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## **THE COMSTOCK CONDOMINIUM HOMEOWNERS ASSOCIATION**

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



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**Note:** There are many references in these documents to California Codes. These laws can be located at no cost by going to <http://www.leginfo.ca.gov/calaw.html> on the web. The reason so many references are made rather than fully explaining the law is that California law is comprehensive, complicated and not easy to interpret, as well as ever changing, and these CC&Rs are intended to be flexible enough to change with it. In addition, it would be very cumbersome to include the exact wording of the statutes. There is a new law that has been passed at the time these Amended Bylaws are provided to members which is intended to improve the Davis Stirling Act currently found at Civil Code Section 1371 – 1378. According to drafters there will not be material changes to the laws, but simply a longer restatement breaking up the subject matter. The Davis Stirling Act will be relocated January 1, 2014, each reference to a subject/law will apply as written in the changed body of law. The Attorney who drafted these documents will supply a cross-reference chart upon request for any changes in statute references. The law allows board members to amend the documents as to any material changes without membership approval, after the new body of law is effective.

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

**THE COMSTOCK CONDOMINIUM HOMEOWNERS ASSOCIATION**

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**THE BOARD OF DIRECTORS OF THE COMSTOCK CONDOMINIUM HOMEOWNERS ASSOCIATION WISHES THE PUBLIC TO BE AWARE THAT THIS RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS RESTATES AND SUPERSEDES THE PRIOR REVISED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS recorded on May 18, 1990, as Document 90 103038, at Book 15867, Page 255 et seq., and any other Amendments or Modifications thereto in the official records of CONTRA COSTA County, except that the Exhibits showing the Condominium Plan and Assessment Allocation are still viable.**

The undersigned hereby certify that they are the President and Secretary, respectively, of THE COMSTOCK CONDOMINIUM HOMEOWNERS ASSOCIATION and are authorized by the Board of Directors to execute this Restated Declaration.

The original Declaration created a condominium Development subdivision as described in Civil Code Section 1351(f) which is subject to all provisions of the Davis-Stirling Common Interest Development Act found at Civil Code Section 1350 et seq., to be administered by the Association named above.

**The property covered by this Restated Declaration includes all that real property located in the City of Concord, State of California, more particularly described as:**

**All that property shown in the Subdivision Map 5428 for THE COMSTOCK CONDOMINIUMS, recorded in the Office of the Recorder of CONTRA COSTA County, State of California, on August 2, 1979, in Book 227 of Maps at Page 42-44 hereinafter referenced as "The Map".**

The Property consists of 13 buildings, 116 condominiums, [92 2 bedroom units and 24 3 bedroom units], 116 shared garages, 116 storage areas, 2 pools, pump sheds and green belts.

**WHEREAS**, the Association has heretofore been incorporated under the laws of the State of California as a non-profit mutual benefit corporation, **THE COMSTOCK CONDOMINIUM HOMEOWNERS ASSOCIATION**, for the purposes of exercising the functions hereinafter described; and,

**WHEREAS**, the membership has tendered the requisite approval to record the Restated Declaration of Covenants, Conditions, and Restrictions;

**NOW, THEREFORE**, this Association and the Owners hereby establish these Restated Covenants, Conditions, and Restrictions for the benefit of the Owners of all Units and hereby declare that all of the Development described above shall be held, sold, and

conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability thereof, and which shall run with the land, constitute equitable servitudes. They shall be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors, and assigns, and inure to the benefit of each Owner of real property within the described Development.

## **ARTICLE I** **DEFINITIONS**

**Section 1.1.** “**Architectural Review Committee**” shall mean and refer to the Committee provided for in the Article VII that reviews proposals for changes to the Units.

**Section 1.2.** “**Articles of Incorporation**” shall mean the Articles of Incorporation on file with the Secretary of State including any amendments and/or restatements.

**Section 1.3.** “**Assessments**” shall mean and refer to those assessments as described in Article IV.

**Section 1.4.** “**Association**” shall mean and refer to **THE COMSTOCK CONDOMINIUM HOMEOWNERS ASSOCIATION**, a California non-profit mutual benefit corporation organized for the purpose of managing a common interest development.

**Section 1.5.** “**Board**” shall mean the Board of Directors of the Association, duly appointed and elected pursuant to the Association Bylaws or Amended Bylaws currently in effect.

**Section 1.6.** “**Common Area**” shall mean and refer to the entire Project except the Units. Undivided fractional interests in the Common Area shall be owned by the Owners of the Units as tenants in common, in shares described on Exhibit C attached hereto. Common Area is more particularly described in Article II.

**Section 1.7.** “**Common Expenses**” means and includes the actual and estimated expenses of operating the property and any reasonable reserve determined by the Board and all sums designated Common Expenses by or pursuant to the Condominium documents.

**Section 1.8.** “**Common Interest**” means the proportionate undivided interest in the Common Area that is included with each Unit as set forth in this Declaration.

**Section 1.9.** “**Condominium**” shall mean a Condominium as defined in Civil Code of California section 1351, and is an estate in real property consisting of:

- (a) A separate fee simple interest in a Unit; and,
- (b) A fractional undivided interest as a tenant in common in the Common Area.

**Section 1.10.** “**Condominium Plan**” shall mean and refer to the original Condominium Plan prepared and recorded in the official county records entitled “The Condominium Plan, Subdivision 5428, County of Contra Costa, which is attached to the original Declaration and the Revised Declaration described on Page 1, in Book 15867, Pages 294-298.



**Section 1.11.** “**Covered Property**” shall mean and refer to all the real property described in Sections 1.22 and 1.23 below and any additional real property which shall become subject to this Declaration.

**Section 1.12.** “**Declaration**” or “**CC&Rs**” shall mean and refer to the Declaration of Covenants, Conditions and Restrictions specifically described, or if in a generic sense, this Restated Declaration, and the provisions herein set forth in this entire document, as may from time to time be amended or restated.

**Section 1.13.** “**Exclusive Use Common Area**” shall mean and refer to portions of the Common Area used by one or more, but fewer than all, of the Owners of the Units and the various exclusive use elements are more fully described in Article II.

**Section 1.14.** “**Governing Documents**” shall refer to the regulatory documents, including this Restated Declaration of Covenants, Conditions, and Restrictions; the Articles of Incorporation; the Amended Bylaws; all duly adopted Resolutions; and the Association Rules and Regulations currently in effect.

**Section 1.15.** “**Maintenance**” shall mean the exercise of reasonable care to keep improvements and fixtures in a state similar to their original condition, normal wear and tear excepted, or improved as determined prudent by the Board of Directors.

Maintenance of landscaping means the exercise of regular fertilizing, irrigation and other garden management practice necessary to reasonably promote healthy, weed-free environment for optimum plan growth.

**Section 1.16.** “**Map**” shall mean that certain subdivision map referenced on page 1.

**Section 1.17.** “**Member**” shall mean and refer to Owners of Units who are those persons entitled to membership as provided herein and in the Bylaws for the Association.

