

## SECOND BOARD DRAFT 4/23/2018

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### THIRD AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE MENLO COMMONS ASSOCIATION

This Amended and Restated Declaration of Covenants, Conditions and Restrictions is made on the date set forth at the end of this document by THE MENLO COMMONS ASSOCIATION, a California nonprofit mutual benefit corporation (referred to in this document as the "Association").

#### RECITALS OF BACKGROUND FACTS; DECLARATIONS

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- A. This Third Amended and Restated Declaration is made with reference to that certain MENLO COMMONS AMENDED AND RESTATED DECLARATION, recorded on March 11, 1977, in Volume 7405, Pages 331 through 393, inclusive, as Document No. 91155AK, in the Official Records of San Mateo County, State of California (the "1977" Declaration).
- B. Amendments to the 1977 Declaration were recorded on various dates as set forth in Exhibit A. The 1977 Declaration together with all of the amendments recorded through 1986 (items 1 through 3 in Exhibit A) are referred to herein collectively as the "Original Declaration."
- C. The Original Declaration was amended and restated and superseded by the Amended and Restated Declaration of Menlo Commons Association dated November 4, 1987 and recorded on November 6, 1987 as Document No. 87 169708 in the Official Records of San Mateo County, State of California (the "First Amended Declaration").
- D. Amendments to the First Amended and Restated Declaration for Menlo Commons Association were recorded on various dates as set forth in Exhibit A.
- E. The First Amended Declaration as amended was amended and restated, and superseded, by the Second Amended and Restated Declaration dated October 11, 2005 and recorded on October 11, 2005 as Document No. 2005-177038 in the Official Records of San Mateo County, State of California (the "Second Amended and Restated Declaration").
- F. The Second Amended and Restated Declaration was amended by the certain First Amendment to Amended and Restated Declaration dated April 26, 2007,

and recorded on May 10, 2007, as Document No.2007-072889, Official Records of San Mateo County, State of California (the "First Amendment") to provide for a restriction on the number of Units that may be rented or leased. The provisions of the First Amendment are restated herein at **Article 7** ("Renting or Leasing").

- G. The Second Amended and Restated Declaration as amended establishes certain limitations, easements, covenants, restrictions, conditions, liens, and charges which run with, and are binding upon all parties having or acquiring any right, title, or interest in, that certain real property located in the County of San Mateo, State of California, and more particularly described as follows:

Parcel A (including Building A (22 Units, and all improvements thereon) and Building B (25 Units, and all improvements thereon)) and Parcel B (including Building C (27 Units, and all improvements thereon), Building D (21 Units, and all improvements thereon) and Building E (27 Units, and all improvements thereon)), as shown on that certain "Parcel Map" filed for record on September 30, 1976, in Volume 33 of Parcel Maps at Page 27, Official Records of San Mateo County, State of California.

- H. The Project (as defined herein) is a "senior citizen housing development" as defined in California *Civil Code* section 51.3(b)(3) and is operated as "Housing for Older Persons" as defined in the United States Fair Housing Amendments Act of 1988, 42 U.S.C. section 3607(b)(2).
- I. THE MEMBERS, constituting at least a majority of the Total Voting Power of the Association desire to amend, modify, and otherwise change the Second Amended and Restated Declaration as amended pursuant to Article IX, Section 9.4 thereof, and DO HEREBY DECLARE that the Second Amended and Restated Declaration as amended shall be, and it is hereby, AMENDED AND RESTATED IN ITS ENTIRETY as set forth in the within Third Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Menlo Commons, but excluding Exhibit D to the Second Amended and Restated Declaration (being the Condominium Plan), which Exhibit D shall remain in full force and effect.
- J. **IT IS FURTHER HEREBY DECLARED** that all of the real property described in **Recital Paragraph G**, above, constitutes a condominium project within the meaning of Section 4125 of the California *Civil Code*.
- K. **IT IS FURTHER HEREBY DECLARED** that all of the real property described in **Recital Paragraph G**, above, is and shall be held, owned, operated, managed, conveyed, hypothecated, encumbered, leased, used, occupied, and improved subject to the following covenants, conditions, and restrictions set forth herein, all

of which are declared and agreed to be in furtherance of a plan and purpose of protecting, preserving, and enhancing the value, desirability, and attractiveness of the said real property and every part thereof, and of fostering the development, management, improvement, enjoyment, and sale of the said real property and any part thereof.

- L. IT IS FURTHER HEREBY DECLARED that all of the covenants, conditions, and restrictions set forth herein shall constitute enforceable equitable servitudes as provided in California *Civil Code* section 5975, shall constitute covenants that shall run with the said real property, and shall be binding upon and inure to the benefit of each Owner of any portion of the said real property or the owner or holder of any interest or estate therein and their heirs, successors, and assigns.

## ARTICLE 1            DEFINITIONS

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- 1.1 Additional Charges. "Additional Charges" shall mean all costs, fees, charges, and expenditures including, but not limited to, interest, late charges, attorney fees, recording and filing fees, and all other costs actually incurred by the Association in collecting and/or enforcing payment of Assessments.
- 1.2 Articles. "Articles" shall mean the Amended and Restated Articles of Incorporation of The Menlo Commons Association, as they may be amended from time to time, and as filed with the Office of the Secretary of State of California.
- 1.3 Assessments. "Assessments" shall mean any or all of the following: Regular Assessments, Special Assessments, Reimbursement Assessments, and Enforcement Assessments.
- 1.4 Association. "Association" shall mean The Menlo Commons Association, a California nonprofit mutual benefit corporation, its successors and assigns.
- 1.5 Board of Directors. "Board of Directors" or "Board" shall mean the governing body of the Association.
- 1.6 Building. "Building" shall mean any of the five (5) condominium Buildings in the Project designated as Buildings A, B, C, D, and E, respectively, and shown on the Condominium Plan.
- 1.7 Bylaws. "Bylaws" shall mean the Amended and Restated Bylaws of the Association as they shall be duly adopted by the Board of Directors and the Members and any duly-adopted amendments thereof.

- 1.8 City. "City" shall mean the City of Menlo Park.
- 1.9 Civil Code. "Civil Code" shall mean the California *Civil Code* as amended from time to time.
- 1.10 Common Area. "Common Area" shall mean Parcels A and B as shown on the Map, title to each of said Parcels being held by the Owners as tenants-in-common of the Units located within the respective Parcels. The Common Area includes, without limitation, the Buildings and other improvements, the land, parking and driveway areas, and garage areas; trash enclosures; landscaping; exterior lighting, fences; interior and exterior stairs and stair wells; lobbies and interior hallways; elevators and elevator shafts; basement and storage areas; exterior walls; decks, and balconies; flower boxes and their irrigation systems; windows, window frames, doors and door frames; bearing walls, girders, subfloors, foundations, unfinished floors, roofs, gutters and downspouts; pumps, motors, ducts, vents, flues, and chutes; building ventilation systems; fire protection systems; conduits, pipes, plumbing, wires and other utility installations (except the outlets thereof when located within a Unit) required to provide power, light, water, sewerage, drainage, and elevator service; and exterior irrigation systems. The line of demarcation between the portion of a water supply line that is Common Area and the portion that is part of the Unit shall be the point at which the line exits the Unit. The line of demarcation between the portion of a waste water line that is Common Area and the portion that is part of the Unit shall be the point at which the exposed line enters the Unit. Some portions of the Common Area constitute "Exclusive Use Common Area" as defined in Section 1.21 ("Exclusive Use Common Area"). The Common Area does not include the Units as described in Section 1.50 ("Unit"), Section 1.50.2 ("Included in Unit"), and Section 1.50.3 ("Excluded from Unit").
- 1.11 Condominium. "Condominium" shall mean an estate in real property as defined in *Civil Code* sections 783 and 4125, consisting of an undivided interest in all or any portion of the Common Area together with a separate fee interest in a Unit and any easements or other interests in the Project or any portion thereof appurtenant to the Unit, as are described in the Declaration, in the Condominium Plan, or in the deed conveying a Condominium.
- 1.12 Condominium Plan. "Condominium Plan" or "Plan" shall mean a plan recorded pursuant to *Civil Code* sections 4285, 4290, and 4295 with respect to the Project and any amendments thereto which identifies the Common Area and each separate interest in the Project, a copy of which Condominium Plan was recorded as Exhibit D to the Second Amended and Restated Declaration, which was recorded on October 11, 2005, as Document No. 2005-177038, in the Office of the Recorder of San Mateo County, State of California and is still the effective Condominium Plan for the Project.



- 1.13 Contract Purchaser / Contract Seller. "Contract Purchaser" and "Contract Seller" shall mean the purchaser and the seller, respectively, under an installment land contract in which title to the property is transferred after the final installment payment is made.
- 1.14 Corporations Code. "Corporations Code" shall mean the California Corporations Code as amended from time to time.
- 1.15 County. "County" shall mean the County of San Mateo.
- 1.16 Declaration. "Declaration" shall mean this Third Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Menlo Commons Association, recorded in the Office of the County Recorder of San Mateo, State of California, and any duly-recorded amendments thereof.
- 1.17 Eligible Mortgage. "Eligible Mortgage" shall mean a Mortgage held by an Eligible Mortgage Holder.
- 1.18 Eligible Mortgage Holder. "Eligible Mortgage Holder" shall mean a First Mortgagee who has requested notice of certain matters from the Association in accordance with Section 13.1.3 ("Notice of Action").
- 1.19 Eligible Insurer or Guarantor. "Eligible Insurer" or "Eligible Guarantor" shall mean an insurer or governmental guarantor of a First Mortgage which has requested notice of certain matters from the Association in accordance with Section 13.1.3 ("Notice of Action").
- 1.20 Enforcement Assessment. "Enforcement Assessment" shall have the meaning set forth in Section 9.11.
- 1.21 Exclusive Use Common Area. "Exclusive Use Common Area" shall mean any portion of the Common Area the exclusive use of which is set aside, allocated, assigned, and restricted to the exclusive use or possession of the Owners and Residents of one (1) or more but less than all of the Units and which is appurtenant to a Unit or Units. An exclusive easement to such Exclusive Use Common Area may be specifically granted in each individual grant deed conveying a Unit or may be granted by or as provided in this Declaration. On the date of recording of this Third Amended and Restated Declaration, the Exclusive Use Common Area appurtenant to the respective Units consists of one (1) or more of the following:
- 1.21.1 Balcony. "Balcony" shall mean an exterior space adjacent to the Unit to which it is appurtenant as stated in the deed to the Condominium. The perimeter and vertical boundaries of each Balcony space are to the interior finished surface of the railing, the exterior finished surface

of the floor, and a plane in space at the height of the ceiling of the adjacent Unit. Each Balcony comprises the airspace encompassed within its boundaries and does not include the physical components enclosing that space.

- 1.21.2 Deck. "Deck" shall mean a deck adjacent to the third-floor Unit to which it is appurtenant as stated in the deed to the Condominium. The perimeter boundaries of each deck space are to the exterior finished surfaces of the building and floor and do not include any physical components enclosing that space.
- 1.21.3 Garage Parking Space. "Garage Parking Space" shall mean each space designated on the Plan by a letter (A, B, C, D or E) indicating the building in which the Garage Parking Space is located, then followed by the letter "P-" which is followed by the number of the Unit to which the Garage Parking Space is appurtenant and as stated on the deed to the Condominium. The perimeter and vertical boundaries of each Garage Parking Space are to the lines on the garage floor demarking the side boundaries of each space to the end of such lines, the interior unfinished surfaces of the exterior wall of the garage level of the Building, floor, and ceiling. Each Garage Parking Space comprises the airspace encompassed within its boundaries and does not include the physical components enclosing that space.
- 1.21.4 Other Exclusive Use Common Area. Internal and external telephone and data communication wiring designed to serve a single Unit constitute Exclusive Use Common Area appurtenant to the Unit.
- 1.22 First Mortgage / First Mortgagee. "First Mortgage" shall mean a Mortgage that has first priority over all other Mortgages. "First Mortgagee" shall mean the beneficiary under a First Mortgage.
- 1.23 Governing Documents. "Governing Documents" shall mean the Articles, Bylaws, Declaration, Rules and Procedures, Voting and Election Rules, and Senior Housing Residency Rules.
- 1.24 Individual Delivery / Individual Notice. "Individual Delivery" or "Individual Notice" shall mean delivery to a Member or Members by one (1) of the following methods, as provided in *Civil Code* section 4040:
- (a) By first-class mail with postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier, addressed to the recipient at such recipient's address last shown on the books of the Association; or

- (b) By email, facsimile, or other electronic means if the recipient has consented in writing to that method of delivery. The consent may be revoked, in writing, by the recipient. Delivery by electronic transmission must also comply with *Corporations Code* sections 20 and 21. Among other things, Section 20 of the *Corporations Code* requires the Association to obtain consent from the person to whom the document is transmitted to receive it by means of electronic transmission as well as other technical requirements.
- 1.25 Lease. "Lease" shall mean any agreement between an Owner and a third party, hereinafter referred to as Tenant, whereby the Tenant is granted the right of use and possession of the Owner's Unit (without the Owner being in residence).
- 1.26 Maintenance. "Maintenance" or to "maintain" (whether the term is capitalized or not) shall mean the act of caring for property and keeping it in its existing state, preserving it from failure or deterioration, including painting, caulking, cleaning, and minor, non-structural upkeep. In the case of landscaping, "maintenance" or to "maintain" shall mean regular fertilizing, irrigation, pruning, and other garden management practices necessary to promote healthy plant growth free of weeds or dead or dying plants.
- 1.27 Majority of a Quorum. "Majority of a Quorum" shall mean a majority of the votes cast by Members in Good Standing in any lawful vote or election by the Members in which the number of ballots cast equals or exceeds the number required to establish a quorum.
- 1.28 Map. "Map" shall mean that certain "Parcel Map," filed on September 30, 1976, in the Official Records of San Mateo County, State of California recorded on September 30, 1976 in Volume 33 of parcel Maps at Page 27 in the Official Records of San Mateo County, State of California.
- 1.29 Member. "Member" shall mean an Owner as shown on a grant deed to a Condominium.
- 1.30 Member in Good Standing. "Member in Good Standing" shall mean a Member of the Association who is current in the payment of all Assessments and Additional Charges imposed in accordance with the Governing Documents, and who is in compliance with all of the provisions of the Governing Documents. A Member shall be deemed to be in Good Standing unless, after notice and an opportunity for hearing, pursuant to Article 14 ("Enforcement; Notice; Hearings"), the Board has found the Member to be not in Good Standing and has so notified the Member in accordance with *Civil Code* section 5855.

