or television antenna or satellite dish without the prior approval of the board, exempting the construction, installation or use of a video or television antenna or satellite dish that has a diameter or diagonal measurement of thirty-six inches or less, and which antenna

or dish is not visible from any street or common area. The construction, installation or use of such antennas or dishes shall still require the prior approval of board, however, such approval shall be given, subject only to the imposition of reasonable restrictions consistent with the applicable section of the Civil Code (section 4725 as of the date of this declaration, as that section may be amended over time). All fees for the use of any cable or satellite television system shall be borne by the respective owners, and not by the association, except for those related to board approved televisions in the common area, if any.

**7.9 Renting and Leasing of Units:** The terms of any rental or leasing agreement for any unit shall provide that the tenants or renters (collectively, “renters”) shall comply in all respects with provisions of this declaration, the bylaws and all rules and regulations adopted by the board.

Owners shall be jointly and severally liable with their renters for the actions of their renters. All owners who rent their units shall obtain a rental endorsement providing for the extension of liability coverage in the event of renter negligence in addition to the owners’ insurance required by Section 8.5. All owners who rent their unit for a term or more than thirty days shall provide the manager with the names and contact information of the tenants, and shall confirm in writing to the Project manager that they have provided copies of this declaration and all rules of the association to their renters.

**7.10 Architectural Control:** No alterations of any kind shall be made that impacts the common area of the Project without prior compliance with this section. Interior alterations within a unit that in no way impact the common area are not regulated by this section. Therefore, no building, fence, wall, pool, spa, obstruction, outside or exterior utility lines, pipes or wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, trellis, landscaping, or improvement or structure of any kind shall be commenced, installed, erected, painted, repainted, or maintained on the property, nor shall any alteration or improvement of any kind be made thereto until the same has been approved in writing by the board. Notwithstanding the foregoing, owners may improve or alter any improvements within the interior boundaries of the owner’s unit provided such improvement or alteration does not impair the structural integrity of any common area, the utilities, or other systems servicing the common area or other units, and does not involve altering any common area (including bearing walls).

Plans and specifications showing the nature, kind, shape, color, size, materials and location of any proposed improvements or alteration regulated by this section shall be submitted to the board for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. Nothing contained herein shall be construed to limit the exclusive right of an owner to paint, wallpaper or in other ways cover the interior of his unit any color desired as set forth in Section 2.4 of this declaration

In the event the board fails to approve or disapprove plans and specifications in writing within ninety (90) days after the same have been submitted to it, the owner/applicant may notify the board by certified mail within the following thirty (30) days that he or she requests a response within thirty (30) days and thereafter should the board fail to approve or disapprove plans and specifications within thirty (30) days of the board’s receipt of said certified mail notice the

owner/applicant's proposal shall be deemed to be approved. If the owner/applicant does not so notify the board within that thirty (30) day time frame, then the owner/applicant's proposal shall be deemed to be disapproved.

Before commencement of any alteration or improvements approved by the board, the owner shall comply with all appropriate governmental laws and regulations. Approval by the board does not satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction.

The board shall have the discretion to require as a condition of approval of any work which is regulated by this section that the record owner(s) of any unit first sign a hold harmless/indemnification agreement in form and substance satisfactory to the board which shall be recorded with the Mono County Recorder and bind all subsequent owners. At the discretion of the board, this agreement may require the owner/applicant to be solely responsible for all maintenance of the proposed improvement and for all claims, first party and third party, relating thereto, in perpetuity.

**7.11 Clothes Lines:** There shall be no outside laundering or drying of clothes. No draping of towels, carpets, or laundry over exterior railings shall be allowed.

**7.12 Power Equipment and Vehicle Maintenance:** No power equipment, hobby shops, or vehicle maintenance (other than emergency work) shall be permitted on the property except with prior written approval of the board. Approval shall not be unreasonably withheld, and in deciding whether to grant approval the board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections.

**7.13 Liability of Owners for Damage to Common Area:** The owner of each condominium shall be liable to the Association for all damage to the common area or improvements as described in Section 5.1.A.

**7.14 Basketball Standards:** No basketball apparatus or fixed sport apparatus attached to the exterior surface of any portion of the common area shall be permitted on the property.

**7.15 Firewood:** Firewood may be stored only on balconies or decks (if and as permitted by law) unless expressly authorized in writing by the board.

**7.16 Barbeques:** No charcoal barbeques are permitted. Propane barbeques are permitted subject to applicable governmental regulations.

**7.17 Keys and Contact Information:** To help insure protection of the units and the common area, owners shall furnish the manager with both a copy of the key to his or her unit and their contact information.

**7.18 Storage of Property:** No property other than that owned, leased or used by the Association (hereinafter referred to as "Privately Owned Property") shall be stored on the Project except as expressly permitted by this section of the Declaration, as follows:

A. Privately Owned Property may be stored on unit back porches (only) if done in a manner that is consistent with the Declaration and the rules of the association as promulgated from time to time by the Board of Directors. No storage is permitted on unit front porches.