**Section 1.18.** “**Mortgage**” shall mean and include any Deed of Trust as well as a Mortgage in the conventional sense and the term “**Mortgagee**” shall mean and include a beneficiary under or holder of a Deed of Trust. “**Eligible Mortgagee**” is one who has provided written notice to the Association requesting notice of any matters to which the Mortgagees are entitled and who has provided and kept current its contact information.

**Section 1.19.** “**Owner**” shall mean and refer to the record Owner (meaning on a recorded instrument) of the Condominium, whether one or more persons or entities, of a fee simple title to any Unit which is part of the Properties. Those having such interest merely as security for the performance of an obligation (such as a holder of a deed of trust) are not considered owners. A contract buyer may be considered an Owner if the Contract or a Deed is recorded.

**Section 1.20.** “**Parking Spaces**” shall mean the spaces in the Common Area designated on the original Condominium Plan for parking. See Article II for more detail.

**Section 1.21.** “**Storage Area**” shall mean the Storage Shed/Closet designated on the original Condominium Plan as Storage Area. See Article II for more detail.

**Section 1.22.** “**Project**” shall mean and refer to all of the Properties, including all structures and improvements thereon, commonly known as **COMSTOCK CONDOMINIUMS**.

**Section 1.23. "Properties"** shall mean and refer to that real property located in the County of CONTRA COSTA, State of California, described on page 1.

**Section 1.24. "Rules"** shall refer to the Association Rules related to use of the properties and obligations of the parties that are adopted by the Board and distributed to Owners.

**Section 1.25. "Unit"** shall refer to the elements of each individual Condominium not owned in common with the Owners of other Condominiums in the Project. Each Unit is an individual residence which may also be alternately called a "dwelling" or "Unit", which is shown, defined and delineated on the recorded Condominium Plan referenced above. The boundaries of Units are described in Article II.

**Section 1.26. "Unit Owner"** refers to all holders of record fee title to a Condominium. It will apply to contract purchasers so long as the buyer has been designated the Owner for purposes of exercising membership rights in the Association by the seller.

**ARTICLE II**  
**PROPERTY RIGHTS AND EASEMENTS/  
RIGHTS OF ACCESS/OWNERS' ASSOCIATION**

**A. DIVISION OF PROPERTY**

**Section 2.A.1. Description of Property.** All real property shown on the Map and described above is subject to this Restated Declaration.

**Section 2.A.2. Division of Property.** The property is divided into Common Area (including Exclusive Use/Restricted Common Area), plus the Units combining to form "separate freehold estates" which each constitute a Condominium. Each Unit Owner shall have an undivided interest in the Common Area, which interest shall be conveyed with the respective Unit.

**Section 2.A.3. Elements of A Condominium/Unit.** Ownership of each Condominium within the Project shall include ownership of a Unit plus an undivided interest in the Common Area as shown on the Condominium Plan referenced above and Exhibit C. The Common Area interest cannot be severed from the ownership of the Unit.

**Unit:** Units are designated with a "U" on the Plan. A Unit consists of the airspace included within the perimeter of the surfaces of the interior walls, ceilings, unfinished floors, windows and doors of the building containing the Units, namely the boundaries that are shown on the Plan. The Units include the interior doors, all plumbing, electrical and other fixtures and utility installations; all appliances including ranges, hoods and fans, and garbage disposals, all outlets, switches, dimmers, fuses, fans, interior partitions; and all heaters; heating and cooling systems, kitchen, bathroom, and lighting fixtures, located within the Unit.

The following are not part of any Unit: bearing walls, columns, concrete slabs, planks, unfinished floors and subfloors; unfinished ceilings; roofs, foundations, chimneys and insulation located in the vertical ducts passing from one Unit to another or the Common

Area, any shared flues, ducts, pipes, ducts, chutes, gas, sewer or water pipes, drains, insulation within the vertical ducts passing from one Unit to another, ventilation systems, conduits and wires within slab floors and bearing walls, or electrical and cable wires and other utility installations that serve more than one Unit.

**Section 2.A.4. Common Area.** The Common Area includes the entire Project, except the property included in the Units. Common Area includes, but is not limited to, the following elements: all facilities and improvements located within the Common Area including two swimming pools, greenbelts, one association storage shed, two pool room sheds, two sump pump sheds, parking areas, driveways, garages, exterior walkways; roofs and roofing components; foundations; portions of the buildings including the exterior walls, bearing walls, columns, girders, subfloors, unfinished floors; pumps, motors, ducts, flues and chutes; conduits, pipes, plumbing, wires and other utility installations except the outlets located within the Unit required to provide utility services and the pipes and wires that serve one unit exclusively; and landscaped and planted areas outside of the individual patio fences. Each respective Condominium includes an undivided tenancy-in-common interest in the Common Area.

**Section 2.A.5. Exclusive Use Common Area/Restricted Common Area.** Exclusive Use Common Area (EUCA) includes EUCA as described by Civil Code Section 1351(i) which are those portions of the common area used by one or fewer than all of the Units. EUCA includes but is not necessarily limited to the following areas.

**Balcony:** The term Balcony shall mean and refer to those areas designated on the plan as a Balcony adjacent to a Unit and includes all balconies on the front facing second story units. An exclusive easement for use and enjoyment of such balcony shall be granted to the owner of the Unit adjoining such Balcony. The boundaries of such Balconies shall be the horizontal plane shown on the Condominium Plan and the airspace encompassed therein.

**Deck:** Decks within the development are defined as wooden decks at the top of the stairs outside of the 2<sup>nd</sup> story end Units.

Note: Every reference to Balconies throughout this Declaration includes the decks.

**Patio:** The term Patio shall mean and refer to those areas designated on the plan as a Patio adjacent to a Unit. An exclusive easement for use and enjoyment of such patio shall be granted to the owner of the Unit adjoining such patio or patios which bears the same number as said patio or patios on the Plan. The boundaries of such patios shall be the horizontal plane shown on the Plan and the airspace encompassed thereon.

**Yard:** The term Yard shall mean and refer to those areas designated on the plan as a Yard adjacent to a Unit. An exclusive easement for use and enjoyment of such yards shall be granted to the owner of the Unit adjoining such yard or yards which bears the same number as said yard or yards on the Plan. The boundaries of such yards shall be the space encompassed in the boundary fence for the yard.

**Garage:** The term Garage shall mean and refer to those designated on the Plan as Garages. Each Garage is shared and the Owner of each Unit is assigned one space in a Garage for its exclusive use. The boundary lines for each Garage shall be to the finished surfaces on the walls, ceilings and floors, and the airspace encompassed therein as set forth on the Plan, and no Owner shall be entitled to use more than one space within the Garage.

**Parking Space:** The term Parking Space shall mean those areas designated on the Plan as open parking spaces, some or all of which are have been deeded to Unit owners at the time of conversion of the project to condominiums. All Parking Spaces are intended for the purpose of parking passenger motor vehicles only, as set forth in this Declaration and the Association Rules. The Association may adopt parking policies and rules for all Parking Spaces. Such policies and rules may provide for a permit parking process, and/or assignment or leasing of open Parking Spaces which have not been deeded to certain Units.