- 1.31 Mortgage / Mortgagee. "Mortgage" shall mean a duly-recorded deed of trust or mortgage in the conventional sense encumbering a Condominium. "Mortgagee" shall mean a beneficiary under a Mortgage.
- 1.32 Owner. "Owner" shall mean the record owner, whether one (1) or more persons or entities, of the fee simple title to any Condominium, including Contract Sellers but excluding Contract Purchasers, and excluding those persons having such interest merely as security for the performance of an obligation.
- 1.33 Parking Space. "Parking Space" shall mean both a Garage Parking Space as defined in Section 1.21.3 and a Parking Space located in the Common Area outside of the garage level of a Building.
- 1.34 Permitted Vehicle. "Permitted Vehicle" shall mean a vehicle that is permitted to be parked or operated within the Project as set forth in Section 6.31.1.
- 1.35 Prohibited Vehicle. "Prohibited Vehicle" shall mean a vehicle that is prohibited from being parked, stored or operated within the Project as set forth in Section 6.31.2.
- 1.36 Project. "Project" shall mean all of the real property described in this Declaration as comprising The Menlo Commons condominium project, including all structures and other improvements located at any time upon said real property, and such additional real property as may hereafter be brought within the jurisdiction of the Association.
- 1.37 Regular Assessment. "Regular Assessment" shall have the meaning set forth in Section 9.7.
- 1.38 Reimbursement Assessment. "Reimbursement Assessment" shall have the meaning set forth in Section 9.10.
- 1.39 Rental. "Rental" (when used as a noun) shall mean a Unit whose Owner has obtained approval from the Board to offer a Lease to a Tenant.
- 1.40 Rental Quota. "Rental Quota" shall mean fifteen (15) Units which is the maximum number of Units that may be leased or rented at one (1) time, not including any Temporary Rental that has been approved by the Board as provided in Section 7.7.2(ii) ("Approval of Lease Application in Special Cases").
- 1.41 Repair. "Repair" (whether the term is capitalized or not) shall mean the minor restoration of property that is torn, broken, or otherwise damaged, or has sustained wear, tear, or deterioration such that minor restoration is necessary.

- 1.42 Replacement. "Replacement" or to "replace" (whether the term is capitalized or not) shall mean substantial reconstruction, restoration, or substitution of the whole or a substantial part of property that has deteriorated or has been damaged or destroyed through usage or through hazard or catastrophe such that it is no longer useable or serviceable in its current condition. In the case of landscaping, "replacement" or to "replace" shall mean the removal and replanting of trees, shrubs, lawns, and other plants that are dead or dying or otherwise not serviceable or the substitution of plants for hardscape or substitution of hardscape for plants.
- 1.43 Resident. "Resident" shall mean any person who resides in a Unit within the Project whether or not such person is an Owner.
- 1.44 Rules. "Rules" shall mean the policies, rules, and regulations governing the administration, management, operation, use, and occupancy of the Project, including the use of the Common Area and facilities, the personal conduct of Owners and Residents, members of their household, pets, tenants, invitees, and guests within the Project, enforcement of the Governing Documents, and any other matter that is within the jurisdiction of the Association, as adopted, published, or amended by the Board from time to time and subject to applicable law including *Civil Code* section 4340 and following.
- 1.45 Senior Housing Residency Rules. "Senior Housing Residency Rules" shall mean the residency policy adopted by the Board and referenced in **Section 6.10** ("Senior Citizen Residential Use; Qualification for Residency").
- 1.46 Special Assessment. "Special Assessment" shall have the meaning set forth in **Section 9.8**.
- 1.47 Temporary Rental. "Temporary Rental" shall mean a Unit that the Board has approved to be a Rental Unit for a limited time period of not more than one (1) year and renewable for not more than one (1) additional year, as a result of an Owner's request for special consideration as provided in **Section 7.6** ("Request for Approval of Board").
- 1.48 Tenant. "Tenant" shall mean a third party with whom an Owner has entered into a rental agreement or Lease of the Owner's Unit pursuant to the approval of the Board to lease or rent that Unit. The Tenant must meet all residency requirements as set forth in the Association's Senior Housing Residency Rules.
- 1.49 Total Voting Power. "Total Voting Power" shall mean the total number of votes of all Members entitled to vote at a particular time, calculated on the basis of one (1) vote for each Unit, excluding any Units as to which an Owner is not then a Member in Good Standing.



1.50 Unit. "Unit" shall mean the elements of a Condominium that are not owned in common with the Owners of other Condominiums within the Project, which Units are shown as separately designated and numbered areas on the Condominium Plan. There are one hundred twenty-two (122) Units in the Project.

1.50.1 Boundaries of Unit. The boundaries of each Unit are as follows: the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows and exterior doors thereof.

1.50.2 Included in Unit. Without limiting the generality of Section 1.50.1, above, a Unit *includes* the following: (a) the finishes or coverings on the interior surfaces of the walls, floors, ceilings, windows and window frames, and exterior doors and door frames; (b) the partition (non-bearing) walls within the boundaries of the Unit; (c) all interior doors within the boundaries of the Unit and hardware of interior doors; and (d) appliances and equipment and fixtures, including non-standard light fixtures, refrigerators, air conditioners, and those portions of sinks, tubs, shower stalls, toilets non-electrical and non-plumbing portions of dishwashers and garbage disposals not excluded under Section 1.50.3, below.

1.50.3 Excluded from Unit. Without limiting the generality of Section 1.50.1, above, a Unit *does not include* the following: (a) Common Areas within the boundaries of the Unit except the finished surfaces thereof inside the Unit; (b) load bearing walls, wherever located, waste and drain line traps, and water lines and faucets; (c) circulation systems of dishwashers and garbage disposals, electrical wall plugs, wall switches, standard light fixtures, and sub-feed circuit breaker panels; and (d) heaters, electrical components of standard ranges and ovens, dishwashers and garbage disposals located within the boundaries of the Unit.

## ARTICLE 2 HOMEOWNERS ASSOCIATION

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2.1 Management and Operation; Bylaws. The Association is an "association" as defined in *Civil Code* section 4080 and as such shall have the power and the authority to manage and operate the Project in accordance with the Governing Documents and the provisions of applicable law. The Association shall have all of the powers set forth in the Governing Documents together with general power to do any and all things that a nonprofit mutual benefit corporation may lawfully do under the laws of the State of California, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Governing Documents. Provisions concerning the operation of the Association as a

nonprofit mutual benefit corporation are set forth in the Bylaws.

- 2.2 Legal Standing. To the fullest extent permitted by law, including *Civil Code* section 5980, the Association shall have standing to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as a real party in interest, and without joining with it the Owners, in matters pertaining to the following:
- (a) Enforcement of the Governing Documents,
  - (b) Damage to the Common Area,
  - (c) Damage to the separate interests that the Association is obligated to maintain, repair, or replace,
  - (d) Damage to a separate interest that arises out of, or is integrally related to, damage to the Common Area or separate interests that the Association is obligated to maintain, repair, or replace.
- 2.3 Membership. Every Owner of a Condominium shall be a Member of the Association and shall remain a Member thereof until such time as his or her ownership of such Condominium ceases for any reason. Fee ownership of a Unit shall be the sole qualification for membership in the Association. Membership shall be appurtenant to and may not be separated from ownership of a Condominium and shall not be transferred, encumbered, pledged, alienated, or otherwise hypothecated in any way, except in connection with the sale or encumbrance of the Condominium to which it is appurtenant.
- 2.4 Voting. Only Members in Good Standing shall be entitled to vote and, only one (1) vote shall be cast for each Condominium, as more particularly set forth in the Bylaws.
- 2.5 Association Rules. Subject to applicable law including *Civil Code* section 4340 and following, regarding notice and procedures, the Board shall have the power and the authority to establish, promulgate, amend, repeal, and enforce Rules.
- 2.6 Association to Monitor Use of Common Area. The Association shall also, as a separate and distinct responsibility, take reasonable action to require that third parties (including Owners and their guests) utilize the Common Area in accordance with applicable municipal, state and federal laws, statutes and ordinances, as the case may be. The Association shall, when it becomes aware of any violation of the aforementioned laws, take reasonable action to expeditiously correct such violations.

### ARTICLE 3 PROPERTY SUBJECT TO THIS DECLARATION

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- 3.1 Legal Description. The property subject to this Declaration and to the jurisdiction of the Association is described in Recital Paragraph G, above.
- 3.2 Classification of Property. The property subject to this Declaration is a condominium project. All of the property subject to the Declaration is divided into the following categories:
- (a) Common Area,
  - (b) Exclusive Use Common Area,
  - (c) Units.
- 3.3 Ownership of Condominium. Ownership of each Condominium within the Project shall include: (i) a designated Unit, (ii) the respective undivided percentage interest as tenant in common in the Common Area as set forth in Exhibit B, (iii) a Membership in the Association, and (iv) any exclusive easements or easements appurtenant to such Unit upon the Exclusive Use Common Area and such other easements as are applicable, all as described in the Declaration, in the deed to the Unit, or in the Condominium Plan.
- 3.4 Undivided Interests Cannot Be Changed. The undivided interests in the Common Area established in the Declaration cannot be changed except with the approval of one hundred percent (100%) of the Owners.
- 3.5 No Separate Conveyance of Undivided Interests. The undivided interests in the Common Area shall not be severed or conveyed separately from the respective Units to which they are appurtenant and each such undivided interest shall in all cases be deemed to be conveyed or encumbered along with the respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit. Any purported severance or separate conveyance of an undivided interest in the Common Area apart from a conveyance of the respective Unit shall, for all purposes, be null, void, and unenforceable.
- 3.6 Limitation on Partition; Power of Attorney. Except in the case of substantial damage to or destruction or obsolescence of the Project as provided in *Civil Code* section 4610, there shall be no judicial partition of the Project or any part thereof, nor shall any Owner or any person acquiring any interest in the Project or any part of the Project seek any judicial partition thereof; *provided, however*, that if any Unit shall be owned by two (2) or more co-tenants as tenants in common or as joint tenants, nothing contained in this Declaration shall be deemed to prevent a judicial partition by sale as between such co-tenants. In the

event of a judicial partition of the Project pursuant to *Civil Code* section 4610 or this Declaration, each Owner, for himself or herself and his or her successors and assigns, hereby grants to the Association an irrevocable power of attorney to sell the entire Project for the benefit of all the Owners. The power of sale shall be exercised only after recordation by the Association of a certificate which provides that the Association has the right to exercise the powers provided in this Section 3.6 and in *Civil Code* section 4610.

- 3.7 Sale or Mortgage of Association's Property. Upon approval of a majority of the Total Voting Power of the Association, the Board acting on behalf of the Association shall have the power and authority to acquire, own, hold improve, build upon, operate, maintain, sell, lease, transfer, mortgage, pledge, encumber, or otherwise hypothecate or dispose of real or personal in connection with the affairs of the Association; *provided, however*, that such approval shall not be required in the case of the sale by the Association of a Unit acquired by the Association as the result of foreclosure of the Association's lien. **[NOTE TO BOARD: Last clause added to clarify that Member approval is not required in order for the Board to sell a Unit acquired by foreclosure of the Association's Assessment lien.]**
- 3.8 Loans. The Board shall have the power, upon the approval of a ~~Majority of a Quorum OR~~ majority of the Total Voting Power of the Association to mortgage, pledge, deed in trust or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred. **[NOTE TO BOARD: Please choose between the two foregoing alternatives.]**

#### ARTICLE 4 UTILITIES

- 4.1 Owner's Rights and Duties. The rights and duties of the Owners of Condominiums within the Project with respect to sanitary sewer, storm sewer, water, drainage, electric, gas, television receiving, telephone equipment, cables and lines, meters, catch basins, storage tanks, wires, ducts, flues, pumps, pipes and exhaust flues, collectively, "Utility Facilities") shall be as follows:
- (a) Whenever Utility Facilities are installed within the Project, which Utility Facilities or any portion of those facilities lies in or upon Condominiums owned by other than the Owner of a Condominium served by those Utility Facilities, the Owners of any Condominium served by those Utility Facilities shall have the right of reasonable access for themselves or for utility companies to repair, replace and generally maintain those 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 serving more than one (1) Condominium are installed within the Project, the Owner of each Condominium served by those Utility Facilities shall be entitled to the full use and enjoyment of such portions of those Utility Facilities as servicing his or her Condominium.
- (c) In the event of a dispute between Owners with respect to the repair or rebuilding of Utility Facilities, or with respect to the sharing of the cost of those facilities, then, upon written request of one (1) Owner addressed to the other Owner(s), the matter shall be submitted first to the Board for mediation, and thereafter, if the dispute remains unresolved, to binding arbitration within sixty (60) days pursuant to the rules of the American Arbitration Association, or any successor rules, or to any other generally recognized system of alternative dispute resolution, The decision of the arbitrator(s) shall be final and conclusive on the parties, and judgment on the decision may be entered in any court having jurisdiction.