B. During the actual course of construction in a unit, an owner or contractor or other agent of an owner may maintain a dumpster at the Project for the disposal of construction debris and trash and garbage incident to construction. This dumpster shall be maintained in a clean condition and its contents must be promptly and properly disposed of when the dumpster is full. The dumpster shall be removed from the Project immediately upon completion of the construction. The location of the dumpster must be approved in advance by the Project's manager, based on such considerations as available space, convenience to the owner's contractor, the convenience of other owners and guests, and the anticipated occupancy level of the Project at the time. At no time shall construction materials for construction by an owner within a unit be stored on the Project.

C. Owners may temporarily store on the Project Privately Owned Property including, but not limited to, vehicles, RV's, trailers and boats for not more than forty-eight (48) hours for each separate occupancy by the owner at his or her unit. The location for all such temporary storage must be approved in advance by the Project's manager, based on such considerations as available space, convenience to owners and guests, and the anticipated occupancy level of the Project at the time. The temporary storage of vehicles, RV's, trailers and boats on the Project shall be deemed to constitute use of one (1) of each unit's allocation of two (2) parking spaces. No vehicle, RV, trailer or boat may be occupied while stored on the Project.

## **ARTICLE VIII INSURANCE**

### **8.1 Insurance: The association shall obtain and maintain the following insurance:**

#### **A. Hazard:**

1. **General Provisions:** A master hazard policy insuring all the improvements within the common area in the Project against loss or damage by fire or other risks covered by the standard all risk endorsement excluding earthquake and flood but including, without limitation, loss or damage as a result of theft, vandalism or malicious mischief and loss or damage to or as a result of boilers, pressure vessels, pressure pipes or sprinkler leakage and such other risks, perils or coverage as the board in its discretion determines is necessary or advisable.

2. **Policy Limits:** Such hazard insurance shall have policy limits of not less than one hundred percent (100%) of the full insurable replacement cost of all improvements within the common area (as determined not less than every three (3) years by the board in consultation with the insurance company issuing such policy).

3. **Additional Endorsements:** The following endorsements should be included in any such master hazard policy, if commercially reasonable to obtain: (A) changes in

building codes (“ordinance or law endorsement”); (B) inflation guard coverage; (C) demolition coverage; (D) “agreed-amount” endorsement (to eliminate a coinsurance problem); (E) replacement cost endorsement; (F) primary coverage endorsement; and (G) “maintenance fees receivable” endorsement to cover unpaid assessments which are not collected by the association as a result of a covered peril.

**B. General Liability:**

**1. General Provisions:** A comprehensive general liability policy insuring the association, the board, its agents, the owners, occupants and such other persons as the board may determine, against liability for bodily injury, death, or property damage arising from the activities of the association and the members or from activities of the directors and officers of the association acting in their capacity as representatives of the association, incident to the ownership or use of the common area or any other association-owned or maintained real or personal property, and if obtainable, such policy shall be written on an occurrence basis.

**2. Desired Inclusions:** If obtainable, such insurance shall include a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured and insurance against water damage, liability for non-owned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to Projects similar in construction, location and use.

**3. Policy Amount:** The amount of general liability insurance that the association shall carry at all times shall be not less than the minimum amounts required by Civil Code sections 5800 and 5805, as those sections may be amended from time to time.

**C. Workers’ Compensation:** Workers’ compensation insurance to the extent required by law (or such greater amount as the board deems necessary) and employer’s liability insurance to the extent necessary to comply with applicable laws. The association shall obtain a certificate of insurance naming it as an additional insured in regard to workers’ compensation claims from any independent contractor who performs any service for the association, if the receipt of such a certificate is practicable;

**D. Directors and Officers:** Directors’ and officers’ liability insurance in not less than the minimum amounts required by Civil Code section 5800, as that section may be amended from time to time.

**E. Other Insurance:**

**1.** Such other insurance as the board in its discretion considers necessary or advisable, including, without limitation, demolition insurance in adequate amounts to cover demolition in the event of destruction and the decision not to rebuild, and fidelity bonds or insurance covering officers, directors, and employees that have access to any association funds.

**2.** The association shall not be required to carry an earthquake endorsement unless a majority of the voting power elects to require the association to obtain such earthquake endorsement. The endorsement may also be subsequently canceled on vote of a

majority of the voting power. If canceled, the association shall make reasonable efforts to notify the members of the cancellation at least thirty (30) days' before the effective date of the cancellation.

**8.2 Amount, Term and Coverage; Review of Policies; Carriers:** The amount, term and coverage of any policy required hereunder (including the type of endorsements, the amount of the deductible, the named insured, the loss payees, standard mortgage clauses, notices of changes or cancellations, and the insurance company rating) shall satisfy the minimum requirements set forth in Civil Code sections 5800 and 5805, as those sections may be amended from time to time, and shall be no less than that which is customary for similar policies on similar Projects in the area. The association shall periodically (and not less than once every three (3) years) review all insurance policies maintained by the association to determine the adequacy of the coverage and to adjust the policies accordingly. Such insurance as required or desired hereunder shall be obtained from reputable insurance companies qualified to do business in the State of California and holding a rating of A (or such other comparable rating if Best uses a different standard in rating insurance companies) or better in Best's Insurance Reports and may be obtained from one or more companies.