**Storage Area:** The term Storage Area shall mean and refer to those Shed or Closet portions of the Common Area designated to each Unit on the Plan as Storage Areas. An exclusive easement for use and enjoyment of Storage Shed/Closet shall be granted to the Owner of the Unit. The boundaries of such Storage Areas shall be the walls, ceilings and floors, and the airspace encompassed therein as set forth on the Plan and no Owner shall be entitled to use more than one Storage Shed or Closet. No hazardous items may be stored anywhere in the complex.

Additionally, if and to the extent allowed by Association policies or rules, Unit Owners may store items at the front of their vehicle in their assigned Garage parking space, as set forth in such policies or rules.

**Section 2.A.6. No Separate Conveyance of Undivided Interest.** The interests in Common Area are to be conveyed with the respective Units as indicated above, and cannot be separately conveyed from the Units.

**Section 2.A.7. Partition Prohibited.** The Common Area shall remain undivided as set forth above. Except as provided by California Civil Code §1359, no Owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the collective rights of the Owners with respect to the operation and management of the Development.

## **B. PROPERTY RIGHTS AND EASEMENTS OF ENJOYMENT.**

**Section 2.B.1. Owners' Rights of Enjoyment and Easements.** Every Owner shall have a right and non-exclusive easement of enjoyment in and to the Common Area except as described above, which shall pass with the title to every Condominium, subject to the following provisions:

- (a) The right of the Association to charge reasonable fees for use of the Common Area facilities limit the number of guests of Members that may use the facilities; and implement rules, regulations, and penalties regarding use of the facilities.
- (b) The right of the Association, after reasonable notice and an opportunity to be heard pursuant to Fair Hearing Procedures in Article XI of the Amended Bylaws, to impose any reasonable fines or penalties prescribed by the Board for violations of the governing documents and/or suspend the voting rights, membership rights, and/or rights to use the Common Area by an Owner, family, tenants, guests: (1) for any period during which an Assessment against his/her Unit remains unpaid; and, (2) for any reasonable period of time in relation to any violation of the Declaration or the governing documents, or for any period during which such infraction continues.
- (c) The right of the Association to dedicate or transfer easements, or all or any part of the Common Area to any public agency, authority, or utility for the provision of important and/or necessary services, as further provided in the Amended Bylaws, Article VI.
- (d) The right of the Board to adopt reasonable rules relating to activities, conduct and/or obligations of owners under the governing documents, including but not limited to the subjects of parking, use of the recreational facilities, use of a Unit, Exclusive Use Area, or Common Area, the keeping of pets, or on any subject where a rule may reasonably be deemed prudent by the Board. The Board may consider and impose any reasonable fines or penalties prescribed by the Board for violations of the governing documents, upon following the procedures in Article XI, Fair Hearings, in the Amended Bylaws, and subject to towing of vehicles parked in violation of the governing documents.
- (e) The right of the Board to adopt parking and towing policies for use of the parking spaces and garages in the development, and to adopt a permit parking policy and/or assign or lease open unassigned Parking spaces.

**Section 2.B.2. Delegation of Use.** If any Unit is leased or rented to others, lessees shall receive the right to use the Common Area under assumed delegation by the Owner of the Unit. The Owner shall be responsible to take whatever steps are necessary to assure that the tenants and/or guests are familiar with the Governing Documents of the Association and comply with all of the Rules and Regulations of the Association. Owner shall provide to tenant(s) copies of all Rules and Regulations of the Association and be responsible for tenant and guest conduct. Delegated rights are subject to suspension, after a hearing is offered to Owner regarding tenant's conduct.

**Section 2.B.3. Utility Access.** Any telephone, electric, cable, or gas company representative rewiring any Units is authorized to enter any Unit or Common Area with approval of the Association and/or the Owner when installation, maintenance, or removal of any utility service for any Unit requires entry. To obtain Association approval the request must be made to the designated representative of the Association (the managing agent unless otherwise designated). If access to a Unit is required, the Owner of the Unit may

not unreasonably withhold approval. Failure of any owner to allow reasonable entry may subject the Owner to penalties or disciplinary action by the Board.

**C. RIGHT OF ENTRY:** Each Unit, including the enclosed and unenclosed portions thereof, and the Common Area (including Exclusive Use Common Areas) shall be subject to the right of the Association or its agents or contractors to enter for the purpose of inspection and/or performance of maintenance, hazards, or conditions that may put other persons or Units at risk; or to enforce obligations or duties under this Declaration (whether the Association's or Owner's responsibility). Prior written notice to Owner(s) must be given at least 48 hours before entry is to occur, except when entry is necessitated by an emergency situation. Each Owner must notify the Association of any maintenance problem or any hazardous or unsafe condition that exists in the Units or Common Area (including Restricted or Exclusive Use Common Area) so that an inspection may be made by the Association's designated contractor or representative. Each Owner shall be responsible for any costs the Association incurs because of refusal to report a problem, refusal to allow access, or inability to reach the Owner or a designated contact person in an emergency, and may also be subject to disciplinary action as set forth in this Declaration.

#### **D. EASEMENTS**

**Section 2.D.1. Easements for Encroachment/Support/Occupancy.** Each Unit is declared to have an easement over all adjoining Units and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in construction, settlement or shifting of the building or any other similar cause, including any encroachment due to building construction. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settling or shifting. Neither the Association nor any Owner may arrange for any construction that undermines the structural support of the buildings or Units.

**Section 2.D.2. Association and Utility Easements.** There are reserved to the Association and its duly authorized agents and to utility companies, local agencies, etc. and representatives, such easements as are necessary to perform the duties and obligations of the Association as set forth in this Declaration, or in the Bylaws, Articles, and Rules of the Association, or on the recorded Subdivision Map, and/or to afford services including sewer, water, telephone, cable, electric, and other important services for any Unit. This includes the areas of easement for the plumbing, utility or drainage systems and any easements granted by the Board and/or any shown on the Subdivision Map or Condominium Plan.

**Section 2.D.3. Governmental Easements.** There are reserved to local Government and its duly authorized agents, and utility companies, local agencies, services, and their representatives such easements as are necessary to perform the duties and obligations of the entities mentioned as set forth in this Declaration, or in the Bylaws, Articles, and Rules of the Association, or as shown on the recorded Subdivision Map or Condominium Plan. An Emergency Vehicle Access easement shall be reserved for the City of Concord so as

to allow for necessary emergency services. Fire lanes must be kept clear of vehicles so access will be available at any time for emergency vehicles.

**Section 2.D.4. Easement for Owners Across Common Area:** Each Owner has a non-exclusive easement of use, enjoyment, ingress, egress, and support in, to, and throughout Common Area, and to all improvements or facilities in the Common Area, subject to Restricted and Exclusive Use Common Areas and Association authority as stated herein, and in the Association Bylaws, and in Rules adopted by the Board limiting, promoting, or controlling any such use, enjoyment, ingress, egress, or support. Each Owner may use the Common Area in accordance with the purposes for which it is intended without hindering the exercise of or encroaching upon the rights of any other Owners, and subject to rights, powers, and responsibilities of the Association in and to the Common Area.