4.2 Easements for Utilities and Maintenance. Easements over, under and through the Project (including soffits and utility chases within Units, if any) for the installation, repair, and maintenance of electric, telephone, water, gas and sanitary sewer lines and facilities, heating or air conditioning facilities, cable or master television antenna lines, drainage facilities, walkways, and landscaping as shown on the Map, and as may be hereafter required or needed to service the Project, exist in favor of the Association for the benefit of its Members.

4.3 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 10.3 ("Owner's Responsibility for Maintenance and Repair."). The Association shall pay all charges for utilities supplied to the Project except those metered or charged separately to the Condominiums.

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**ARTICLE 5                      TAXES; MECHANIC'S LIENS; EASEMENTS**

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5.1 Unallocated Taxes. In the event that any taxes are assessed against the Common Area or against the personal property of the Association rather than against the Units, said taxes shall be included in the Regular Assessments, and if necessary a Special Assessment may be levied against the Units in an amount equal to said taxes, to be paid in two (2) installments each due not less than thirty (30) days prior to each tax installment.

5.2 Mechanic's Lien Against Common Area. In the event there shall be filed against the Common Area a notice of mechanic's lien for, or purporting to be for, labor or




materials alleged to have been furnished or delivered for any Owner within the Project or his or her Unit, such Owner shall forthwith cause such lien to be discharged by payment, bond, or otherwise. If the Owner fails to cause the lien to be discharged, the Board may send written notice to the Owner specifying that unless the Owner causes the lien to be discharged within five (5) days from the date of such notice, the Board may cause the lien to be discharged. Within such five (5) day period, and notwithstanding any other provisions of the Governing Documents concerning notice or hearing, the Owner shall be permitted a hearing before the Board regarding the validity of such lien and any offsets or defenses thereto. At that time, the Board shall determine whether the lien adversely and improperly affects and encumbers the rights and interests of the Association or the other Owners. If the Board of Directors determines that the lien does adversely and improperly affect and encumber such rights and interests and that adequate protection of such rights and interests has not been provided, the Board may cause the lien to be discharged by payment, bond, or otherwise. The Board shall have the right to levy a Reimbursement Assessment against the Owner responsible for causing the lien to be discharged in an amount equal to all amounts paid by the Association together with interest thereon at the legal rate and all costs and expenses paid or incurred in connection therewith, including reasonable attorney fees.

- 5.3 Easements in General. In addition to all easements reserved and granted on the Map or the Condominium Plan, there are hereby specifically reserved and granted for the benefit of the Units and the Owners in common and for each Unit and each Owner severally, and for the Association, as their respective interests shall obtain, the easements, reciprocal negative easements, secondary easements, and rights-of-way as particularly identified in this Article 5.
- 5.4 All Easements Are Part of Common Plan. Whenever any easements are reserved or created or are to be reserved or created herein, such easements shall constitute equitable servitudes for the mutual benefit of all property in the Project, even if only certain Units are specifically mentioned as subject to or benefiting from a particular easement, and when easements referred to herein are subsequently created by grant deed or other grant, such easements are part of the common plan created by the Declaration for the benefit of all property Owners within the Project.
- 5.5 Exclusive Use Common Area Easements. The "Exclusive Use Common Areas" are enumerated in Section 1.21. "Exclusive Use Common Areas" are subject, as the servient tenements, to exclusive easements in favor of the Units to which they are attached or assigned, as the dominant tenements, and such exclusive easements shall be appurtenant to those designated Units. An exclusive easement to such Exclusive Use Common Area may be specifically granted in each individual grant deed conveying a Unit; however, the failure of any such

deed to set forth such grant of easement shall not invalidate the exclusive easement granted as provided in this Declaration.

5.6 Owner's Non-exclusive Easements of Enjoyment. Every Owner of a Condominium shall have a non-exclusive easement of use of and enjoyment in, to, and throughout the Common Area of the Project; *provided, however*, such non-exclusive easements shall be subordinate to, and shall not interfere in any way with, the exclusive easements, if any, appurtenant to Units over Exclusive Use Common Area. Each such non-exclusive easement shall be appurtenant to and pass with the title to every Unit, subject to the following rights and restrictions:

- (a) The right of the Board to establish and enforce Rules governing the use of the Common Area and facilities thereon;
- (b) The right of the Board to charge reasonable admission and other fees for the use of any facilities situated upon the Common Area;
-  (c) The right of the Board to suspend an Owner's right to use the community facilities as provided in Section 14.8 ("Imposing Sanctions");
- (d) The right of the Board, as set forth in Section 3.7 ("Sale or Mortgage of Association's Property"), to mortgage, pledge, encumber, or otherwise hypothecate the Common Area and facilities thereon as security for money borrowed by the Association;
- (e) The right of the Board, as set forth in Section 5.8 ("Association's Utility Easements"), to grant and transfer utility easements and rights-of-way in, on, over, or under the Common Area subject to such conditions as may be agreed to by the Board;
- (f) The right of the Board, as set forth in Section 5.9 ("Board's Power to Grant Easements and Licenses to Owners"), to grant easements, licenses, and rights-of-way upon the Common Area; and
- (g) The right of the Association or its authorized agents, as provided in this Declaration, to perform its obligations under this Declaration, including obligations with respect to construction, maintenance, repair, or replacement for the benefit of the Common Area or the Owners in common.

5.7 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Unit and such portion or portions of the Common Area adjacent thereto and/or as between adjacent Units due to the placement or settling or shifting of the improvements constructed, reconstructed,

or altered thereon in accordance with the terms of the Declaration; *provided, however*, that in no event shall an easement for encroachment exist in favor of an Owner, Resident or the Association if such encroachment occurred due to willful unauthorized conduct on the part of such person. In the event that any Unit is partially or totally destroyed and then repaired or rebuilt in accordance with the provisions of the Declaration, the Owners of each Unit agree that minor encroachments over adjoining Units and/or Common Area shall be permitted and there shall be easements for the maintenance of said encroachments so long as they shall exist.

- 5.8 Association's Utility Easements. Easements over under and through the Project or any portion thereof (including soffits and utility chases within Units, if any) for the installation, repair, maintenance, and replacement of electric, telephone, water, gas, and sanitary sewer lines and facilities, heating and air-conditioning facilities, cable or master television antenna lines, drainage facilities, walkways, and landscaped areas as shown on the Map or Condominium Plan, and as may be hereafter required or needed to service the Project, are reserved by and shall exist in favor of the Association, together with the right to grant and transfer the same.
- 5.9 Board's Power to Grant Easements and Licenses to Owners. Notwithstanding any other provisions of the Governing Documents, the Board shall have the power in its discretion without approval vote of the Members to grant and convey licenses for use, rights-of-way, and *nonexclusive* easements in, over, or under the Common Area or any portion thereof to Owners, for such purposes as the Board deems to be appropriate and not inconsistent with the purposes and interests of the Association; *provided, however*, that approval of a majority of the Total Voting Power of the Association shall be required to grant an *exclusive* easement over Common Area to any Member, other than any grant or conveyance to a Member described in *Civil Code* section 4600(b). **[NOTE TO BOARD: Your current documents are silent concerning the right of the Board to grant easements over the Common Area to individual Unit Owners. *Civil Code* section 4600 calls for approval of 2/3 of all Owners to grant an exclusive easement to an Owner unless a different level of approval is stated in the CC&Rs. We suggest a majority of the Unit Owners rather than 2/3, since this is consistent with the statutory Member approval requirement for amendments to the CC&Rs and still constitutes a high threshold for any exclusive easement to be granted.]**

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## ARTICLE 6                      USE RESTRICTIONS

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- 6.1 Use of Common Area Generally. All use of Common Area is subject to the Governing Documents. Subject to the provisions of the Governing Documents,

the Common Area shall be held, maintained, and used to meet the common interests of the Owners and the Residents, members of their household, tenants, and guests.

- 6.2 No Public Rights. There shall be no entitlement to public use of, access to, or other public rights in, the Project property. The Association reserves the rights to prohibit entry on the Project property by any person whose presence is not authorized by the Governing Documents.
- 6.3 No Alteration of Common Area. Except as may be authorized by the Board, no person or entity other than the Association or its duly-authorized agents shall (i) construct, reconstruct, refinish, alter, or maintain any improvement upon the Common Area, (ii) make or create any excavation or fill upon the Common Area, (iii) change the natural or existing drainage of the Common Area, or (iv) plant, remove, or destroy any seed, plant material, tree, shrub, or other vegetation upon the Common Area (other than permitted vegetation upon or within a balcony or any Exclusive Use Common Area).
- 6.4 No Obstruction of Common Area. The Common Area shall be kept free of rubbish, debris, and other unsightly or unsanitary materials. There shall be no obstruction of any part of the Common Area nor shall anything impair access to the Common Area. Each Owner shall avoid causing any damage to the Common Area.
- 6.5 No Smoking in Common Area. For the safety of the property and for the health, safety, and security of all Residents of the Project, no smoking of cigarettes, pipes, cigars, electronic cigarettes, personal vapor devices, or any other tobacco product, marijuana, legal or illegal substance shall be permitted anywhere in the Common Area, whether indoors or outdoors including Exclusive Use Common Area. "Smoking" shall include the inhaling, exhaling, burning, or carrying of any lighted cigarette, pipe, cigar, electronic cigarette, personal vapor device or other smoke inhalation device or any kind, or other tobacco product, marijuana, legal or illegal substance, and shall include smoke or vapor from any such activity drifting from the interior of a Unit to the Common Area or to Exclusive Use Common Area.

Another Version for No smoking anywhere within Project.

- 6.6 No Smoking. For the safety of the property and for the health, safety, and security of all Residents of the Project, no smoking of cigarettes, pipes, cigars, or any other tobacco product, marijuana, or illegal substance shall be permitted anywhere in the Project, including in a Unit, in Common Areas, and in Exclusive Use Common Areas. "Smoking" shall include the inhaling, exhaling, burning, or carrying of any lighted cigarette, pipe, cigar, electronic cigarette, personal vapor device or other smoke inhalation device or any kind, or other tobacco product,

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marijuana, legal or illegal substance, and shall include smoke or vapor from any such activity drifting to the Project.

Another version including e-cigarettes and personal vaporizers

6.7 No Smoking in Pool Area. For the safety of the property and for the health, safety, and security of all Residents of the Project, no smoking of cigarettes, pipes, cigars, electronic cigarettes or "e-cigarettes," personal vaporizers (PV), electronic nicotine delivery systems (ENDS), or any other tobacco product, marijuana, or illegal substance shall be permitted anywhere in the pool area, whether indoors or outdoors. "Smoking" shall include the inhaling, exhaling, burning, or carrying of any lighted or cigarette, pipe, cigar, electronic cigarette, personal vapor device or other smoke inhalation device or any kind, or other tobacco product, marijuana, legal or illegal substance, and shall include smoke or vapor from any such activity drifting from the pool area to other parts of the Common Area.

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6.8 Delegation of Use. Any Owner may delegate his or her rights of use and enjoyment, including easements, in the Project to the members of his or her household, tenants, Contract Purchasers, and guests, subject to the terms of the Governing Documents. It is the express purpose and intent of this Section 6.8 to limit the right of use and enjoyment of the Common Area amenities to Residents of the Project and their accompanied guests. ~~[NOTE TO BOARD: Are guests required to be accompanied by the Resident when using Common Area amenities?]~~ Upon the leasing or renting of a Unit, or upon occupancy of a Unit by a Contract Purchaser, the Owner shall be deemed to have delegated and assigned all such rights exclusively to the tenants or Contract Purchasers of such Unit. Any rights of enjoyment that have been delegated by an Owner are subject to suspension to the same extent that rights of Owners are subject to suspension as provided in the Governing Documents.

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6.9 Independent Living Condominium Community. Menlo Commons is a not a community licensed as a "continuing care retirement community," a "residential care facility for the elderly," or otherwise equipped to accept responsibility for or to care for persons who are not capable of safely living independently. The Association does not provide care or supervision of residents, assistance with activities of daily life, assisted living services, or care programs of any kind for residents.