**8.3 Payment of Deductible; Processing of Claims:**

**A. Payment of Premiums/Deductible:** The premiums for the insurance purchased pursuant to this article shall be paid for out of the assessments levied and collected pursuant to this declaration. Subject to the provisions of Section 8.2, the board may select such deductibles, which, in its opinion, are consistent with good practices in connection with the purchase of such insurance policies. The board may adopt a policy regarding payment of deductibles on any insurance coverage and such policy shall be set forth in the rules. Unless the board determines otherwise, the association shall pay deductibles required under any insurance claims from association funds, except if the damage is the result of the acts, omissions, negligence or misconduct of an owner or such owner's Invitees, in which case the owner shall be responsible to pay such deductible and the association shall levy a special assessment against the owner in such amount in accordance with Article IV.

**B. Processing of Claims:** The board may adopt such policies and procedures regarding the filing and processing of claims for damage and destruction to the improvements in the common area or any other matters covered by the insurance maintained by the association, as the board in its discretion shall deem advisable.

**8.4 Authority of Board:** Each of the owners, and every other person named or covered as an insured in connection with any of the policies purchased and maintained by the association, hereby irrevocably delegates to the board any authority which such owner may otherwise have to negotiate loss settlements with the insurance carriers who provide such insurance. The board shall have the sole and exclusive authority and right to negotiate any such loss claim form, release form and/or settlement agreement in connection with the settlement of a loss claim, which shall be binding on all of the owners, and upon any other person named as an insured on any such policy or policies, but only upon the execution thereof by a majority of the members of the board. The owners and every other person named or insured hereby appoints the association, by and through the board, as its attorney-in-fact for the purpose of executing any necessary claim form, release

form or settlement agreements on their behalf.

### **8.5 Owner Insurance:**

**A.** All owners are strongly cautioned that the insurance maintained by the association does not cover the personal property in the units or personal liability for damages or injuries occurring in the units. The insurance maintained by the association may not cover the entire actual cost of repairing or reconstructing a unit to the condition existing prior to a casualty, such as building upgrades previously made by an owner or unique features of a unit. In addition, without limitation, owners may be liable for damages to the common area or other units or owners and the insurance policies maintained by the association and/or such other owners may grant to the applicable insurance carriers rights of subrogation against the owner responsible for the damages (unless otherwise determined by the board pursuant to Section 8.6).

**B.** Each owner shall be required at its sole cost and expense to obtain and maintain real property and personal property insurance which insures the personal property, furniture, furnishings, and decorations within the unit, any improvements in the unit, or otherwise protecting the condominium. These are minimum requirements and each owner is encouraged to discuss his or her appropriate insurance coverage with his or her insurance agent.

**C.** Each owner shall also be required, at its sole cost and expense, to obtain and maintain insurance for premises liability which includes protection for bodily injury and property damage, in such types as reasonably determined by the board based on generally acceptable industry standards or practices in California, as applicable from time to time. The minimum amount of such liability insurance shall be one million dollars (\$1,000,000.00) or such other amount as the board may reasonably determine from time to time.

**D.** Notwithstanding the foregoing, no owner shall be entitled to exercise such owner's right to acquire or maintain such insurance coverage so as to decrease the amount which the association, on behalf of all owners, may realize under any insurance policy which it may have in force on the common area at any particular time or to cause any insurance coverage maintained by the association to be brought into contribution with such insurance coverage obtained by the owner.

**E.** Each owner shall be required to file a copy of the policy or policies required under this section with the board at the time of the owner's purchase of a Unit and shall provide evidence to the board (or to the manager or other designee of the board) of the insurance coverage required by this section from time to time. Because the owner, and not the association, is responsible for maintaining insurance coverage for such owner's personal property and improvements to the unit, all of which may not covered by the association's policy on the common area, in the event of a casualty loss that results in damage to the unit or the owner's personal property or improvements to the unit, such owner shall be required to file a claim against such owner's insurance policy. Should the owner's best good faith efforts fail to result in full coverage of such a claim, then the board may elect to submit a claim to the association's insurance carrier for any remaining unreimbursed portion of the claim, should the board determine, in the sole exercise of its discretion, that to do so would be in the best interest of the association.. Neither the

association nor the board shall have any obligation to review any insurance policies, certificates or similar documents provided by any owner. Any such review, if conducted, shall be solely for the benefit of the association and neither the association nor the board shall have any liability with respect to the adequacy of coverage obtained by any owner or any similar matter. The board shall have the authority to adopt rules in accordance with Section 5.2.C to monitor and enforce compliance with provisions of this section.

**F.** In addition, it is recommended that each owner periodically contact the board to determine the types and amounts of insurance coverage then being provided pursuant to Sections 8.1 and 8.2 hereof, and that each owner purchase any other policy of insurance which such owner believes is reasonably necessary to protect such owner's separate interest.