**E. OWNERS' ASSOCIATION:** The Association is a homeowners' association charged with duties and empowered with the rights set forth herein and in the Association Amended Bylaws and any amendments thereto. The management of the Common Area shall be vested in the Association in accordance with its Amended Bylaws and this Restated Declaration.

### **ARTICLE III** **MEMBERSHIP AND VOTING RIGHTS**

**Section 3.1. Membership.** Every Owner of a Unit shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Upon termination of Unit ownership, the membership in the Association shall also terminate. Ownership of a Unit shall be the sole qualification for membership in the Association. All of the rights, duties, privileges, and obligations of all Members of the Association shall be as provided in this Declaration, the current Bylaws, and Rules of the Association. The membership of an Owner shall not be transferred, pledged, or alienated in any way except upon transfer of title to the Owner's Unit and then only to the transferee of title to such Unit. Any attempt to make a prohibited transfer is void.

**Section 3.2. Voting of Members.** The Members shall have voting rights as set forth in the Amended Bylaws, 1 vote per condominium.

### **ARTICLE IV** **COVENANT FOR ASSESSMENTS**

**Section 4.1. Creation of the Lien and Personal Obligation of Assessments.** Each Owner of any Unit, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) Regular Assessments, (2) Special Assessments, (3) Reimbursement Assessments, and (4) Enforcement Assessments, all to be established and collected as hereinafter provided. All such Assessments, together with interest, costs, and reasonable attorney's fees, except for Enforcement Assessments, shall be a charge on the land and shall be a continuing lien upon the property against which each such Assessment is made and shall also be the

personal obligation of the person(s) or entity who owned such property at the time when the Assessments fell due. If there are two or more Owners of any Unit, the Owners shall share liability for the assessments imposed on a joint and several basis.

**Section 4.2. Purpose of Regular and Special Assessments.** The **Regular Assessments** levied by the Association shall be used for administration and management of the properties, maintenance of the Common Area, services as deemed necessary or important by the Board, other expenses of the Association incurred in carrying out its duties and obligations (called "**Operating Expenses**") and assessments for fulfilling the responsibility of the Association with regard to maintenance, repairs and replacement of the major components that the Association is obligated to maintain, repair and replace (called "**Reserves**".)

**Special Assessments** are for the purpose of funding maintenance, repair and replacement projects when the reserve funds are insufficient, funding new improvements properly approved, funding reserves, meeting budget shortfalls or unanticipated increases in costs and expenses, or any other purpose as determined a reasonable basis for a special assessment by the Board.

No Owner shall be relieved of an Assessment or any part thereof by reason of his/her failure to use the Common Area.

Upon the sale or transfer of any Condominium by any Owner, the Owner's interest in the funds held by the Association shall terminate and shall be deemed automatically transferred to the successor-transferee of such Owner.

**Section 4.3. Limits on Annual/Regular Assessments and Special Assessments.** Under California law, and as reasonably required by need, the Board may for any fiscal year increase the annual Regular Assessments up to twenty percent (20%) without a vote of the membership and/or impose Special Assessments which in the aggregate do not exceed five percent (5%) of the budgeted gross expenses for that fiscal year. For any increase or Assessment that exceeds these limitations, except an Emergency Assessment defined below, the Board must obtain the approval of a majority of a quorum of the Members. A "quorum" for this purpose (defined by Civil Code Section 1366) is more than half of the Members.

**Section 4.4. Emergency Assessment.** In the event the Board is required to make any expenditure, the necessity for which was not foreseen at the commencement of the calendar year, or if the Board's original estimate of the annual assessment is inadequate and there are not sufficient funds available in the Operating Account, the Board may levy any additional assessment to cover the costs. The requirements of Notice to Owners, Open Board Meeting and findings found in Civil Code Section 1366 must be satisfied.

**Section 4.5. Reimbursement Assessment.** The Board may impose a Reimbursement Assessment against any Unit and the Owner thereof for any and all costs and expenses, including reasonable attorney's fees incurred by the Association, needed to perform or enforce any responsibility or duty of such Owner under this Restated Declaration that the



Owner fails to perform, in violation of the Governing Documents. Owner shall first be given notice of the obligation and a reasonable time in which to cure the deficiency or violation. Any Reimbursement Assessment shall be payable within thirty (30) days after notice to the Owner or at a later date as may be specified by the Board.

**Section 4.6. Enforcement Assessment (“Fine”).** The Board may levy an Enforcement Assessment upon an Owner and his/her residence Unit by the Association for failure to comply with the Governing Documents, after notice and an opportunity for a hearing before the Board under Article XI of the Bylaws is offered to the Owner. The Board may establish reasonable Rules regarding repeated Assessments for continual or recurring violations and shall adopt and circulate a policy to the Owners setting forth fines to be charged. These Assessments are *not* subject to collection through non-judicial foreclosure processes. All other remedies are available.

**Section 4.7. Imposition of Assessments at Times Other Than With Budget Distribution.** In the event the Board is required to make any expenditure during the year, the necessity for which was not foreseen at the commencement of the fiscal year, or if the Board's original estimate of the annual Assessment is inadequate and there are not sufficient funds available in the operating fund, the Board may levy an increase in Regular Assessments or impose a Special Assessment in amounts allowed by law (subject to the aggregate limits of the Civil Code Section 1366), with appropriate notice as required by law of at least 30 days before the due date of the Assessment.

**Section 4.8. Allocation of Assessments.** Regular and Special Assessments levied by the Board except as noted in the Damage and Destruction Article shall be allocated on a per Unit basis by shares as set forth on Exhibit B. Assessments may be collected monthly or as otherwise set forth by the Board.

Reimbursement and Enforcement Assessments shall be levied upon the Unit Owner/Condominium on an individual basis, and shall be due and payable as specified by the Board.

**Section 4.9. Association Bank Accounts.** All Assessments collected by the Board shall be deposited in FDIC-insured accounts selected by the Board of Directors of the Association, which accounts shall be clearly designated as THE COMSTOCK CONDOMINIUM HOMEOWNERS ASSOCIATION accounts. The Board shall have the control of said accounts and shall be responsible to the Owners for maintenance of accurate records thereof all the time. Funds may be withdrawn from any reserves account only upon written signature of two appropriately authorized members of the Board. The Board shall adopt a policy with regard to signatures for release of operations expenditures.

**Section 4.10. Date of Commencement/Collection of Annual (Regular) and Special Assessments.** The Board of Directors shall determine the amount of the Regular Assessment which will be imposed against each Unit for the following fiscal year and provide written notice to every Owner as required by law. The Notice shall go out to the Members with the Annual Budget, or, if not, then within not more than 60 nor less than 30 days prior to the beginning of the Fiscal Year. The Board of Directors shall determine the

amount of any Special Assessments which will be imposed against each Unit as they are approved (by the Board, and/or membership, as provided by law) and provide written notice to every Owner subject thereto not less than thirty (30) days in advance of the due date(s) for the Special Assessment. The due date(s) and payment periods of Assessments shall be established by the Board of Directors.