6.10 Senior Citizen Residential Use; Qualification for Residency. Except to the extent permitted in Section 6.12 ("Restriction on Businesses"), all Units shall be occupied and used for senior citizen residential purposes only. Residents, other occupants, and guests shall be subject to the age and other restrictions set forth in the Senior Housing Residency Rules adopted by the Board in compliance with applicable federal and California law, as those laws may be amended from time



to time, and all such persons shall cooperate with the Board as required to verify the Association's compliance with such laws.

6. ~~10~~.1 Qualification of Occupants. An Owner leasing or renting his or her Unit shall, as required by the Senior Housing Residency Rules, provide to the Association documentation verifying each prospective occupant's qualification for residency before such person takes up occupancy of a Unit.

6. ~~10~~.2 Prior Approval Required. Prior to any person taking up occupancy in a Unit, proof of qualification of such person to be a Resident must be provided to the Board and approved by the Board. No person to whom ownership passes by law or otherwise shall be entitled to occupy any Unit unless and until he or she has applied for occupancy and been approved by the Board.

6. ~~10~~.3 Financial and Health Qualifications. In addition to complying with applicable age restrictions, the "Qualifying Resident(s)" as defined in the Senior Housing Residency Rules must, as a condition of approval for occupancy:

- (i) have assets and income sufficient under foreseeable circumstances and after providing for payment of the Resident's obligations under the Governing Documents, as and when they become due, to meet the Resident's ordinary and customary living expenses;
- (ii) be capable of independent living, including being capable of understanding and managing his or her own affairs, being capable of providing for his or her own personal needs for physical health, food, and clothing, and being capable of understanding participating in, and contributing to the affairs, business and activities of the Association; and
- (iii) be free of contagious disease and not constitute a threat to the health or safety of other individuals or to the property of others.

6. ~~10~~.4 Form of Application. Every prospective Resident shall file an application with the Board which shall include a form approved by the Board, proof of age, and such information as the Board may require to evaluate the qualification of the prospective Resident(s) including: (i) financial information (including but not limited to a personal credit report, financial statements and copies of bank and other account statements, and tax returns), (ii) medical information (including but not limited to medical examination reports) or the Association may require

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a prospective Resident to be examined by a physician selected by the Association, and (iii) such other information as the Board may reasonably require pursuant to the Senior Housing Residency Rules or otherwise.

6.10.5 Review of Complete Application. Upon receipt of a complete application, the Board shall review the application and all materials submitted with the application and shall interview the applicant(s) and evaluate the applicant(s)' qualifications for Residency. The Board shall approve or disapprove the application based upon proof of age and other evidence germane to the applicant(s)' qualifications for occupancy, including financial and health qualifications.

6.10.6 Delay in Taking Up Residency. In the event occupancy of a Unit has not occurred within six (6) months after the Board has approved occupancy by an individual, the Board may require an updated documentation concerning the financial or health qualification of the prospective occupant. If such updated documentation is deemed by the Board to be unsatisfactory, the Board may revoke the approval of occupancy.

6.10.7 Renters, Owners. If an approved occupant under a lease should seek to occupy a Unit as an Owner, a new application for consent to occupy shall be required.

6.10.8 Preservation of Senior Community Status. Notwithstanding any contrary provision in the Senior Housing Residency Rules, this Declaration shall at all times be deemed to restrict residency and occupancy to older persons or senior citizens to the fullest extent permitted by applicable law to preserve the character of the Project as a senior community.

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6.11 Residential Use. Except to the extent permitted in Section 6.12 ("Restriction on Businesses"), Units shall be occupied and used only for single family residential purposes in conformity with the requirements of applicable zoning laws or other state or local rules or regulations.

6.12 Restriction on Businesses.

6.12.1 Types of Businesses Allowed. No business of any kind shall be established, maintained, operated, permitted, or conducted within the Project except: (i) professional, administrative, or clerical activity as may be permitted by applicable governmental ordinances without the requirement of a conditional use permit but only if such activity does not entail the presence of employees, patrons, clients, or vendors

except on an infrequent basis; does not require storage of large amounts of bulky goods or inventory; there is no external evidence of such activity including but not limited to a significant increase in traffic within the Project; the activity complies with all applicable governmental ordinances; and the activity is merely incidental to the use of the Unit for residential purposes; and (ii) certain care facilities that, by law, cannot be prohibited by the Declaration, including family day care homes and residential care facilities as provided in Sections 6.19 ("Family Day Care Homes") and Section 6.20 ("Residential Care Facilities"). **[NOTE TO BOARD: By law, certain small family day care facilities and small residential facilities are deemed "residential" uses and cannot be prohibited by CC&Rs. If you choose not to include the detailed provisions of Sections 6.19 and 6.20, below, we will also delete the shaded language in clause (ii), above.]**

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6.12.2 Indemnification Regarding Business Activity. To the fullest extent permitted by law, every Owner or Resident who conducts or engages in any business, commercial endeavor, or profession within the Project, or whose tenant does so, agrees to and shall indemnify and defend the Association, its officers, directors, employees, and agents and shall hold them harmless from and against any cost, loss, claim, or damages of any kind, arising out of the conduct or presence of such activity, including but not limited to attorney fees, any claims for consequential damages, and any claims arising or alleged to arise out of the enforcement or non-enforcement by the Association of the Governing Documents, including but not limited to the restriction on business contained in this Section 6.12. Any amounts owed pursuant to this Section 6.12.2 may be assessed as a Reimbursement Assessment.

6.12.3 Garage Sales or Yard Sales; Estate Sales. A community garage sale date and a yard sale date, each to be limited to once each year, may be announced from time to time as authorized by the Board. Otherwise no individual yard sales, garage sales, tag sales, or similar activity shall be permitted. The Board in its discretion may permit estate sales to be held in connection with the sale of a Unit. Estate sales must be authorized by the Board in advance in writing, including the date and the manner in which the sale will be conducted.

6.13 Keys and Locks. The Owner of every Condominium shall provide to the Board a key to his or her Unit and the Board shall maintain a pass key to all Units for use in case of emergency. Without Board consent, no Owner shall alter any lock or install a new or additional lock in any door providing access to his or her Unit or to any portion of the Common Area (except to storage lockers inside a storage

room) over which he or she has exclusive use. In the interest of security, safety, and welfare of the Members and Residents, the Board shall have the right to re-key all Units when necessary in the discretionary judgment of the Board.

6.14 Authority for Entry of Unit or Exclusive Use Common Area. The Association or its agents shall have the right to enter any Unit or any portion of Exclusive Use Common Area, whenever such entry is necessary, in the Board's discretion, for purposes of inspection and/or in connection with the performance of any maintenance, repair, construction, or replacement for which the Association is responsible or for which it is authorized to perform. Such entry shall be made with as little inconvenience to the Residents as practicable and only upon reasonable advance written notice of not less than twenty-four (24) hours, except that in emergency situations notice shall be given as the situation reasonably permits. Without limiting the generality of the foregoing, the Association or its agents and the fire marshal or similar authority having jurisdiction concerning fire safety or life safety system compliance may enter and inspect any Unit upon reasonable notice for the purpose of evaluating existing fire prevention or fire safety or life safety measures or effectuating fire prevention or fire safety or life safety measures approved or mandated to be installed. **[NOTE TO BOARD: This is a common issue in multi-story condominiums. Is it applicable?]** YES *OK with a 1/17/19*

6.15 Board's Discretion to Require Maintenance. The Board shall have the discretion to determine whether any maintenance, repair, or replacement that is the responsibility of an Owner, including within a Unit, is necessary to preserve the appearance and value of the property within the Project or any portion thereof and may notify an Owner of the work the Board deems necessary. In the event an Owner fails to perform such work within sixty (60) days after notification by the Board to the Owner, the Board may, after written notice to the Owner and the right of a hearing before the Board pursuant to Section 14.12 ("Hearing Called by the Board; Executive Session; Open Meeting"), cause such work to be done and charge the cost thereof to the Owner as a Reimbursement Assessment.

6.16 Limitation of Association's Liability. In the case of damage to a Condominium or its contents arising or allegedly arising from the Association's performance of its maintenance, repair or replacement obligations, the Association shall not be responsible or liable for such damage, except to the extent arising from the willful misconduct or gross negligence ~~or negligence~~ of the Association, its employees, contractors, or agents. **[NOTE TO BOARD: Please choose between a willful misconduct, gross negligence standard and a regular negligence standard. We recommend the Board consider a "willful misconduct or gross negligence" standard, since fact-finders (e.g., small claims court judges) often erroneously consider an HOA to be a "deep pocket" and the mere fact that something has happened is interpreted to be "ordinary" negligence, whether or not the HOA was in fact negligent.]** *OK with 1/17/19*



6.17 Owner's Liability to Association for Negligent Damage. In the event the need for any maintenance, repair, or replacement performed by the Association is caused by the willful or negligent act or omission of an Owner or a Resident, a member of his or her household, pets, tenants, invitees, or guests, the cost of such maintenance, repair, or replacement not covered by insurance, including any applicable insurance deductible and the cost of materials, labor, supplies, and services shall be charged to, and paid by, the Owner of the Condominium in the form of a Reimbursement Assessment.

[NOTE TO BOARD: Under Section 6.16 ("Limitation of Association's Liability") and Section 6.17 ("Owner's Liability to Association for Negligent Damage"), the first recourse in case of any damage will always be to the applicable property insurance policy. For insured casualties, if the Association is liable to an Owner under Section 6.16 or an Owner is liable to the Association under Section 6.17, for insured casualties each party's exposure would be limited to the amount of the deductible under the other party's policy.] OK SWM 11/17/19

6.16 Owner's Liability to Other Unit Owners or Residents. In the case of damage to a Condominium or its contents arising or allegedly arising from another Unit or the conduct of the Owner or Resident of another Unit (for example and not by way of limitation, damage to a Unit resulting from water leaking from another Unit), if any affected party or their insurers should assert claims against the Owner or Resident of another Unit to recover damages, any such claims shall not alter the obligation of each Unit Owner as provided in this Declaration to maintain, repair, and replace their respective Units; to carry insurance; and to perform and/or pay for repairs or reconstruction of their Unit in the event of casualty. Moreover, any such claims shall not affect the authority of the Board to enforce a Unit Owner's obligations with respect to his or her own Unit under the Declaration and shall not obligate the Association or the Board to intervene in any such claims or disputes between Unit Owners or Residents: [NOTE TO BOARD: Even if an Owner believes another Owner is responsible for damage to his Unit, as between the Association and the first Owner it is still that Unit Owner's obligation to repair the damage to his own Unit. Any claims that Owner may have against the other Unit Owner are his or her own business to pursue and are not the responsibility of the Association or the Board under the CC&Rs.] OK SWM 11/17/19

[NOTE TO BOARD: Some Associations prefer to include the following two sections concerning family day care homes and residential care facilities so the Association's rights are detailed. Others prefer not to include them so as not to give residents the "idea." Please let us know if you would like to include these sections or not.]

6.17 Family Day Care Homes. No family day care home for children shall be permitted within the Project except as specifically authorized by California Health and Safety Code section 1597.40, and other applicable state statutes. The OK SWM 11/17/19



owner/operator of any permitted family day care home shall provide the Association with prior written notice as to its operation, and comply with all local and state laws regarding the licensing and operation of a day care home and, in addition, shall:

- (a) Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of the day care home, as provided under California *Health and Safety Code* section 1597.531. This clause (a) of Section 6.19 is intended to be and shall be conclusively deemed to be the written notice to the operator or owner from the Association as specified in *Health and Safety Code* section 1597.231;
- (b) Be subject to the provisions of Section 6.12.2 ("Indemnification Regarding Business Activity");
- (c) Abide by and comply with all of the Association Rules;
- (d) Supervise and be completely responsible at all times for children for whom day care services are provided while they are within the Project; and
- (e) Cooperate with the Association upon request by the Association or its insurance agent or carrier for proof of insurance, proof of the agreement of the owner or operator of the home to these conditions, or other reasonable requests.

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Residential Care Facilities. Except for residential facilities serving six (6) or fewer persons and permitted in accordance with California *Health and Safety Code* sections 1566.3 and 1569.85 and other applicable state statutes, no health care facilities operating as a business or charity and serving the sick, elderly, or physically or developmentally disabled shall be permitted in the Project. The owner/operator of any permitted residential care facility shall comply with all local and state laws regarding the licensing and operating of such facility, and, in addition, to the extent permitted by applicable laws, shall:

- (a) Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of such residential care facility;
- (b) Be subject to the provisions of Section 6.12.2 ("Indemnification Regarding Business Activity");
- (c) Abide by and comply with all of the Association's Rules as applied to Units in the Project in a general manner;

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- (d) Supervise and be completely responsible for occupants of such residential facility at all times while they are within the Project; and
  - (e) Cooperate with the Association upon request by the Association or its insurance agent or carrier for proof of insurance, proof of the agreement of the owner or operator of such residential care facility to these conditions, or other reasonable requests.

6.21 Compliance with Laws. Each Owner and Resident shall comply with all requirements of all federal, state, and local governmental authorities and all laws, ordinances, rules and regulations applicable to his or her Unit and the Common Area.