**G.** So long as owners are in compliance with the insurance provisions of this section, then in the event of a loss covered by the association's insurance such owners shall be entitled to proportionately (based on one share for each entitled unit) share in any excess insurance proceeds after rebuilding of common area to the extent such proceeds are allowed to be used for rebuilding of interior fixtures, cabinets and similar property. Owners not in compliance shall not be so entitled.

#### **8.6 Additional Provisions Regarding Insurance Policies:**

**A. Subrogation:** The board shall determine from time to time whether and the extent to which the insurance maintained by the association shall provide that the association has rights of subrogation against owners, occupants of the condominiums and mortgagees, or whether such rights of subrogation shall be waived. If required by the board, all insurance maintained by an owner shall contain a waiver of subrogation as to the association and its officers, directors and members, the other owners, occupants of the condominiums, and mortgagees, and all owners are deemed to have waived on behalf of their respective insurance carriers any such subrogation rights.

**B. Optional Provisions:** To the extent economically practical and available at reasonable premiums, any insurance maintained by the association shall:

**1. Cross-Liability:** Contain a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured.

**2. Decision to Repair:** Provide that the insurer issuing such insurance policy agrees to abide by the decision of the association whether or not to repair, reconstruct or restore all or any damaged or destroyed portion of the common area.

**3. No Escape Clause:** Contain "no escape" or "other insurance" clause that would cause such policy to become void in whole or in part or cause any proceeds payable thereunder to be reduced, setoff, apportioned; prorated or otherwise brought into contribution with or by reason of separate insurance obtained by any owner or such owner's mortgagee.

**4. Valuation of Improvements:** Provide that only improvements

made or installed by the association shall affect the valuation of the buildings or improvements on the property for co-insurance purposes.

**5. Power to Adjust Losses:** Provide that the board or its authorized agent or representative shall have the exclusive authority to adjust any and all losses covered by said policy.

**6. Vacancy:** Provide that the insurance obtained pursuant to this article shall not be prejudiced by reason of the vacancy or non-occupancy of any one or more units, provided that this declaration (as it may be amended from time to time) is in force and the Project is operating as a condominium Project.

**7. Association as Trustee:** Provide that all insurance proceeds obtained pursuant to the association's master insurance policy be payable to the association as trustee to be held and expended as provided in this declaration for the benefit of the owners and their respective mortgagees as their interests may appear.

**8.7 Limitation of Liability Regarding Insurance:** The association, and its directors and officers, shall have no liability to any owner or mortgagee if, after a good faith effort, it is unable to obtain the insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the board in its sole discretion determines is unreasonable under the circumstances, or the members fail to approve any increased assessment needed to fund the insurance premiums. In such event, the board shall immediately notify each owner and any eligible first mortgagee entitled to notice that the insurance will not be obtained or renewed. Furthermore, as to any insurance to be obtained or maintained by the association hereunder, provided that such policies will not be voided or impaired thereby, the owners hereby waive and release all claims against the association, the board, association employees, and other owners with respect to any loss covered by such insurance.

**8.8 Notice of Change in Insurance Coverage:** The association shall, as soon as reasonably practicable, provide individual notice pursuant to Civil Code section 4040 to all members if any of the policies described in the annual budget report described in section 12.1 of the association's bylaws have lapsed, been cancelled, and are not immediately renewed, restored or replaced, or if there is a significant change, such as a reduction in coverage or limits of an increase in the deductible, as to any of these policies. If the association receives any notice of nonrenewal of a policy described in such 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.

## ARTICLE IX

### DAMAGE OR DESTRUCTION; EMINENT DOMAIN

#### 9.1 Initial Board Determination; Notice:

**A.** In the event of damage to any common area or to any portion of a unit or its restricted common area, equipment or appliances covered by the association's insurance policy,

the board shall promptly, and to the extent possible, within sixty (60) days after the date of damage, make the following determinations with respect thereto, employing such contractors, architects, and/or consultants as the board deems advisable and necessary:

1. The nature and extent of the damage, together with an inventory of the improvements and property directly affected thereby.

2. A reasonably reliable estimate of the cost to repair the damage, which estimate shall, if reasonably practicable, be based upon two (2) or more firm bids obtained from responsible contractors.

3. The expected insurance proceeds, if any, to be available from insurance covering the loss based on the amount paid or initially offered by the insurer.

4. The amount, if any, by which the estimated cost of repair exceeds the expected insurance proceeds, and the amount of the assessments that would have to be made against each unit if the excess cost were to be paid as a common expense.

B. The board shall promptly, and in all events within thirty (30) days after the date of damage, file a proof of loss claim with the insurance company if the loss is covered by insurance and abide by all terms and conditions of its insurance policies, unless the board determines it would not be in the best interest of the association to file a proof of loss claim. The board shall then provide each owner with written notice describing the damage and summarizing the initial board determinations in relation to the damage. If the damage affects a material portion of the Project, the board shall also send the notice to each eligible first mortgagee; and if the damage affects a unit, the board shall send the notice to the eligible first mortgagee of that unit. If the board fails to do so within such thirty (30) day period, any owner or eligible first mortgagee may give the notice required under this section.