**Section 4.11. No Offsets.** All assessments are due and payable in amounts within the time and specified by the Board. There shall be no offsets (withholding of assessments) permitted for any reason including, without limitation, any claim that the Association is not properly exercising its duties of maintenance or enforcement.

**Section 4.12. Effect of Nonpayment of Assessments/Remedies of the Association.** If any Assessments hereunder are not paid within fifteen (15) days after the due date, a late charge (pursuant to the legal limits of Civil Code Section 1366) of up to ten dollars (\$10.00) or ten percent (10%) of the delinquency, whichever is greater, may be imposed. No more than one late fee may be charged on any particular past due assessment. Interest may accrue and be charged on all sums (including Assessments, late fees and reasonable costs of collection) which are more than thirty (30) days overdue at the rate of up to twelve percent (12%) per annum, per Civil Code Section 1366. The Board of Directors has discretion to set late fees and/or interest as limited herein by Board policy. In the event of a default payment of any Assessment and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation as follows:

- (a) By suit or suits at law to enforce each such Assessment obligation. Any request for judgment in any such action shall include a sum expended for attorney's fees and related collection costs. The Association shall have the special rights specified and afforded by Code of Civil Procedure Section 116.540 to proceed in Small Claims Court to collect delinquent assessments if the jurisdictional limits do not preclude it.
- (b) By lien and foreclosure pursuant to and subject to the limits of Civil Code Sections 1367.1-1367.4, which at the time this Restated Declaration is approved, preclude filing a Notice of Default and commencing foreclosure proceedings before a delinquent account is at least \$1,800 behind in assessments, or at least one year delinquent.
- (c) By lien and judicial foreclosure, under the jurisdiction of the Superior Court.

If there is a foreclosure sale, a certificate of sale shall be executed and acknowledged by an authorized officer of the Association or by the person conducting the sale. A deed upon foreclosure shall be executed in like manner. For a period of 90 days after the foreclosure sale, the Owner shall have the right to redeem the property (purchase it back) as set forth in the Code of Civil Procedure Section 729.035.

**Section 4.13. Lien Notice Requirements.** The Board shall adopt Association collection policies and circulate them to the membership as required and shall comply with the requirements of Civil Code Section 1367 and 1367.1 with regard to pre-lien communications, recording of liens and considering non-judicial foreclosure proceedings.

**Section 4.14. Access to Internal Dispute Resolution (IDR), A Meeting to Discuss A Payment Plan, or Alternative Dispute Resolution (ADR).** Assessment delinquency disputes are generally not subject to ADR. However, an Owner may request ADR upon payment of the delinquency and costs, or at the time of recording a Notice of Default. The provisions, requirements and timelines of Civil Code Sections 1369.510 and Civil Code Section 1367.5 apply. There are other meeting options allowed by law, such as meetings regarding payment plans (Civil Code Section 1365.1) and “internal dispute resolution” or “meet and confer”, otherwise known as IDR (Civil Code Section 1363.810). The Association shall provide annual disclosures to owners as required by these laws and other notices as required by the assessment collection laws (Civil Code Sections 1366-1367).

**Section 4.15. Assignment of Rents As Security for Payment of Assessments.** Effective upon delinquency of payment of assessments of at least 90 days, and pursuant subject to a lien if one has been recorded, each Owner assigns and transfers to Association the right to collect all the rents and revenues of the Owner’s Lot until the assessment delinquency is paid in full, including assessments, late fees, interest, and collection costs incurred by the Association, and according to the Association’s policy on collection of delinquent accounts. Owner authorizes Association, upon notice as provided below, to collect the rents and revenues, and directs each tenant of the property to pay rents to the Association to cover the delinquencies as described herein.

This assignment of rents constitutes security to the Association in the event the Association assessments become delinquent and the Owner does not pay. Association shall not invoke this assignment unless Owner fails to pay his or her delinquent account in full, or alternatively fails to enter into and honor a written payment plan to pay the amounts that are due to the Association.

Before the Association may collect any rents under this provision, notice and an itemized list of the amounts due must be provided to the subject Owner at the last known address provided by Owner which appears in the Association records and Owner must be given an opportunity to request a hearing before the board, and must be given an opportunity to pay the total amount due within 30 days of the date of the letter or be offered a payment plan agreement which if executed by Owner, supersedes the assignment of rents at all times when the Owner is making the payments as agreed.

This right shall be subordinate to the rights of any mortgage holder with an assignment of rents on the property during all times that said mortgage holder is actively pursuing the assignment of rents because of a mortgage delinquency.

In any event, if tenant pays to Association more than is required to settle the Association debt, Association shall immediately tender the difference to Owner by sending payment to the last known address in the Association records and providing tenant notice to cease sending rents to the Association.

**Section 4.16. Curing the Default.** Within 21 days of a determination that a lien was recorded in error or upon the timely payment or other satisfaction of (a) all delinquent Assessments specified in the notice of claim of lien and allowable by law; (b) all other Assessments which have become due and payable with respect to the Unit as to which such notice of claim of lien was recorded; and (c) interest, late charges, attorney fees, and other costs pursuant to this Declaration and the notice of claim of lien which have accrued, the Officers of the Association or any other persons designated by the Board shall release or direct the release of the lien recorded in the office of the County Recorder.

**Section 4.17. Authorized Charges for Transfer of Membership.** Membership in the Association is transferred automatically upon transfer of the Unit upon which the membership is based. Upon a transfer of a membership to another, a reasonable charge shall be payable to the Association or its managing agent. Such charges shall include (1) actual cost of changing membership records, (2) copying costs for all required financial and other disclosures and (3) reasonable charges to produce other items (completion of disclosures and administrative time required for services required by or outside of the mandates of Civil Code Section 1368), subject to limitations specified in CC 1368. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association setting forth whether the Assessments on a specified Unit have been paid.

**Section 4.18. Priority of Interests/Subordination of Lien of Association to Mortgages.** Any first Mortgagee (Lender holding a Deed of Trust) who comes into possession of a Unit pursuant to the remedies provided in the mortgage or upon foreclosure of the mortgage, shall take the Unit free of any claims for unpaid assessments or charges against the mortgaged Unit which accrue prior to the time such Mortgagee comes into possession of the Unit, provided, however, that said Mortgagee must pay assessments levied after taking possession. If California law changes to allow lien priority for associations such as this one, the law should control as to priority.

## **ARTICLE V** **USES PROHIBITED AND PERMITTED**

**Section 5.1. Residential Use.** All Lots and dwellings shall be used for single family residential purposes (as defined by local zoning regulations) and for no other purposes. Occupancy is limited to 2 persons per bedroom plus one for the 2 bedroom Units and 2 persons per bedroom for the 3 bedroom Units.