6.22 Moving In and Out. The Association may charge a reasonable fee, including a damage deposit, to a Unit Owner to cover costs of administering the moving in or moving out of a Unit by a Unit Owner or the tenants or other occupants of a Unit, or the moving of furniture, equipment, or other large objects into or out of a Unit that requires use of the elevators. Before elevators are used for moving furniture, equipment, or other large objects, the Owner shall notify the Association and shall comply with all applicable Rules. **[NOTE TO BOARD: If access to the Units is by an elevator and/or an inside hallway and you feel that there is a significant impact on the interior parts of the Common Areas from owners and tenants moving in and out, you may want to include this fee to offset the extra administrative costs. The fee cannot be an arbitrary amount but must be based on a reasonable estimate of actual administrative costs. The damage deposit can be a separate amount which would be refunded if no damage occurred. If damage occurred that exceeded the amount of the deposit the owner still would be responsible for the damage under Section 6.17 ("Owner's Liability to Association for Negligent Damage.")]**

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6.23 Sports Apparatus. No sports apparatus shall be attached to the Building exterior, or affixed to any portion of the Common Area, nor shall any portable apparatus be used for playing sports in the Project.

6.24 Unlawful Conduct, Nuisances; Noise. ~~No unlawful~~ <sup>NO</sup> No unlawful, noxious, harmful, or offensive activities shall be conducted upon or within any part of the Project, nor shall anything be done within the Project that may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to any Resident of the Project, or which shall in any way interfere with Residents' use of the Common Area and facilities thereon or the use and enjoyment of their Units; *provided, however,* that each Owner and Resident acknowledges that due to the concrete slab floors and wood framing of the Buildings, noise from people moving about, moving furniture, using audio equipment, etc., within a Unit, will be transmitted between Units and may be affected by the installation of hard floors in a Unit and

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such noise transmission by itself shall not be considered a violation of this Section 6.24. **[NOTE TO BOARD: If there is a problem with noise transmission from one Unit to another, you may wish to include the above shaded language.]** Without limiting any of the foregoing, no Resident shall permit noise, including but not limited to the barking of dogs, to emanate from the Resident's Unit that would unreasonably disturb another Resident's enjoyment of his or her Unit or of the Common Area. The Association shall not be obligated to enforce this Section 6.24 when a dispute under the Declaration is solely between neighbors, does not involve Common Area, or is not an emergency. In any violation or dispute involving neighbors, Residents shall take reasonable steps to work with each other to resolve their differences before reporting a violation or dispute to the Association. Resident's complaints to the Association about neighbors shall: (a) be in writing; (b) give as much detail as possible concerning the dispute; (c) provide specific information about what informal efforts to resolve the matter were undertaken by the complaining Resident(s); and (d) provide the name, address, phone numbers, and email address of the complaining Resident(s). **[NOTE TO BOARD: Do you want to include the shaded optional language? It is intended to encourage Owners to resolve neighbor-to-neighbor disputes prior to involving the Board.]**

6.25 Conditions Affecting Insurance. Nothing shall be done, placed, or kept within the Project that will increase the rate of insurance or result in the cancellation of insurance under any insurance policy maintained by the Association, or which will be in violation of any governmental statute, ordinance, rule, or regulation. If any Owner or Resident, member of their household, tenant, invitee, or guest shall violate this Section 6.25, the Unit Owner shall be liable to the Association for any resulting increase in insurance premiums and any other damages, which may be assessed against the responsible Owner as a Reimbursement Assessment.

6.26 Requirement of Architectural Approval. As addressed in Section 8.2 ("Requirement of Architectural/Remodeling Approval"), construction, installation, modification, or alteration of Buildings, outdoor structures, landscaping, and outdoor lighting are subject to prior architectural approval.

6.27 Animals.

6.27.1 No Commercial Purposes. No animals shall be kept, bred, or maintained within the Project for any commercial purpose.

6.27.2 Number of Pets. A reasonable number of common domestic household pets such as a dog or a cat or a caged bird may be kept in each Unit. Unless otherwise provided in the Rules, a "reasonable number" of all dogs, cats, and birds kept in a Unit shall be deemed to be two (2) (for example, two dogs, or a dog and a cat, or a dog and a bird, or two birds).

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Control of Pets ~~[Version 1 applies only to dogs:]~~ While in Common Areas including Exclusive Use Common Areas, each dog must be restrained on a leash held by a responsible person capable of controlling the dog. ~~[Version 2 applies to all pets:]~~ While in Common Areas including Exclusive Use Common Areas, each pet must be leashed, caged, or carried by a responsible person capable of controlling it. ~~[NOTE TO BOARD: Version 2 means "no outside cats." Please select Version 1 or Version 2.]~~ Any Owner or Resident may cause any unleashed dog within the Common Area to be removed to a pound or animal shelter under the jurisdiction of the City or County.

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6.27.4

No Outside Structures for Animals. No animal cages, dog crates, or other devices or structures for the care, housing, or confinement of any animal shall be permitted anywhere in the Common Area, including any Exclusive Use Common Area. ~~[NOTE TO BOARD: Do you wish to include this section?]~~

6.27.5

No Outside Feeding of Animals. In order to control feral cats, raccoons, vermin, and other stray animals within the Project, no animal food shall be kept or placed outside anywhere within the Project, except for approved bird feeders. Pet feeding stations may not be kept in a garage if the garage door is left open permitting animals to access the feeding station. ~~[NOTE TO BOARD: Do you wish to include something like this?]~~

6.27.6

Responsibility for Pets. The owner of each pet shall be responsible for immediately removing and disposing of any waste introduced to any portion of the Project by such pet. Owners, their tenants, and guests shall prevent their pets from soiling any portion of the Common Area and shall immediately clean up any mess left by their pet.

6.27.7

Indemnification Regarding Pets. Each Owner, Resident, and any person bringing or keeping an animal within the Project shall be absolutely liable to the Association and all other persons for any injury or damage to persons or property caused by the animal brought upon or kept upon the Project by such person or by members of his or her household, tenants, invitees, or guests. To the fullest extent permitted by law, each Owner agrees to and shall indemnify and defend the Association, its officers, directors, employees, and agents and shall hold them harmless from and against any cost, loss, claim, or damages of any kind, arising out of or resulting from the presence or conduct of any animal brought upon or kept within the Project by the Owner, members of his or her household, tenants, invitees, or guests



including but not limited to attorney fees, any claims for consequential damages, and any claims arising or alleged to arise out of the enforcement or non-enforcement by the Association of the Governing Documents, including but not limited to the restrictions on animals contained in this Section 6.27. Any amounts owed pursuant to this Section 6.27.7 may be assessed as a Reimbursement Assessment.

6.27.8 Removal of Nuisance Pets. The Association shall have the right to prohibit the keeping of any animal which, after the responsible Owner or Resident has an opportunity for a hearing called by the Board pursuant to Section 14.12 ("Hearing Called by the Board; Executive Session; Open Meeting"), is found by the Board to be a nuisance.

6.27.9 Pet Rules. The Board may adopt and enforce pet Rules in addition to the provisions of this Section 6.27.

6.28 Trash Disposal. Trash, garbage, accumulated waste plant material, other waste and refuse, and recyclable waste shall be deposited only in ~~[ALT 1]: covered sanitary containers~~ ~~ALT 2]: containers provided for that purpose by the garbage collection service.~~ ~~[NOTE TO BOARD: Please indicate whether there are common dumpsters or if each Unit has individual trash service.]~~ Such containers shall be located in ~~an appropriate area [ALT 1]: near each Unit~~ ~~ALT 2]: designated areas in the Common Area and concealed from view.~~ No Owner or Resident shall permit or cause any garbage, trash, or other waste or refuse to be kept upon any portion of any Unit or elsewhere in the Project, except in such containers. Furniture, appliances, water heaters, construction or remodeling debris, and other bulky items must be properly disposed of off-site by the Owner or Resident at his or her sole expense and shall not be placed in Association waste containers or discarded in the dumpster areas. ~~[NOTE TO BOARD: Do you wish to require that bulky items be disposed off-site, as provided above?]~~

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YES

6.29 Machinery, Equipment, Motor Vehicle Maintenance. No power equipment, hobby shops, or motor vehicle maintenance (other than emergency work) shall be permitted on the Project except with prior written approval of the Board. Use of power tools is restricted to the hours of 8:00 a.m. to 5:00 p.m. on weekdays and Saturdays. 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. All hazardous or toxic materials shall be disposed of properly by each Owner.

6.30 Signs, Banners, Flags. Only the following types of signs, posters, banners, or flags shall be displayed to the public view from any portion of the Project:

**[NOTE TO BOARD: (a) through (e) reflect the most restrictive provisions permitted by law.]**

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- (a) Signs required by legal proceedings;
  - (b) A noncommercial sign or poster no larger than nine (9) square feet in size or a noncommercial flag or banner no larger than fifteen (15) square feet in size, displayed upon a Unit, and limited to the fullest extent permitted by *Civil Code* section 4710. **[NOTE TO BOARD: This includes political signs. This is the most restrictive provision allowed by law and it must be in the CC&Rs in order to be enforceable. If you wish to permit but control political signs or garage sale signs, see (f) and (g), below.]**
  - (c) A single sign of customary and reasonable dimension and design advertising a Unit for sale or rent, complying with the provisions of applicable law, including any applicable ordinance, and the Architectural Rules, if any, and located within areas of the Project that are designated in the Rules regarding such signs; and, in addition, an Owner or his or her agent may display one (1) for sale or for rent sign within his or her Unit;
  - (d) Other signs which by law cannot be prohibited;
  - (e) A flag of the United States, subject to City or County restrictions as to size and as to time, place, and manner of display, as provided in *Civil Code* section 4705;

**[NOTE TO BOARD: The following clauses are typical for developments with private streets or driveways.]**

- (f) A single identification sign which has been approved by the Board or the Architectural Committee (if any) located on a Unit identifying the number or address of the Unit and/or the names of the occupants;
- (g) Signs approved by the Board as required for traffic control and regulation of streets or open areas within the Project; and
- (h) Signs on the Common Area as approved by the Board for a purpose reasonably related to the affairs of the Association, including signs located at or near any entrance to the Project identifying the Project.

29  
6.31 Vehicles and Parking.

29  
Except as otherwise permitted in this Section 6.31, only Permitted Vehicles shall be parked, stored or operated within the Project.

- 29  
6.31.1 Permitted Vehicles. The following types of vehicles are Permitted Vehicles: appropriately licensed and operable (i) passenger automobiles, (ii) sports utility vehicles, (iii) motorcycles, (iv) trucks having a carrying capacity of three-quarter (3/4) ton or less, and (v) vans having a seating capacity of eight (8) persons or less.
- 29  
6.31.2 Prohibited Vehicles. All vehicles that are not Permitted Vehicles are Prohibited Vehicles and may not be brought into the Project. Without limiting the foregoing sentence, the following types of vehicles are Prohibited Vehicles: (i) dilapidated or inoperable vehicles; (ii) unreasonably noisy vehicles, vehicles that emit foul-smelling or offensive exhaust fumes; (iii) campers, mobile homes, motor homes, trailer homes, recreational vehicles; (iv) trailers; (v) boats; (vi) any vehicle that is too large to be parked entirely within a garage or entirely within a designated parking space ("oversized vehicle"); (vii) golf carts or similar equipment; and (viii) commercial vehicles. The term "commercial vehicle" shall not include any two-axle passenger vehicle, van, or pickup truck with carrying capacity of no greater than three-quarter (3/4) ton that is used by a Resident both for business and for daily personal transportation, provided that any signs or markings of a commercial nature on such vehicle shall be unobtrusive and inoffensive as determined by the Board.
- 29  
6.31.3 Parking Generally. The primary parking facility for Residents is the garage/parking space allocated or designated for the Unit. Each garage/parking space shall be used for parking the vehicles of the Residents of the Unit and shall not be used for any other purpose that interferes with the ability to park the number of vehicles the garage/parking space was designed to accommodate. Vehicles shall not be parked anywhere within the Project except wholly within a garage or in a designated parking area. Parking is not allowed at any time in designated fire lanes. No vehicle shall be parked continuously in the street for longer than seventy-two (72) hours.
- 29  
6.31.4 Parking of Commercial Vehicles. Commercial vehicles (other than a vehicle that constitutes a Prohibited Vehicle as defined in Section 6.31.2, above) of vendors, utilities, contractors, and others providing services may be parked in appropriate parking spaces within the Project temporarily as necessary while services are actually being performed and shall not be parked within the Project overnight.
- 29  
6.31.5 No Car Washing. Washing of vehicles of any kind shall not be permitted anywhere within the Project.

<sup>29</sup> 6.31.6 Vehicle Repairs. No motor vehicles or boats shall be constructed, reconstructed, repaired, or serviced within the Project (other than minor emergency repairs to the extent necessary to move the vehicle to a repair facility).

<sup>29</sup> 6.31.7 Parking Enforcement and Towing. The provisions of this Section 6.31.7 apply to all vehicles within the Project, including vehicles of guests and invitees. In addition to the provisions of this Section 6.31.7, the Board shall have the power and authority to adopt, promulgate, and enforce Parking Rules and shall have the power to impose fines and other sanctions for violations of provisions of the Governing Documents relating to vehicles and parking. Subject to the provisions of applicable law, including California *Vehicle Code* section 22658, the Board shall have the power and authority to cause the towing, at the vehicle owner's expense, of vehicles that are parked within the Project in violation of any of the provisions of the Governing Documents. Costs incurred by the Association relating to the towing and/or storage of any vehicle parked in violation of any provision of the Governing Documents shall be assessed as a Reimbursement Assessment against the Owner responsible or whose household member, Contract Purchaser, tenant, invitee, or guest is responsible for the presence of such vehicle.