**9.2 Reconstruction Without Election by Owners:** In the event of damage to or destruction of any improvements, if the available proceeds of the insurance carried pursuant to Article VIII are sufficient to cover not less than eighty-five percent (85%) of the estimated cost of repair or reconstruction thereof, the same shall be promptly repaired and rebuilt. Notwithstanding the foregoing, if:

A. Such damage or destruction renders the entire Project or some material portion thereof unfit for habitation; and

B. Within ninety (90) days after the date that the board notifies the members that it has determined the amount of insurance proceeds likely to be available for rebuilding will satisfy the requirements of the first sentence of this section, and not less than seventy-five percent (75%) of the voting power, in person or by proxy, at a duly constituted and called annual or special meeting of the members determine that such reconstruction shall not take place, then such reconstruction shall not occur and the provisions of Section 9.6 shall apply.

**9.3 Repair or Reconstruction by Consent of Owners:** If the proceeds of such insurance are less than eighty-five percent (85%) of the costs of repair or reconstruction, such repair or reconstruction may nevertheless take place if at least fifty percent (50%) of the units requiring repair or reconstruction elect to rebuild; otherwise the provisions of Section 9.6 shall apply.

**9.4 Assessments; Use of Reserves:** In the event of a determination to rebuild pursuant to Section 9.2 the board shall have the authority to levy a special assessment against the owners in such amount as necessary to pay for the costs of rebuilding which exceed the insurance proceeds available. In the event of a determination to rebuild pursuant to Section 9.3, the board shall have the authority to levy a special assessment against the damaged or destroyed units (only) in such amount as necessary to pay for the cost of rebuilding which exceed insurance proceeds available, except that the amount of the association's reserves proportionally attributable to the square footage of the units suffering damage or destruction shall first be expended for this cost. Either way such special assessment shall be computed on the basis of the formula set forth in Section 4.6.A for the costs of insurance and painting, roofing and siding reserves for those units subject to the special assessment, and shall be due and payable in full within thirty (30) days after written notice thereof unless otherwise determined by the board. In the event of damage or destruction to a building which does not contain units, then the board shall have the authority to levy a special assessment against all of the units in such amount as necessary to pay for the cost of rebuilding which exceeds insurance proceeds available. Such special assessment shall be computed on the basis of the formula set forth in Section 4.6.A referenced hereinabove and shall be due and payable in full within thirty (30) days after written notice thereof unless otherwise determined by the board.

**9.5 Obligation of Board When Rebuilding:**

**A. Obtaining Bids.** The board shall utilize such construction consultants, architects and other professionals as it shall determine are reasonably necessary in connection with its obligations under this article. Unless the estimated cost of repair is less than \$100,000.00, the board shall make reasonable efforts to obtain bids from at least two (2) reputable contractors, and if a determination to rebuild is made in accordance with Sections 9.2 or 9.3, the board shall award reconstruction work to the bidder the board reasonably believes is best qualified to perform the work at a reasonable price; provided, however, that the board shall not be required or authorized to award such contract until it has sufficient monies, whether from insurance proceeds or the collection of special assessments, with which to pay the cost of reconstruction as reflected by the bid to be accepted by the board. Unless the estimated cost of repair is less than \$100,000.00, all insurance proceeds, special assessments and other monies allocated for the repair or rebuilding, including any borrowings by the association, shall be deposited with a financially sound, reputable commercial lending institution or escrow company experienced in the disbursement of construction funds. The board, upon awarding said contract, shall thereafter be authorized to cause the disbursement of monies to the contractor in accordance with said contract from time to time as construction progresses, utilizing the available insurance proceeds and the special assessments levied and collected by the board in accordance with this article, and in accordance with customary construction disbursement procedures, in coordination with applicable insurers and any first mortgagees.

**B. Time Period and Manner of Reconstruction.** The board shall take all steps necessary or appropriate to assure the commencement and completion of such reconstruction at the earliest practicable date. All reconstruction shall be in accordance with the condominium plan and the original plans of construction of the Project (if available) subject to any different building codes and standards then in effect, unless an alternative plan is approved by a majority of the voting power and taking into consideration the availability and expense of labor and materials in the original construction of the improvements.

**C.** If the cost of repair or reconstruction is \$100,000 or less, the board shall disburse the available funds for the repair and reconstruction under such procedures as the board deems appropriate under the circumstances.

**9.6 Determination Not to Rebuild:** If the improvements are not repaired or rebuilt in accordance with the foregoing, and in all events if rebuilding has not actually commenced within one (1) year after the occurrence of the damage or destruction, any insurance proceeds available for such rebuilding (after payment of the costs of mitigating hazardous conditions on the Project, making provision for the continuance of public liability insurance to protect the interests of the owners until the Project can be sold, and complying with all other applicable legal or regulatory requirements) shall be divided and disbursed among the owners in the same proportions as those relating to each owner's responsibility for annual assessments in accordance with Section 4.6. Disbursements to owners shall be subject to the rights of mortgagees. Any unpaid assessments of an owner, together with interest charges attributable thereto, shall be paid to the association before the distribution of any insurance proceeds to an owner. If the Project is sold, the sale proceeds shall be distributed to all owners (subject to the rights of mortgagees) in the same proportions as those relating to each owner's responsibility for annual assessment in accordance with Section 4.6. For the purpose of effecting a sale under this section, each owner hereby grants to the association an irrevocable power of attorney to sell the entire Project for the benefit of the owners, to terminate this declaration and to dissolve the association.