**Section 5.2. Leasing/Renting Units.** No Unit may be sold, leased, or used as a short term rental. The following provisions apply to leasing and renting units in the development:

- (a) All leasing and rental arrangements between an Owner and a tenant, or a tenant and a subtenant, must be in writing and must provide that the tenant is in all respects subject to the provisions of the Association governing documents (which includes these CC&Rs, Bylaws, the Articles and the Association Rules) and that any failure by the tenant to comply with such provisions shall be a material default under (breach of) the lease.

- (b) No Unit may be leased for a period of less than one year.
- (c) Each Owner-Lessor shall be responsible for compliance by the tenants and any of their guests or invitees with the governing documents during occupancy and use of the Unit and Common Area. Upon request of the Association, every Owner-Lessor shall be obligated to furnish to the Association a copy of the lease within 10 days after the lease becomes effective, as well as a statement signed by the tenant(s) stating that he/she/they have received and read a current copy of and reviewed the Restated Declaration, the Amended Bylaws and the Rules. Owner-Lessor is obligated furnish to the Board of Directors the names of the tenant(s) and their day and evening telephone numbers, and the Owner's telephone and other contact information. Owner-Lessor shall notify the association when tenants have vacated the Unit.
- (d) In no event shall any lease release or relieve an Owner from the obligation to pay regular and special Assessments to the Association, or any fines or costs imposed pursuant to Article IV herein, regardless of whether the obligation to pay Assessments and/or fines has been delegated to the tenant in such lease.

**Section 5.3. Business and Commercial Use Prohibited.** No part of the Development shall be used or allowed or authorized in any way directly or indirectly for any business, commercial, civil, manufacturing, mercantile, storing, vending, or other such nonresidential purposes except for home offices or occupations without any external evidence of said office or occupation. External evidence includes but is not limited to extra vehicles, foot traffic, signs, employees on site, excessive deliveries, storage of items for business in or business use of garage such that the intended number of vehicles cannot be parked inside, unusual noise or other nuisance, and any other visible signs of business. No Unit may be used for any business activity that is not permitted by the City of Pleasant Hill. Likewise, a permit by the City and adherence to municipal regulations and ordinances does not guarantee an owner the right to conduct a particular home business within the Association. The restrictions herein will still apply.

**Section 5.4. Hazards.** No Owner shall permit or allow anything to be done or kept in his/her Unit or any portion of the Development which will increase the rate of the Association's insurance, result in its cancellation, or create an unreasonable threat to other residents.

**Section 5.5. Animals.** Owners may have two common household pets which may be dogs, cats, birds or other pets as defined in Civil Code Section 1360.5 and as limited by local City and County ordinances and regulations. Dogs are restricted to a weight limit of 25 pounds or less.

No pet may be allowed to make unreasonable noise or cause or become an annoyance to other Owners. Dogs (including those belonging to visitors and guests) must be kept on a leash or confined to their Owner's Unit. No vicious or dangerous animals will be allowed in the development.

No pet shall be allowed in the Common Area unless under the control of a person which means on a leash or in a carrier. No pets may be left unattended outside of a Unit. Pets are not allowed in any of the recreational areas (such as in the pool area other common areas with the exception only of service animals qualifying under the Fair Housing laws for persons with disabilities who require service animals in their presence.

Threatening dogs will not be tolerated as they present considerable risk to the association and residents, Owners are responsible for their pets and any nuisance or damage caused by them. The Association is not responsible for damages or losses due to injuries or property damage caused by a resident's pet. The owner(s) of the Unit involved and the pet owners are 100% responsible. If any damages or costs accrue to the Association, it may seek reimbursement of costs, indemnification, and or full recovery of said costs from the Owner of the Unit where the pet was kept or visiting and/or any other responsible parties.

The Board may adopt rules and regulations regarding conduct of pets and pet owners, the number and size of pets that may be kept, fines related to violations of the pet rules, and the removal of any pet determined to be a continuing nuisance or a possible danger to residents or other pets. If the Board deems a pet a possible threat, it may order removal of the pet pending any disciplinary action and/or a hearing. In addition, should the Board determine at any time that dog breeds identified on some lists provided by insurance companies as uninsurable dogs should be prohibited, the Board may adopt a rule prohibiting them from that point forward.

**Section 5.6. Vehicles, Parking, Use of Garages, and Parking Rules.** All vehicles parked within the properties shall be subject to this Restated Declaration and any Rules adopted by the Board. All allowed vehicles must be parked wholly within Garages or parking spaces leaving sufficient room for ingress and egress from vehicles in adjacent spaces. The Board may adopt registration and/or permit parking requirements if deemed necessary to control parking in the development.

The Parking Spaces including Garages are to be used only for operable vehicles used for personal transportation by residents of Comstock, and not for storage of inoperable vehicles. "Inoperable" vehicles include, but are not limited to vehicles without current registration for highway operation, without license plates, and vehicles that are dilapidated, not running, missing important parts like an engine, battery, tires, etc., or vehicles requiring brake support such as blocks, bricks, boots, or other devices.

No trailer, camper, recreational vehicle, mobile home, inoperable automobile, boat or similar equipment, shall be permitted in the development. No commercial vehicle of any kind or truck (other than standard sized pickup trucks or vans), may remain upon any area in the development unless it is present for and compliant with any rules relating to loading or unloading, or is on premises as necessary to provide necessary services to residents.

Washing of vehicles on site is not permitted. No automobile repairs shall be allowed except in an emergency situation. "Emergency" repairs relate to those required in order to run so the vehicle can be moved off site. For example, the vehicle can be made operable by adding a battery or changing a tire or jump starting the vehicle because of a dead battery.

There shall be no changing of oil or other repairs or maintenance work performed on any vehicles in the Development.

Parking in open parking spaces may be limited by rules adopted by the board with regard to time and duration. The rules may address misuse and damage to parking areas, abuse of parking rules, towing and disciplinary action for violation of the governing documents and rules. The board may limit size of vehicles by wheel base, height of vehicle or topper or racks in a pickup truck, and weight of vehicles/trucks. The vehicle must fit fully within a deeded garage with the ability to fully close the garage door; allowing enough room so that the doors of vehicles in neighboring parking spaces can be opened and closed reasonably.

Violation by any residents of any of the provisions herein or Board rules or policies relating to parking subjects the owner of the Unit involved to disciplinary action, which may include fines and/or reimbursement of costs, towing, and towing charges, if any are incurred by the Association.

Motorcycles are allowed. They are subject to noise and nuisance provisions, as are all vehicles.