**[NOTE TO BOARD: State law imposes very specific rules for towing by homeowner associations and failure to comply can result in significant financial penalties to the association. If your Association uses towing as a remedy for parking violations, it is probably wise to have your towing rules and procedures reviewed for compliance with the law; however this is not included in the scope of work for this governing document update.]**

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<sup>9</sup> 6.32 Conversion of Garage Parking Spaces Prohibited. Garage parking spaces shall not be converted into any use (such as a recreational room or a storage room) that would prevent their use as parking space for the number of vehicles the space was designed to accommodate.

6.33 Barbecues; Open Fires. Per the 2016 California *Fire Code* section 308.1.4, and any relevant successor Code and section thereof, only electric grills or small cooking devices using a liquid propane (LP) gas cylinder not to exceed nominal "one pound" (16.4 oz) may be used within ten feet (10') of combustible construction upon or within the Balconies or Decks. Use of charcoal or wood-burning open flame barbecues or other devices and the use of propane tanks larger than one pound (nominal) are not allowed on Balconies or Decks. No other open flame devices of any kind are permitted to be used anywhere within the Project.



6.34 *see item 11/17/19* Impairment of Structural Integrity. Nothing shall be done anywhere within the Project which will impair the structural integrity of the Building. Planters or pots heavier than fifty pounds (50 lb) (dry weight) and more than nine (9), fifteen (15) gallon containers shall not be placed on decks or balconies.

6.35 *see item 11/17/19* Window Coverings. All drapes, curtains, shutters, blinds or other window coverings visible from the street of Common Areas shall be beige, white, or off-white in color or lined in beige, white, or off-white or, as the case may be, of colors, materials and patterns which are approved by the Board. In no event shall aluminum foil, newspaper, or similar materials be placed in windows.

6.36 *see item 11/17/19* Outside Laundering, Clothes Lines. There shall be no outside laundering or drying of clothes within the Project and draping of towels, carpets, flags or laundry over railings is prohibited.

## ARTICLE 7 RENTING OR LEASING

*see item 11/17/19* **[NOTE TO BOARD: [This Article retains the rental provisions of Section 7.9 in the 2005 Declaration.]**

7.1 Right to Lease; Limitation on Leasing. Any Owner who wishes to lease his or her Condominium must meet each and every one of the following requirements, and the lease will be subject to these requirements whether they are included within the lease or not:

- (a) All leases must be in writing;
- (b) The lease must be for the entire Unit and not merely parts thereof, unless the Owner remains in occupancy;
- (c) No lease shall be for a period of less than one (1) year;
- (d) All leases shall be subject in all respects to provisions of the Declaration, the Bylaws, and all Rules adopted by the Board;
- (e) All Owners who lease their Condominiums shall promptly notify the secretary of the Association in writing of the names of all tenants and members of tenants' family occupying such Condominiums and shall provide the Board with a complete copy of the lease; all Owners leasing their Condominium shall promptly notify the Board of the address and telephone number where such Owner can be reached.

7.2 Violation Is a Default. Any failure of a tenant to comply with the Declaration, Bylaws, and Association Rules, shall be a default under the lease, regardless of whether the lease so provides. In the event of any such default, the Owner immediately shall take all actions to cure the default including, if necessary, eviction of the tenant;

7.2.1 Association's Right to Evict. If any tenant is in violation of the provisions of the Declaration, Bylaws, or Rules of the Association, the Association may bring an action in its own name and/or in the name of the Owner to have the tenant evicted and/or to recover damages. If the court finds that the tenant is violating, or has violated any of the provisions of the Declaration, the Bylaws of the Association, or the Rules of the Association, the court may find the tenant guilty of unlawful detainer notwithstanding the fact that the Owner is not the plaintiff in the action and/or the tenant is not otherwise in violation of tenant's lease. For purposes of granting an unlawful detainer against the tenant, the court may assume that the Owner or person in whose name a contract (the lease or rental agreement) was made was acting for the benefit of the Association. The remedy provided by this subsection is not exclusive and is in addition to any other remedy or remedies which the Association has. If permitted by present or future law, the Association may recover all its costs, including court costs and reasonable attorney fees, incurred in prosecuting the unlawful detainer action.

7.2.2 Notice in Writing. The Association shall give the tenant and the Owner notice in writing of the nature of the violation of the Declaration and/or Rules and a demand that the violation be cured within twenty-five (25) days from the mailing of the notice. If the violation has not been cured within such period, the Association may file for eviction.

7.3 Owner to Provide Tenant with Copies of Governing Documents. Each Owner shall provide a copy of the Declaration, Bylaws and all rules and regulations of the Association to each tenant of his or her Unit. By becoming a tenant, each tenant agrees to be bound by the Declaration, the Bylaws and the Rules of the Association, and recognizes and accepts the right and power of the Association to evict a tenant for any violation by the tenant of the Declaration, the Bylaws, and Rules of the Association. The Owner shall cause the tenant to acknowledge in writing that the tenant has read and understood the Declaration, the Bylaws, and the Rules, and agrees to comply with the provisions. The signed acknowledgement is to be provided to the Association's manager within fifteen (15) days of occupancy.

7.4 Provisions Controlling Leasing or Renting of Units. Notwithstanding anything to the contrary in this Article 7, the following provisions shall control the leasing or rental of any Units in the Project;

7.4.1 Lease / Rental Units. The purpose of this Section 7.4 is to set forth the limitations and restrictions in regard to leasing or rental of Units. The primary purpose of the limit and restrictions is to protect and preserve property values, the availability of preferred financing through compliance with secondary market standards for similar projects, the active participation and cooperation of the Members in the management of the Project by the Board of Directors, and the residential nature and quality of the Project by limiting the number of Units that are leased or rented to third parties.

7.4.2 Definitions.

- (i) "Lease" or "Rental Agreement" means any agreement between an Owner and a third party whereby the third party obtains the right of use and possession of the Owner's Unit (without the Owner in residence), and the Owner receives monetary or other compensation in return for those rights.
- (ii) "Third Party" for the purposes of this Section 7.4.2 means any party without an ownership interest in the Unit.
- (iii) "Quota" for purposes of this Article 7 means the maximum number of Units that may be leased or rented at one (1) time which shall not be more than fifteen (15) out of a total one hundred twenty-two (122) Units.
- (iv) "Governing Documents" refers to the Declaration, as amended, the Association Bylaws, and any Association Rules or policies currently in effect.
- (v) "Owner" or "Owners" for purposes of this Section 7.4.2 means only the record holder(s) of fee simple legal title to a Unit in the Project, and shall not refer to any holder of a security or equitable interest in any Unit, including, without limitation, any purchaser under a contract of sale for any Unit.

7.5 Rights of Owners. Any Owner shall be entitled to rent/lease his/her Unit only where one (1) or more of the following circumstances exist.

- (a) The Unit was leased to a tenant prior to October 11, 2005 (provided this exemption shall cease as to a particular Unit upon the expiration of the

lease, including any extensions for therein, in place as of October 11, 2005); or

- (b) The Owner became Owner of the subject Unit prior to October 11, 2005 and the lease is executed thereafter and complies with the provisions of Section 7.6(b) ("Request for Approval of Board"); or
- (c) The Owner inherited the subject Unit as a bona fide heir to the estate of a deceased Owner described in Section 7.4.2 ("Definitions"), and the lease is executed thereafter and complies with the provisions of Section 7.6(b), ("Request for Approval of Board"); or
- (d) The Board of Directors has formally approved, in writing, the Owner's written request to lease/rent the subject Unit pursuant to Section 7.7.1(i) and (ii) ("Criteria for Approval"); or
- (e) The Board of Directors has waived its right to deny an Owner's written request to rent/lease a Unit by failing to make a determination within the time periods provided for in Section 7.6 ("Request for Approval of Board").

**7.6 Request for Approval of Board.** All Owners leasing or renting at the time this provision becomes effective must "register" with the Board, by providing a copy of the existing lease. Existing lease agreements on October 11, 2005 shall be deemed approved, but not be extended beyond the term provided in such lease agreement, including any extensions provided for therein, without compliance with this Section 7.6. All other Owners must seek approval prior to entering into a lease or rental arrangement. Owners applying for approval of the leasing of a Unit have the right to request a hearing before the Board of Directors. The hearing shall be set before the Board of Directors within thirty (30) days after receipt of the request for hearing together with the application for approval, and the Board shall make its determination within five (5) days after the hearing. In cases where a hearing is not requested, the Board shall make its determination within thirty (30) days after receipt of the application for approval. If the Board fails to make a determination on any application within the foregoing time periods, its right to disapprove the request is waived. These time limits may be extended by the written agreement of both parties, i.e., the Owner(s) and Board of Directors. The Board of Directors has the power to approve or disapprove requests to rent/lease Units, in accordance with the standards set forth in Section 7.7.1 ("Criteria for Approval"). Before any Unit may be considered for approval to be leased/rented, and before any of the foregoing time periods begin to run, the Owner must provide the Board of Directors with all of the following documents for its consideration:



- (a) A written request to lease/rent the subject Unit, identifying the subject Unit and stating the proposed lease term and the tenant and other information required in this Article 7; and
- (b) A written lease (in the form to be used by the Owner) which specifies the following terms and conditions:
  - (i) the tenant shall be subject to all of the same provisions of the Governing Documents as the Owner; and
  - (ii) failure by the tenant to comply with the provisions of the Governing Documents will constitute a default under the rental/lease agreement; and
  - (iii) the term shall not be less than one (1) year; and
- (c) If the Owner wishes to qualify for approval under Section 7.7.2 ("Approval of Lease Application in Special Cases") a "Statement of Hardship and Request for Board Hearing" setting forth the special circumstance for the request to lease the Unit.

**7.7 Completed Application to Be Delivered to Board.** The foregoing written applications and supporting documents (the "Completed Application") must be hand-delivered personally to a Board member at a Board meeting or hand-delivered or mailed to the attention of the President of the Association. Notwithstanding anything to the contrary in this Article 7, the Board of Directors has discretion to deny consideration of a request where a Completed Application has not been received by the Board.

**7.7.1 Criteria for Approval.** The Board of Directors shall follow the criteria set forth in this Article 7 in considering applications for approval to lease/rent Units.

- (i) the Board of Directors shall approve any requests to lease a Unit so long as the requirements of this Article 7 have been satisfied, and (a) the present number of leased/rented Units in the Project does not exceed the "Quota" set forth in Section 7.4.2(iii) ("Definitions"); or (b) the Owner is an Owner qualified under Section 7.4.2(v); or (c) the Board finds that the criteria set forth in Section 7.4 ("Provisions Controlling Leasing or Renting of Units") have been met.
- (ii) the Board of Directors shall not approve any requests to lease/rent a Unit where the requirements of this Section 7.7 have not been met.

7.7.2 Approval of Lease Application in Special Cases.

- (i) the Board shall approve the temporary leasing of a Unit for a one (1) year period WITHOUT regard to the Quota limitation in special circumstances which the Board finds meet the following criteria:
- A) non-permanent job transfer, where the Owner is moving out of the area because of the distance of the new work site from the Project and expects to occupy the Unit again at the end of the assignment;
  - B) serious illness in the family or of a person with a close relationship to the Owner which requires the Owner to live elsewhere temporarily to provide care for the ill person;
  - C) substantial, adverse changes in the Owner's financial condition due to job loss, emergency expenses or other sudden loss, which create a significant problem for the Owner in maintaining the expenses of ownership of the Unit without the benefit of rental income and threatened forfeiture of the Unit; and
  - D) the Owner has actively tried to sell the Unit by listing the Unit for sale on the local multiple listing at a reasonable price for three (3) consecutive months without receiving an offer to buy the Unit at a price within five percent (5%) of the listing price (a reasonable price shall be a price within Twenty Thousand Dollars (\$20,000) of the highest sales price of comparable Units within the Project within the six (6) month period preceding the listing of the Unit for sale, or if no such sales exist, the appraised value of the Unit based on a letter appraisal from a local realtor with at least five (5) years' experience in residential sales in the local area, to be obtained by the Association.
- (ii) the Board may also approve the temporary leasing of a Unit for a one (1) year period WITHOUT regard to Quota limitation in other special circumstances where the inability to lease the Unit will create a serious hardship on the Owner as a result of unexpected circumstances.

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The purpose of this **Section 7.7.2** is to protect Owners from serious hardship, but it is not intended to permit Owner-occupied Units to be converted to rental Units at a time that the Quota has been exceeded unless the Owner shows one (1) or more of the special circumstances set forth in **Section 7.7.1** ("Criteria for Approval") or other serious hardship due to unexpected circumstances. Any denial of a "Special Circumstances" request must be based on a finding by the Board of Directors that withholding its approval is reasonably related to the protection, preservation or proper operation of the Project and the purposes of the Association as set forth in **Section 7.1** ("Right to Lease; Limitation on Leasing") or otherwise in its Governing documents, and that the Owner will not suffer serious hardship due to unexpected circumstances. For purposes of **Section 7.1**, not having read or known the content of this Declaration is not an "unexpected circumstance." An Owner may be considered for an extension to the one-year period referred to in **Section 7.1** by reapplying to the Board of Directors for approval to lease the Unit as provided in **Section 7.1**.