### **9.7 Interior Damage:**

**A. General Provisions:** Restoration and repair of any damage occurring under the conditions addressed in this article to the betterments and improvements of any individual unit shall be made by and at the individual expense of the owner of such unit (unless there are insurance proceeds to cover such item pursuant to Article VIII) and, in the event of a determination to rebuild after partial or total destruction, shall be completed as promptly as practical and in a lawful and workmanlike manner, and subject to the approval of the board to the extent otherwise required under Section 7.10 or other provisions hereof.

**B. Specific Provisions:** - Earthquake Damage to Drywall. In the event of earthquake damage to the plaster and drywall in a unit:

**1. Replacement:** The association shall only be liable for the replacement of the drywall on walls of the unit which, in the reasonable judgment of the board, suffered sufficient damage to require replacement. The association shall not be liable for repainting the walls or replacing wall coverings of any kind.

**2. Re-Taping:** Damage to walls which does not require replacement of the drywall (i.e., bucked joint tape, hairline fractures of the drywall, etc.) shall be the responsibility of the individual owner. The owner shall be responsible for the restoration and repair of all finished surfaces which includes, but is not limited to, re-taping, painting, plastering, and wallpapering.

**9.8 Negotiations with Insurer:** The board shall have full authority to negotiate in good faith with representatives of the association's insurer of the improvements or any other portion of the common area, and to make a settlement with the insurer for less than full insurance coverage on the damage to the improvements or any other portion of the common area. Any settlement made by the board in good faith shall be binding upon all owners.

**9.9 Condemnation:** The association shall represent the owners in any eminent domain or condemnation proceedings or in negotiations, settlements, and agreements with any condemning authority for the taking or acquisition (a "Taking") of the common area or any part thereof. In the event of a Taking of any or all of the common area, the award or proceeds of settlement shall be payable to the association, or any trustee appointed by the association, for the use and benefit of the owners and their mortgagees as their interests may appear. In the event of an award for the taking of any condominium, the owner of such condominium shall be entitled to receive the entire award, and after acceptance thereof such owner and such owner's mortgagee shall be divested of an interest in the Project if such owner shall vacate his or her condominium as a result of such taking. The voting power of the remaining owners shall decide whether to rebuild or repair the Project, or take other action. The remaining portion of the Project shall be resurveyed, if necessary, and this declaration shall be amended to reflect such taking and to readjust proportionately the percentages of the undivided interests of the remaining owners and the assessment formula set forth in Section 4.6. In the event of a taking of any part of the common area, the association shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where the condominiums are not valued separately by the condemning authority or by the court. Proceeds of condemnation shall be distributed among owners and their respective mortgagees according to the relative values of the condominiums affected by the taking, said values to be determined by the method provided in Section 9.6. If there is a substantial taking of the Project, as determined by the board, the voting power of the owners may terminate the legal status of the Project as a condominium Project and, if necessary, bring a partition action under Civil Code section 4610, as that section may be amended over time. The proceeds from the partition sale shall be distributed to the owners (subject to the rights of mortgagees) in proportion to the values of their condominiums as determined under the method described in Section 9.6.

## ARTICLE X

### GENERAL PROVISIONS

**10.1 Enforcement:** The association, or any owner, shall have the right (but not the obligation) to enforce, by any proceeding at law or in equity, all applicable restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this declaration, the articles and the bylaws, and in such action shall be entitled to recover reasonable attorneys' fees as are ordered by the Court. Failure by the association or by any owner to enforce

any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The prevailing party in any proceeding by or against the association or any owner as described hereinabove shall be entitled to an award of reasonable attorneys' fees and costs.

**10.2 Invalidity of Any Provision:** Should any provision or portion hereof be declared invalid or in conflict with any law of the jurisdiction where this Project is situated, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

**10.3 Term:** The covenants and restrictions of this declaration shall run with and bind the property, and shall inure to the benefit of and shall be enforceable by the association or the owner of any property subject to this declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date of recordation of this declaration, after which time they shall be automatically extended for periods of twenty (20) years, unless an instrument in writing, signed by the number of the then owners of the condominiums required by the terms of this declaration has been recorded within the year preceding the beginning of each successive period of twenty (20) years, agreeing to terminate the same.

**10.4 Amendments:** This declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of members representing a majority of the voting power of the association. However, the percentage of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be certified in a writing executed and acknowledged by the president or vice president of the association and recorded in the office of the Mono County Recorder. All amendments affecting matters within the regulatory power of the Town of Mammoth Lakes must be approved by the attorney for the Town of Mammoth Lakes. No amendment shall adversely affect the rights of the holder of any mortgage of record prior to the recordation of such amendment.