**Section 5.7. Electric Vehicle Charging Stations and Unusually Heavy Use of Power.** No unusually large or heavy use of electricity involving a central meter or any situation involving separate power that causes a threat or safety hazard to the surrounding structures or any persons is allowed within the Project. This includes electricity use related to electric vehicle charging as well as any power equipment, appliances, etc. EVCs may be considered only with written approval by the Board. Owners are required to pay all related costs including but not limited to installation and removal, construction, consumption of electricity, and insurance, and may be required to execute a recordable agreement regarding rights and obligations. Civil Code Section 1353.9 provides requirements for Owners and Associations regarding electric vehicle charging stations (EVCs) and the cost of electricity, rule-setting capability, and insurance requirements. Civil Code Section 1363.07 regulates the ability to allocate exclusive use common area for EVCs.

**Section 5.8. Signs/Flags/Banners.** No sign or flag of any kind shall be displayed to the public view on or from any Unit or in the Common Area without prior written consent of the Board, except those allowed by law, which include: (1) noncommercial signs allowed by Civil Code Section 1353.6, (2) display of the U.S. Flag (by methods of display allowed by Association rules which shall comply with California Civil Code Section 1353.5, and any Federal laws, (3) any sign required by legal proceedings, and (4) a real estate sign advertising the Unit for sale or lease, to be placed in a window of the Unit or any other acceptable area designated by the Board, or in any designated display area provided by the Association in the Common Area.

The Association may maintain and display such signs identifying the Units as the Board may deem appropriate. Any such signs shall be attractive and compatible with the design of the Project and shall comply with any applicable City ordinances.

**Section 5.9. Antennas, Satellite Dishes and/or Fixtures.** Architectural review and approval is required for the installation of any satellite dishes or antennas. The Board may order removal of any antenna or dish that is not approved, and may set rules and regulations regarding installation, placement, and screening.

**Section 5.10. Balconies, Patios, Yards, Garages, Parking Spaces, and Storage Sheds and Closets.** Each resident shall at all times keep balconies, patios, yards, garages, parking spaces, and Storage sheds or closets free of clutter and debris. balconies may not be used for storage except for plants and outdoor furniture of the type that is made for balcony or patio use, with water protectors under all plants. The Board may restrict weight of items placed on the balconies. Installation of shades, umbrellas, or any similar items are subject to written architectural or approval or published standards. No appliances may be kept on the balconies or any outside areas. Nothing may be attached to any building, wall, or railing without approval of the Architectural Review Committee or the Board. Owners may landscape their back yard areas, but any plantings, hardscape, or anything that would be erected near or against a fence, which extends above fence height or is attached to the building or a fence requires architectural approval and is subject to an order of removal by the Board if it becomes a nuisance or causes any problems.

Washing of balcony floors must be done by damp mopping rather than hosing or pouring of water that may impact the under structure of the balcony. Garage and open parking spaces must be kept clean by those who use them and vehicle spills must be cleaned up right away so as to avoid staining or damage to the surface.

The Board may adopt additional rules relating to these areas and may and enforce penalties for violations of this or any other provision herein.

Storage Areas are for storage of personal property, household items, bicycles, etc., and not for any other purpose. Areas should be kept clean and clutter and debris-free.

**Section 5.11. Use of Walkways and Driveways.** Common area walkways and stairways are for ingress and egress from buildings and Units. Streets and driveways are for vehicle ingress and egress. The Board may adopt rules and regulations regarding what items can be kept or stored on any ingress or egress areas. Riding or use of any wheeled vehicles that present a danger to pedestrians, except for strollers under the control of an adult, or wheelchairs or devices used to aid the disabled is strictly prohibited on the walkways which are not separated from the driveways.

**Section 5.12. Trash, Recycling and Green Waste.** Garbage must be contained in designated trash and recyclable containers provided by the Association. No hazardous waste (including fluorescent light bulbs) or electronic waste disposal is permitted in association dumpsters.

Owners are subject to fines, reimbursement assessments, and any other disciplinary action if the residents or guests of any Unit place any items such as couches, TV's, stoves, or other miscellaneous items in the walkways or driveways or trash areas.



No portion of any Unit or exterior of a Unit may be used for the storage of building materials or other materials other than Board-approved temporary storage in connection with specifically approved construction.

**Section 5.13. Open Fires are Prohibited.** No open fires are allowed. Owners are required to act responsibly in using barbecues or other devices that present potential fire hazards and to also advise Tenants to be responsible. Cooking over an open fire or use of barbecues that allow for an open fire within 10 feet of the structures is prohibited. Additionally, for purposes of safety and to attempt to prevent hazards, the Board may adopt rules limiting the use of any barbecue device that allows for an open flame.

**Section 5.14. Use of Laundry Rooms.** There are laundry rooms available on site. Installation of individual washers and dryers and any venting systems can cause specific problems in a buildings that were not originally fitted for such installations as is the case with Comstock buildings. Installation of such items is strictly prohibited.

There shall be no exterior drying or laundering of clothes or other items on balconies or other outside areas, nor any outdoor clotheslines that would be visible from streets, the Common Area or other Units.

**Section 5.15. Sports Apparatus.** No sports apparatus or equipment is allowed in the Common Area.

**Section 5.16. No Solar Tubes and Skylights.** No solar tubes or skylights may be installed.

**Section 5.17. Common Area Improvements.** No improvements, structures, sheds, doghouses, storage bins or other items may be constructed on the Common Area or Exclusive Use Common Area except for items proposed by or approved in writing by the Architectural Committee or Board.

**Section 5.18. Daycare Facilities.** Certain daycare facilities are allowed by State law. Anyone wishing to operate such a facility must comply with all applicable laws, must register as appropriate with the local municipality and/or the State of California (as state law requires), and must also register with the Board. The Board may require provider to supply a copy of the municipal or state license. Daycare providers or Owners of the Lot being used for day care must obtain liability insurance to cover personal injury and/or property damage in a sum for proceeds acceptable to the Board and must name the Association as an additional insured, and provide proof as to the coverage obtained to the Association. If there is an additional cost to name the Association as additional insured (which the Association may require by law), the Association shall reimburse the additional cost. Daycare operators and all customers or clients must comply with Association rules.

**Section 5.19. Window Coverings.** The Board may adopt reasonable rules and regulations relating to window coverings for windows that can be seen from the streets or common area. Colors shall be limited to white or off-white for the window treatments on all windows.

**Section 5.20. Swimming Pools.** The pool facilities are for the exclusive use of residents and their guests only. Guests must be accompanied by a resident host. Persons not accompanied by a resident shall be considered trespassing. The Board shall have the authority to adopt and amend additional rules and regulations regarding the use of the swimming pool facilities.

**Section 5.21. Nuisances.** No unusually noisy, or hazardous, noxious, unlawful or offensive activity or excessively loud music shall be allowed in any Unit or portion of the properties, nor shall anything be done or kept thereon which may be or may become an annoyance or nuisance to the neighboring residents, or which shall in any way interfere with the quiet enjoyment of Owners. The Board may adopt specific rules that are intended to protect the community and to prevent specific nuisances.

**ARTICLE VI**  
**MAINTENANCE/REPAIR OBLIGATIONS**  
**[See Maintenance Matrix Attached As EXHIBIT A For Easy Reference]**

**Section 6.1. Association's Obligations and Responsibilities.**

**Common Area.** The Association shall maintain, repair and replace as needed all elements and facilities of the Common Area as set forth below. The Association is not responsible to maintain, repair or replace those areas and items that are specified as obligations of Owners as set forth under Section 6.2; however the Board may enforce those maintenance obligations.