7.8 **Record Keeping / Waiting List.** The Secretary or other designated representative of the Association shall:

- (a) Keep records regarding the number of leased/rented Units;
- (b) Keep records regarding mailing address and telephone number of the Owner and telephone number of the tenant, as provided by the Owners;
- (c) Keep records of all requests to lease/rent Units and files containing the date of request and lease agreements provided by the Owners;
- (d) Keep a waiting list of all Owners desiring to lease/rent their Units when the Quota limitations are filled. Owners shall receive priority on the waiting list according to the order in which their requests to lease/rent their Units are received. Once a waiting list is formed, requests of Owners on that list will be considered before those requests of Owners not on the list, in order of priority, except as to **Section 7.7.1** ("Criteria for Approval") and **Section 7.7.2** ("Approval of Lease Application in Special Cases").

## **ARTICLE 8 ARCHITECTURAL AND UNIT REMODELING CONSIDERATIONS**

8.1 **Purpose and Intent.** It is the purpose and intent of this **Article 8** to ensure that additions and alterations in the Project are consistent with the interests of the

Project as a whole and the coherence, value, attractiveness and aesthetic compatibility of all improvements in the Project, including architectural designs and features. To that end improvements, changes and alterations that are considered bizarre, outlandish or offensive to a reasonably prudent Owner within the Project will not be approved. In general, the Board may from time to time adopt, amend, and repeal Rules and regulations to be known as "Architectural/Remodeling Rules." These Rules shall set forth the standards for review and guidelines for improvements or alterations to the internal facilities of a Unit and its Exclusive Use Common Area; *provided, however*, that these Rules shall not be in derogation of any minimum standards required by this Declaration.

- 8.2 Requirement of Architectural/Remodeling Approval. An Owner may make changes or alterations to his or her Unit or to that Unit's Exclusive Use Common Area. To do so, an Owner must obtain prior architectural/remodeling approval. Additionally, an Owner shall conform and comply with the Rules, restrictions, and procedures established in this **Article 8** and all the Association's Rules and regulations as stated in the Association's Governing Documents. An Owner is not permitted to make any additions or alterations to the Project's Common Area. The requirement of architectural/remodeling approval shall not apply to alterations, additions, or improvements made or constructed by or on behalf of the Association.
- 8.3 Compliance with Governmental Requirements. In addition to the requirements of this **Article 8**, an Owner of a Unit is required to obtain all permits and governmental authorizations, if any, required for any work done within such Owner's Unit and such Owner must comply with all applicable zoning and building codes as well as other applicable laws and ordinances. The Owner of each Unit is solely responsible for complying with any applicable building permit process or other governmental requirements with respect to any work done within the Owner's Unit. Submission of a request for architectural/remodeling approval and the review and approval of any proposals, plans, or other submittals shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements, nor shall it constitute the assumption of any responsibility by or impose any liability on the Association, the Board, the Committee, or its or their members as to the accuracy, efficacy, or sufficiency thereof. When architectural/remodeling approval standards of the Association are more stringent than applicable governmental standards, the more stringent standards of the Association shall apply, notwithstanding the fact that governmental approval may have been obtained based on governmental standards that are less stringent than those of the Association.
- 8.4 Rights of Disabled. Any modifications to a Unit to facilitate access or alter conditions that may be hazardous to persons who are blind, visually handicapped, deaf, or physically disabled must comply with applicable



requirements of *Civil Code* section 4760 and **Section 8.2** ("Requirement of Architectural/Remodeling Approval") and **Section 8.3** ("Compliance with Governmental Requirements") of this Article.

8.5 **Rules and Restrictions.** This **Section 8.5** enumerates the Rules and restrictions of the more common subjects of Unit remodeling improvements, changes or alterations and does not represent an exhaustive list of items that require prior architectural/remodeling approval. Nothing in this **Section 8.5** shall be deemed to limit the generality of **Section 8.2** ("Requirement of Architectural/Remodeling Approval") and **Section 8.3** ("Compliance with Governmental Requirements").

8.5.1 **Solar Energy Systems.** As provided in *Civil Code* section 714.1, only solar energy systems approved by the Board shall be installed, added, or improved in or on any Common Area.

8.5.2 **Satellite Dishes and Antennas.** No outside radio or television aerial, antenna, dish, wire, or other receiving or transmitting device (collectively "antenna") shall be erected, constructed, or maintained on the Common Area including upon the exterior of any Building, except (i) those erected, constructed, or maintained by the Association, (ii) an antenna free standing within a Balcony not visible from the ground/street level, (iii) an antenna free standing on a Deck not visible from the ground/street level, or (iv) those that by law cannot be prohibited. It is the intention of this **Section 8.5.2** to restrict radio or television aerials, antennas, dishes, wires, and other receiving or transmitting devices in the Project to the fullest extent permitted by law and to authorize the Board to adopt and implement Rules regarding the same.

8.5.3 **No Installations on or Through the Low Slope Roof.** ~~No installation of solar panels shall be placed on a low sloped roof except upon approval of the Association, and no installation of any other kind, including but not limited to skylights, vents, antennas, or air-conditioning equipment, shall be placed on, installed upon or through any low slope roof except alterations, additions, or improvements made or constructed by or on behalf of the Association.~~

8.5.4 **Installations on or Through the Steep Slope Roof.** A third floor Owner may request approval to install a vent through the steep slope roof for the sole purpose of improving the air circulation beneath the roof and that request will require architectural/remodeling approval. No other installation on or through the steep slope roof is permitted, including, but not limited to, skylights, air-conditioning equipment, or antennas ~~except alterations, additions, provided that an Owner may install a~~

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Solar panels

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solar panel on a steep slope roof only upon approval of the Association.

8.5.5 Balconies and Decks. No additions, alterations, fixtures, permanent floor coverings or construction of any kind shall be made or installed on any Balcony, or Deck without prior architectural/remodeling approval.

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8.5.6 Air Conditioner Units. Prior architectural/remodeling approval is required for any interior or exterior installation of air-conditioning systems. For first and second floor Units, air-conditioning systems shall only be installed in the already provided spaces beneath the windows in each Unit. For third floor Units, air-conditioning systems shall not be installed on any Deck surface nor vent through any roof (low or steep slope) or building exterior visible from ground/street level. Venting of an air-conditioning system into the Deck air space shall be below line of sight from ground/street level.

8.5.7 Interior Unit Decoration. Except as provided in Section 8.5.8 ("Window Coverings and Awnings"), Section 8.5.9 ("Floor Coverings"), and Section 8.5.10 ("Ceiling Radiant Heating"), each Owner shall have the right to decorate or redecorate the interior of his or her Unit. Owners may improve or alter any facility within the interior boundaries of his or her Unit, provided prior architectural/remodeling approval is obtained and such improvement or alteration does not impair the structural or acoustical integrity of the Unit, Common Area, utilities, other systems servicing other Units or the Common Area, or other Units.

up window draw

8.5.8 Window Coverings and Awnings. All drapes, curtains, window shades, blinds, shutters and other window coverings installed in the windows of any Unit that are visible from the exterior of the Unit shall be beige, white or off-white or lined in beige, white or off-white or as otherwise approved by the Board, and must comply with any applicable Architectural/Remodeling Rules. No exterior awning, ornamental screens, or sunshades of any kind shall be installed or placed without prior architectural/remodeling approval.

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8.5.8.1 AND SECTION 8.5.8.2  
WINDOWS, DRAPES AND SHUTTERS  
REPLACEMENT  
SHOULD BE IN COMPLIANCE WITH EXISTING COMMON AREA AND FROM DECKING

8.5.9 Floor Coverings. To reduce sound transmission, all Units which are above other Units (second and third floor Units) shall have all floor areas except kitchens and bathrooms covered with carpet or other material which provides appropriate insulation against sound transmission to the Unit below as determined by the Architectural/Remodeling Committee and approved by the Board. The padding underlayment specification for carpeting is padding that is not less than fifty ounce (50 oz) jute padding, one-half inch (1/2") synthetic needle punch jute padding, or equivalent noise absorption padding.

For all Units, existing carpeting may be replaced with carpeting material (like for like in the same locations) without prior architectural/remodeling approval. Architectural/remodeling approval is required for all other flooring installation including replacing prior installations of materials other than carpeting. Specifically, for Units on the second and third floors, wood or composite flooring material may be installed only when one-half inch cork underlayment is used. For Units on the first floor, the one-half inch cork underlayment is not required, but architectural/remodeling approval is still required.

8.5.10 Ceiling Radiant Heating. The heating system for Units within the Project is by radiant heating panels built into the ceilings of every Unit. It is solely the responsibility of the Association to maintain these panels and repair them when they are inoperable. These panels are in the ceilings of every room except kitchens and bathrooms. Therefore, except for the ceilings in kitchen and bathroom areas a Unit Owner shall not install, attach, or intrude any facility (electrical, lighting, or other) into or onto the ceiling. Any and all costs for labor, materials, or any other service or provision to replace or restore the heating panels as result of any damage caused by a Unit Owner or Unit Owner's agent's failure to comply with this requirement will be borne solely by the Unit Owner.

8.5.11 Variances. The Board may, but is not obligated to, grant variances or adjustments if necessary or appropriate in its discretion to overcome practical difficulties due to conditions unique to a particular Unit, avoid unnecessary expense, or prevent unnecessary hardship in the application of the provisions of the Declaration; *provided, however*, that such variance or adjustment does not violate the purpose or purposes intended to be served by the standard or criteria being waived in each instance and is in conformity with the intent and purposes of the Declaration; and *provided, further*, that no such variance shall constitute a waiver of such provision with respect to any future application whether for the same Unit or any other Unit. Any variance granted by the Board shall be noted in the written approval of the proposed work and may be required by the Board to be recorded in the County records.

8.6 Architectural/Remodeling Approval Process

8.6.1 Architectural/Remodeling Committee. The Board in its discretion may appoint an Architectural/Remodeling Committee composed of Board members only, a "Committee of the Board" as defined in the Bylaws, to act for the Board in all matters related to, but limited to, initial review and recommendation of approval or disapproval of any request for

*The Full Board should provide*

architectural or remodeling additions, changes, or improvements and referred to throughout this Section 8.6 as the Board. In the event of an initial disapproval decision, the matter shall immediately be referred to the full Board for providing written notice to the Owner. An Owner having any disagreement with the initial decision has the right to bring his or her request for reconsideration by the full Board at a meeting that may be in a private or public forum at the discretion of the Owner.

8.6.2 Written Request for Approval. Any Owner proposing to perform any work that requires prior architectural/remodeling approval pursuant to this Article 8, shall submit to the Board, a written request setting forth the nature of the proposed work and furnishing such information and documentation as the Board may require depending on the nature and size of the proposed work. Subject to the discretion of the Board, such information and documentation shall include but is not limited to: (i) floor plans, (ii) plumbing/electrical specifications, (iii) construction plans, (iv) wall plans, (v) color samples of materials, (vi) elevations, (vii) graphics, and (viii) the Owner's proposed construction schedule.

8.6.3 Fees; Professional Consultants. The Board may charge a reasonable fee or fees for review of architectural/remodeling applications, drawings, plans, and specifications which may include the cost of retaining outside consultants including but not limited to architects, engineers, plumbers, electricians, or other contractors.

8.6.4 Basis for Decisions; Good Faith. The Board's decisions shall be made in good faith and shall not be unreasonable, arbitrary, or capricious. It is recognized and intended that the Board will employ subjective criteria and judgments in its review of and determination concerning plans and proposals submitted to it. The Board shall make its decisions from the perspective of the interest of the Project in the fostering of the coherence, value, attractiveness and aesthetic compatibility of all architectural/remodeling designs and features in the Project, after consideration of such factors the Board reasonably determines to be relevant and after reasonable investigation consistent with the scope and circumstances of the proposal submitted. The Board shall grant the requested approval only if:

- (i) the Owner has submitted a complete application;
- (ii) the Board finds that the plans and specifications conform to this Declaration and to the Architectural/Remodeling Rules in effect at the time such plans were submitted;

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- (iii) the Board finds that the proposed work will, if approved, be consistent and compatible with the architectural/remodeling and aesthetic standards prevailing within the Project and will be in harmony with the external design and appearance of existing structures and improvements within the Project; and
- (iv) the Board determines that the proposed work would be consistent with the standards of the Project and the purposes of this Declaration as to quality of workmanship and materials.

8.6.5 Decisions in Writing; Timely Decision; Reasonable Conditions. All decisions by the Board shall be in writing and shall be issued within forty-five (45) days from the date of submission of a complete application. At the Board's determination, an approval may include reasonable conditions to proceed, incorporate in, or for an appropriate conclusion of the request, which then becomes part of the request and obligates the Owner to comply. If a request is rejected or disapproved, the decision shall include an explanation of the Board's decision.