**10.5 Encroachment Rights:** If any portion of the common area encroaches on any unit or any part thereof, or if any portion of a unit encroaches on any common area, due to minor engineering errors, minor errors in original construction, reconstruction, repair, settling, shifting, or movement of the building, or any other cause, the owner of the encroachment shall have the right to maintain, repair, or replace the encroachment, as long as it exists, and the rights and obligations of owners shall not be altered in any way by said encroachment, settlement, or shifting; provided, however, that no right shall be created in favor of an owner or owners if said encroachment occurred due to the intentional conduct of said owner or owners. In the event a structure is partially or totally destroyed, and is then repaired or rebuilt, the owners agree that minor encroachments over adjoining units or common area shall be permitted and that there shall be appropriate rights for the maintenance of said encroachment so long as they shall exist.

**10.6 Rights of Lenders:** No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall render invalid the lien of any first mortgage (meaning a mortgage with first priority over any other mortgage) on any condominium made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding on and effective against any owner whose title is derived through

foreclosure or trustee's sale, or otherwise. Notwithstanding any provision in any documents to the contrary, first lenders shall have the following rights:

**A. Copies of Project Documents:** The association shall make available to condominium owners and first lenders, and to holders, insurers or guarantors of any first mortgage, current copies of the declaration, bylaws, articles or other rules concerning the Project, and the books, records, and financial statements of the association. "Available" means available for inspection and copying, upon at least ten days' prior written request, during normal business hours or under other reasonable circumstances. The party requesting such records shall pay to the association, in advance, the actual out of pocket expenses estimated to be incurred by the association for the production of those records, including, but not limited to, the cost of staff time (whether the staff time be incurred by employees of the association or by independent agents of the association, for example, the accountant or attorney of the association). Within a reasonable amount of time after the production is complete, a reconciliation of the actual cost compared to the amount of the advance deposit shall be made, and the party requesting the records shall either be refunded the difference, or shall pay the difference to the association, as the case may be. In addition, parties requesting copies of such records shall pay to the association in advance an amount equal to the actual cost of the copies to the association.

**B. Audited Statement:** The holders of fifty-one percent (51%) or more of first condominium mortgages shall be entitled, on written request, to have an audited financial statement for the immediately preceding fiscal year prepared at their expense if one is not otherwise available. Such statement shall be furnished to the requesting mortgagees within a reasonable time following such request.

**C. Notice of Action:** On written request to the association, identifying the name and address of the eligible mortgage holder or eligible insurer or guarantor, and the condominium number or address, such eligible mortgage holder or eligible insurer or guarantor will be entitled to timely written notice of: (1) Any condemnation loss or any casualty loss which affects a material portion of the Project or any condominium on which there is a first mortgage held, insured or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, as applicable; (2) any default in performance of obligations under the Project documents or delinquency in the payment of assessments or charges owed by an owner of a condominium subject to a first mortgage held, insured, or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, which remains uncured for a period of sixty (60) days; (3) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the association; and (4) any proposed action which would require the consent of a specified percentage of eligible mortgage holders as specified in Section 10.6.D. The association shall discharge its obligation to notify eligible holders or eligible insurers or guarantors by sending written notices required herein to such parties, at the address given on the current request for notice, in the manner prescribed by Section 10.8.

**D. Consent to Action:**

**1.** Except as provided by statute or by other provision of the Project documents in case of substantial destruction or condemnation of the Project:

**a.** The approval of eligible mortgage holders holding mortgages on condominiums which have at least sixty-seven percent (67%) of the votes of condominiums subject to eligible holder mortgages shall be required to terminate the legal status of the Project as a condominium Project.

**b.** The approval of eligible mortgage holders holding mortgages on condominiums which have at least fifty-one percent (51%) of the vote of the condominiums subject to eligible holder mortgages shall be required to add or amend any material provisions of the Project documents which establish, provide for, govern, or regulate any of the following: (i) voting; (ii) assessments, assessment liens or the priority of such liens; (iii) reserves for maintenance, repair and replacement of the common area(s) (or units if applicable); (iv) insurance or fidelity bonds; (v) rights to use of common areas; (vi) responsibility for maintenance and repair of the several portions of the Project; (vii) expansion or contraction of the Project or the addition, annexation, or withdrawal of property to or from the Project (except as provided in paragraph D.1 above); (viii) redefinition of boundaries of any condominium; (ix) reallocation of the interests in the general or restricted common areas; (x) convertibility of units into common areas or of common areas into units; (xi) leasing of condominiums; (xii) imposition of any right of first refusal or similar restriction on the right of a condominium owner to sell, transfer, or otherwise convey his or her condominium; (xiii) any provisions which are for the express benefit of mortgage holders, eligible mortgage holders, or eligible insurers or guarantors of first mortgages on condominiums; and (xiv) restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than specified herein.