8.6.6 Owner's Compliance Failure During Active Construction. When it is determined during the performance of approved work that there was a violation of Section 8.2 ("Requirement of Architectural/Remodeling Approval"), Section 8.3 ("Compliance with Governmental Requirements") or the documented conditions set by the Board as part of its approval in Section 8.6.5 ("Decisions in Writing; Timely Decision; Reasonable Conditions"), the Board may stop all work activities. Any costs and/or complications incurred or resulting from this action shall be the sole responsibility of the Owner. Work activities may resume only upon the Board's finding that all violations have been remedied.

8.6.7 Board's or Committee's Failure to Make Timely Decision. Except for applications to install or use solar energy systems and install Electric Vehicle Charging Stations, if the Board shall fail to act on a request for approval within the time specified in Section 8.6.5 ("Decisions in Writing; Timely Decision; Reasonable Conditions"), the Owner shall be entitled to invoke internal dispute resolution discussed in Section 14.16 ("Internal Dispute Resolution") and this delay shall not result in an application being deemed approved. For an application to install or use solar energy systems, in the event of a delay longer than forty-five (45) days, the application will be deemed approved and for an application to install Electric Vehicle Charging Stations, in the event of a time delay greater than sixty (60) days, the application will be deemed approved.

8.6.8 Commencement of Approved Work. Upon receipt of written approval, the Owner shall, as soon as practicable, satisfy all conditions of the approval and diligently proceed with the commencement and completion of all approved work. Commencement of the approved work shall occur, in all cases, within ninety (90) days from the date of such approval. If the Owner fails to comply with this paragraph, any approval previously given shall be deemed revoked unless the Board, upon written request of the Owner made prior to the expiration of the time for commencement of the approved work, extends the time for such commencement. The Board shall not grant an extension of time for commencement of the work if the Board finds that there has been a material change in the circumstances upon which the original approval was granted.

8.6.9 Notice to Association Before Commencement of Work; Bond. The Board, in its discretion, may require an Owner to give the Association and any other Owner whose Unit will be affected by the work up to thirty (30) days' prior written notice before commencing approved work so that the Association or other Owner may record a notice of non-responsibility or take other appropriate action. The Board may require from the Owner performing work a bond or other assurance (such as disbursement through a voucher system of payments directly to materialmen, contractors, and subcontractors) to protect against mechanic's or materialmen's liens arising against the Common Area or other Units.

8.6.10 Completion; Extension of Deadline. The Owner shall complete all approved work within one (1) year after commencement thereof; except that in the case of reconstruction after substantially total destruction of a Unit, the construction or reconstruction shall be completed within eighteen (18) months after commencement thereof. In the case of projects under construction when this Declaration is recorded, the construction or reconstruction shall be completed by the completion date specified in the project approval or, if no such completion date was specified, within one (1) year (or in the case of reconstruction after unintended substantial total destruction of the Unit within eighteen (18) months) after the date of recordation. The date for completion may be extended as long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities, or other supervening forces beyond the control of the Owner or his or her agents, provided the Owner notifies the Board of such occurrence within a reasonable time after becoming aware of it. If an Owner fails to comply with this Section 8.6.10, the Board shall be entitled to proceed in accordance with the provisions of Section 8.6.14 ("Failure

to Remedy Non-conformity”), as though the Board has given written notice of non-conformity with approved plans per **Section 8.6.13** (“Notice of Non-conformity”).

8.6.11 Notice of Completion; Inspection of Completed Work. Upon the completion of any work for which approval is required under this Article 8, the Owner shall give written notice of completion to the Board. The written notice shall include copies of all applicable permits, job cards, and building permit inspections. Within thirty (30) days after receiving notice of completion from the Owner, the Board or its duly-authorized representative may inspect such work to determine if it substantially complies with the granted approval and Owner shall cooperate with the Board to conduct such inspection. If the Board fails to notify the Owner of any non-conformity within such thirty (30) day period, the work shall be deemed to be in accordance with the granted approval. If the Owner fails to give notice of completion, the Board shall be entitled to proceed in accordance with the provisions of **Section 8.6.14** (“Failure to Remedy Non-conformity”), as though the Board has given written notice of non-conformity with approved plans per **Section 8.6.13** (“Notice of Non-conformity”).

8.6.12 Failure to Obtain Required Approval. If any work that requires prior approval pursuant to this **Article 8** is performed without such approval having been obtained, the Board shall be entitled to proceed in accordance with the provisions of **Section 8.6.14** (“Failure to Remedy Non-conformity”), as though the Board has given written notice of non-conformity with approved plans per **Section 8.6.13** (“Notice of Non-conformity”).

8.6.13 Notice of Non-conformity. If the Board finds that the work was not done in substantial conformity with the granted approval, it shall notify the Owner in writing before the end of the thirty (30) day period set forth in **Section 8.6.11** (“Notice of Completion; Inspection of Completed Work”) specifying particulars of non-conformity and requiring the Owner to remedy the same within thirty (30) days from the date of the notice from the Board, or such longer time as the Board may designate in the notice.

8.6.14 Failure to Remedy Non-conformity. If the Owner fails to remedy such non-conformity within the time specified in the notice of non-conformity, the Board shall then, pursuant to the procedures set forth in **Section 14.12** (“Hearing Called by the Board; Executive Session; Open Meeting”), set a date on which a hearing before the Board shall be held regarding the alleged non-conformity. If the Board finds at such hearing that a substantial non-conformity exists, the Board may, in

addition to any other remedy available under the Governing Documents or applicable law, order the Owner to remedy or remove such non-conformity. If the Owner thereafter fails to do so within the time specified by the Board, the Board may, in addition to any other remedy available under the Governing Documents or applicable law, remove or remedy the non-conformity and, in that event, all expenses incurred by the Association in connection therewith shall be assessed against the Owner as a Reimbursement Assessment.

8.7 Sound Impact Standards. Within upper Units, the Board may require replacement flooring to be carpet and padding or other flooring materials with an Impact Insulation Class Rating (IIC) of eighty (80) or higher (determined in accordance with ASTM E1007-14 standards "Standard Test Method for Field Measurement of Tapping Machine Impact Sound Transmission Through Floor-Ceiling Assemblies and Associated Support Structures") or equivalent except in the kitchen, bathrooms, and the immediate entry way where linoleum or an equivalent product may be installed to replace existing linoleum or other hard flooring. In the event non-approved floor covering has been installed without obtaining prior architectural/remodeling approval, then upon receipt of noise complaints from Residents of another Unit and subject to notice and hearing pursuant to Article 14 ("Enforcement; Notice; Hearings"), the Unit Owner may be required to remove the unauthorized floor covering and replace it with carpet and padding or other floor covering having an IIC rating of eighty (80) or higher or other flooring material approved by the Board or may be required to take other remediation measures (for example and not by way of limitation, the installation of area rugs and padding).

8.8 Code Upgrades to Common Area. If an Owner's requested change would result in the need for the Association to upgrade any Common Area component or system for which the Association is responsible (such upgrade being necessary to comply with changes in code requirements in order for appropriate governmental permits to be issued to the Owner for Owner's proposed work and where such code upgrade would not be required but for the work proposed by Owner), the Board may condition approval upon the agreement of the Owner to pay for or contribute to the cost of the Common Area upgrade. In making a determination, the Board may consider such factors as it deems appropriate under the circumstances including, but not limited to, whether Owner's requested work is discretionary or is required as the result of a casualty, the failure of a component in the Common Area or within a Unit; the age, condition, and remaining useful life of the component or system that would require upgrading; the cost of upgrade; whether or not the Association has reserved for the replacement or upgrade of the system; and whether a feasible alternative to the Owner's proposed work is available that would not necessitate the Common Area code upgrade. Under no circumstances shall the Association be obligated to pay



for such code upgrades if the Owner has not applied for and obtained prior architectural/remodeling approval pursuant to this Article 8.

8.9 Disproportionate Burden on Common Utility Service; Separate Metering. If an Owner-installed alteration or addition will increase any utility usage for the Owner's Unit that is not separately metered, the Board may require that separate metering facilities be installed at the Unit Owner's sole cost and expense or, if that is not feasible, the Board may allocate such utility costs in a manner the Board determines is reasonable and equitable as provided in Section 9.7.2 ("Allocation of Regular Assessment").

8.10 Non-waiver. The approval by the Board of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring approval under this Article 8, shall not be deemed to constitute a waiver of the right to withhold approval of any similar plan, drawing, specification, or matter subsequently submitted for approval with respect to the same Unit or any other Unit.

8.11 Disclaimer of Liability. Neither the Board nor any Board member shall be liable to the Association, to any Owner, or to any person deriving an interest through an Owner for any damage, loss, or prejudice suffered or claimed on account of: (i) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; or (iii) the development of any property within the Project; *provided, however,* that the Board or such member has acted in good faith on the basis of such information as may be possessed by it or him or her. Without limiting the generality of the foregoing, the Board may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted for approval pursuant to this Article 8. Every purchaser, by acquiring title to a Unit or portion thereof agrees not to bring any action or suit against the Board or its members seeking to recover any such damages.

## **ARTICLE 9                      ASSESSMENTS AND LIENS**

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9.1 Covenant of Owner. Each Owner of a Unit within the Project, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, shall be deemed to have covenanted and agreed to pay to the Association all: (i) Regular Assessments, (ii) Special Assessments, (iii) Reimbursement Assessments, and (iv) Enforcement Assessments levied by the Association as hereinafter provided, together with all Additional Charges.

- 9.1.1 Association's Power to Collect. Such deed or conveyance shall be deemed to vest in the Association the right and power to initiate all actions and procedures as the Board shall deem necessary or appropriate for the collection of such Assessments and Additional Charges and for the enforcement of the liens hereinafter provided for.
- 9.1.2 Assessments Are a Personal Obligation. Assessments levied by the Association pursuant to this Declaration, together with all Additional Charges, shall be a personal debt and obligation of the Owner against whom they are assessed, and shall bind his or her heirs, devisees, personal representatives, successors, and assigns.
- 9.1.3 Obligation Runs with the Land. The obligation to pay Assessments and Additional Charges and the right and power of the Association to initiate all actions and procedures for collection shall run with the land, so that each successive Owner or Owners of any Unit shall, in turn, become liable to pay all such Assessments and Additional Charges assessed that become due and payable during the time he or she is Owner of such Unit.
- 9.1.4 Owner's Liability After Transfer. After an Owner transfers of record his or her interest in any Unit, he or she shall not be liable for any Assessments levied thereafter with respect to such Unit. Such Owner shall remain personally liable, however, for all unpaid amounts due and owing at the time of transfer, together with Additional Charges accruing until time of collection. No assumption of personal liability by a successor Owner shall relieve any Owner from personal liability for delinquent Assessments. A Contract Seller of any Unit shall continue to be liable for all Assessments and Additional Charges until a conveyance by deed of such Unit is recorded in the Office of the County Recorder.
- 9.2 Creation of Lien. Each Assessment levied by the Association pursuant to this Declaration, together with all Additional Charges, shall be a charge upon the land and upon levy shall be secured by a continuing lien upon the property against which such Assessment is levied. The Association shall have a separate lien and a separate lien is hereby created upon each Unit to secure the payment of any such Assessments and Additional Charges as may be levied under this Declaration.
- 9.2.1 Lien Is Continuing. The lien provided for herein shall continue to secure all Assessments and Additional Charges levied upon any Unit notwithstanding the transfer of record title to such Unit, and any such transfer shall be subject to the Association's lien, provided that, prior to

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such transfer, a notice of delinquent assessment has been recorded as provided in the Declaration and by law.

- 9.2.2 Priority of Association's Assessment Liens. The priority of all such liens on each Unit shall be in inverse order so that upon the foreclosure of the lien for any particular charge on any Unit, any sale of such Unit pursuant to foreclosure of the lien will be made subject to all liens securing Assessments and Additional Charges on such Unit that become due and payable subsequent to the lien being foreclosed upon.
- 9.3 Purpose of Assessments. The Assessments levied by the Board shall be used exclusively to pay for the costs of management and operation of the Project, of conducting the business and affairs of the Association, to promote the recreation, health, safety, welfare, benefit, and interests of the Owners and Residents in the Project, and for the improvement and maintenance, repair, and replacement of the Common Area and, to the extent provided for in the Governing Documents or by law, of the Units situated within the Project or which, in the opinion of the Board, shall be deemed to be necessary or proper for the management of the Project or of the affairs of the Association, or the benefit of the Owners, or for the enforcement of the Governing Documents.
- 9.4 Funds to Be Held in Association Name. Unless otherwise determined by the Board, the Association shall maintain at least two (2) separate accounts in one (1) or more banks or other depositories selected by the Board, which accounts shall be clearly designated The Menlo Commons Association operating account and The Menlo Commons Association reserve account. The Assessments collected by the Association shall be properly deposited into such accounts. Withdrawal of funds from Association accounts shall be subject to the requirements of Section 10.4 of the Bylaws ("Checks, Drafts, and Evidences of Indebtedness").
- 9.5 Funds Held in Trust for Owners. The Assessments collected by the Association shall be held in trust by the Association for and on behalf of each Owner. Upon sale or transfer of any Condominium by any Owner, the Owner's interest in the funds held in trust by the Association shall terminate and shall be deemed automatically transferred to the successor-transferee of such Owner.
- 9.6 Authority of the Board to Levy Assessments. The Board shall have the power and the duty to levy Regular Assessments and Special Assessments sufficient to meet the Association's obligations under the Governing Documents and applicable law.