**c.** An addition or amendment to such document shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. An eligible mortgage holder who received a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request, provided the notice was delivered by certified or registered mail, with a return receipt requested.

**2.** Except as provided by statute in case of condemnation or substantial loss to the condominiums and/or common elements of the condominium Project, unless eligible mortgage holders holding mortgages on condominiums which have at least two-thirds (2/3) of the vote of the condominiums subject to eligible holder mortgages have given their prior written approval, the association and/or the owners shall not be entitled to:

**a.** By act or omission, seek to abandon or terminate the condominium Project (except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain);

**b.** Change the pro rata interest or obligations of any individual condominium for the purpose of: (i) levying assessments or charging or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each condominium in the (condominium) common area;

c. Partition or subdivide any condominium;

d. By act or omission, 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 condominium Project shall not be deemed a transfer within the meaning of this clause);

e. Use hazard insurance proceeds for losses to any condominium property (whether to condominiums or to common area) for other than the repair, replacement or reconstruction of such condominium property.

**E. Priority of Liens:** Each holder of a first mortgage on a condominium who comes into possession of the condominium by virtue of foreclosure of the mortgage, or any purchaser at a foreclosure sale under a first deed of trust, will take the condominium free of any claims for unpaid assessments and fees, late charges, fines, or interest levied in connection therewith against the condominium which accrue prior to the time such holder takes title to the condominium, except for claims for a pro rata share of such assessments or charges to all Project condominiums including the mortgaged condominium, and except for assessment liens recorded prior to the mortgage.

**F. Distribution of Insurance or Condemnation Proceeds:** No provision of the Project documents gives an owner, or any other party, priority over any rights of first mortgagees in the case of a distribution to condominium owners of insurance proceeds or condemnation awards for losses to or taking of condominiums and/or common area.

**G. Restoration or Repair:** Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the declaration and the original plans and specifications, unless other action is approved by eligible mortgage holders holding mortgages on condominiums which have at least fifty-one percent (51%) of the votes of condominiums subject to eligible holder mortgages.

**H. Termination:** Any action to terminate the legal status of the Project after substantial destruction or a substantial taking in condemnation of the Project property requires the approval of eligible mortgage holders holding mortgages on condominiums which have at least fifty-one percent (51%) of the votes of condominiums subject to eligible holder mortgages.

**I. Reallocation of Interests:** No reallocation of interests in the common areas resulting from a partial condemnation or partial destruction of the Project may be effected without the prior approval of eligible mortgage holders holding mortgages on all remaining condominiums whether existing in whole or in part, and which have at least fifty-one percent (51%) of the votes of such remaining condominiums subject to eligible holder mortgages.

**10.7 Enforcement of Owners' Compliance:** Each owner, tenant, or occupant of a condominium shall comply with the provisions of this declaration, and (to the extent they are not in conflict with this declaration), the articles and bylaws, and the decisions, resolutions and rules of the association or the board, as lawfully amended from time to time. Failure to comply with

any such provisions, decisions, rules or resolutions shall be grounds for discipline against an owner in accordance with Section 7.2 of the bylaws, and/or for an action (1) to recover sums due, (2) for damages, (3) for injunctive relief, (4) for costs and attorneys fees, or (5) for any combination of the foregoing.

All agreements and determinations lawfully made by the association in accordance with the voting procedures established in this declaration or in the bylaws, shall be deemed to be binding on all owners of condominiums and their successors and assigns.

**10.8 Notice:** Any notices required or permitted to be delivered by the association to one or more owners shall be delivered in accordance with the applicable provisions of Civil Code sections 4040 and 4045. Any notices required or permitted to be delivered by an owner to the association shall be delivered in accordance with Civil Code section 4035.

**10.9 Fair Housing:** No owner shall, either directly or indirectly, forbid or restrict the conveyance, encumbrance, leasing, or mortgaging, or occupancy of his condominium to any person of a specified race, sex, sexual orientation, adulthood, marital status, color, religion, ancestry, physical handicap, or national origin.

## **ARTICLE XI**

### **EASEMENTS**

**11.1 Validity of Prior Easements:** Any and all easements reserved, granted or in any manner created by the original declaration in favor of declarant, the association, or the members, or to anyone else without limitation, whether for utilities, maintenance, access or for any other purpose without limitation, shall not be extinguished or modified by this Amendment but shall instead remain in full force and effect.

**11.2 New Easements:** The association shall have the authority to grant easements in accordance with Section 5.3 of this declaration.

### Conclusion of Amended and Restated Declaration

(vald'isere\cc&r070616)

EXHIBIT A

VAL D'ISERE

SCHEDULE OF FRACTIONAL INTERESTS IN

COMMON AREA

The owner of each one of the following Units shall own an undivided 1.94 percent interest in the common area, to wit:

UNITS 1, 3, 5, 7, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43 and 45

The owner of each one of the following Units shall own an undivided 2.27 percent interest in the common area, to wit:

UNITS 2, 4, 6, 8, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44 and 46

The owner of each one of the following Units shall own an undivided 3.67 percent interest in the common area, to wit:

UNITS 9 and 10