The Association's obligations include, but are not limited to the following:

- (a) **Condominium Buildings/Structures.** The Association shall maintain, repair and replace as necessary the condominium buildings including but not limited to foundations, portions of the buildings including the exterior walls, bearing walls, columns, girders, subfloors, unfinished floors, pumps, motors, ducts, flues and chutes; conduits, pipes, plumbing, wires and other utility installations except the outlets located within the Unit or water, utility and electrical facilities serving an individual Unit exclusively. The Association's obligation includes maintenance, repair and replacement of fire escapes, hallways, stairways and all structural repairs to and replacement of components of the buildings. The Board shall arrange for all exterior painting, including the buildings, garages, and hall stairways, surface flooring on hallway stairs, and all maintenance, repair, and replacement of roofs, roof structures, gutters and downspouts.
- (b) **Exclusive Use Common Area Structures.** The Association is responsible to maintain, repair and replace all structural elements of the stairways, decks, balconies, and storage sheds and closets including things like foundational elements, slabs, railings, braces, floorboards or structural flooring, and the like, except as to flooring or other elements added or installed by owners and obligations as set forth in Section 6.2.

- (c) **Common Area Recreational and Other Facilities.** The Association shall maintain, and perform repairs and replacement as needed of all Common Area facilities and amenities including two swimming pools, greenbelts, one association storage shed, two pool room sheds, and two sump pump sheds. Each respective Condominium includes an undivided tenancy-in-common interest in the Common Area.
- (d) **Landscaping And Common Area Grounds.** The Association shall maintain all Common Area grounds including the landscaped and planted areas outside of the individual backyard fences.
- (e) **Unit Entry and Balcony Light Fixtures.** The Association shall maintain and replace the interior foyer, laundry room and walkway exterior fixtures except those exclusive use fixtures located at individual end units and balconies.
- (f) **Driveways, Walkways and Parking Spaces.** In addition to the structural aspects noted above, the Association shall be responsible for the repairs, replacement and maintenance of the surfacing of the streets, driveways, and all open parking areas except that Owners are responsible for cleanup of fluids and other debris in the assigned or deeded parking spaces which is the individual Owner's responsibility, and in any open parking space used by a guest or service vehicle that caused a vehicle spill.
- (g) **Garage Doors and Structures:** The Association is responsible for the normal age related replacement of Garage Doors.
- (h) **Fences and Gates:** The Association is responsible to maintain the all fencing in the development that serve as a boundary to the Common Area facilities and between back yards. Owners who installed gates in their back yards at the time the vinyl fencing was installed are solely responsible for the operation and maintenance of said gates.
- (i) **Other.**
- (1) All electrical wires, conduit, and wiring systems located in the Common area are the Association's responsibility, except to the extent a third party (like a utility company) provides the maintenance.
- (2) Exterior repairs and preventive measures required because of the presence of termites, pests, other organisms and dry rot are the Association's responsibility. However, if the cause is outside the Association's control and within an individual Owner's control (such as dry rot on balconies from over watering plants, carrying in bedbugs or roaches, etc.), the repairs are the Owner's responsibility. Owners are responsible for damages caused by cleaning balconies with excessive water or water pressure instead of a damp mop as directed.
- (3) All plumbing and gas systems, including gas conduit, pipes, and any other plumbing-related items and water heaters located in the Common Area and serving

more than one Unit shall be maintained, repaired or replaced as needed by the Association.

**Section 6.2. Unit Owner's Responsibilities and Obligations.** All Owner repair, replacement, and maintenance responsibilities shall be in conformity with the Board's standards and architectural standards and applicable codes. Except for those portions of the property which the Association is required to maintain and repair as set forth in Section 6.1 above, each Owner shall be responsible, at his or her sole cost, for the cleaning, maintenance, repair, and replacement of elements within his or her Unit and the appurtenant Exclusive Use Areas as described below and including the following:

- (a) **Interior of Unit.** Each Owner shall have the exclusive right at his/her sole cost to paint, repaint, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floor surfaces, windows and doors that serve as the perimeter of his/her own Unit and the surfaces of bearing walls and partitions within his/her Unit, including substituting new finished interior surfaces in place of those existing on the walls, floors, partitions or ceilings, with exceptions as noted. While the Association is responsible for the building envelope and structural aspects to the sheet rock in the Units, the Owners are responsible for all ceiling, wall and flooring finishes.

No changes to any of the structural or shared walls, electrical, plumbing, or utility systems may be made or installed or relocated without written approval under Article VII. Any installation discovered that was not duly approved is subject to being ordered removed. To the extent any such change has been duly approved and the modification results in a nuisance or safety issue, it may have to be removed or modified. Owners causing changes or owning Units with such changes are responsible for maintenance of any approved or unapproved modifications or additions to the Units and for any damage to any other areas caused by modifications or additions.

- (b) **Exclusive Use Areas Associated With A Unit.** Each Unit Owner shall maintain keeping clean and free of debris the "Exclusive Use Common Area" that is appurtenant (adjacent to) his or her Unit including decks, balconies, backyards, garages spaces, and assigned parking spaces in a clean, sanitary and attractive condition. Nothing may be hung from a balcony, fence, or deck. No holes or penetrations may be made into the material surfaces of the Unit exterior, garages, balconies, decks or fences. Doing so shall expose the owner of the Unit to disciplinary measures and reimbursement of costs to repair the holes and any related damage to the structure.

- (c) **Doors: Storage Shed and Closet Doors, Garage Doors:** Owners have the responsibility for repair, maintenance, and replacement of their individual storage shed or closet doors. The Association shall paint these doors only as painting cycles are arranged. Garage doors shall be replaced by the Association only during cycles based on the life of the doors. Any repairs, maintenance or replacement that is necessary due to abuse or damage by owners or their family members, guests, or tenants, is the owners' responsibility.

- (d) **Air Conditioners and Heating Systems.** Each Owner is responsible to ensure the heating or air conditioning systems that are located within the Unit or on the Common Area roof are properly maintained. No systems may be modified or installed without prior written board approval.
- (e) **Water Damage Including Mold.** All water damage within any Unit must be repaired promptly by the Owner of the Unit. Upon notice, the Association shall promptly repair any Common Area water damage. If leaks are reported promptly the chance of mold is greatly minimized.

For any damage that is caused by leaking pipes other than Common Area pipes located outside of a Unit, or any appliance tubing, plumbing fixtures, overfilled tubs, clogged drains, or any other identifiable source which is within the responsibility of a Unit Owner, then that Owner shall bear the responsibility to have all of the repairs to the item causing the leak and all resultant damage accomplished promptly. This includes damages to his or her Unit and all damaged adjoining Units. Should a damaged adjoining Unit be repaired by the Owner thereof, that Owner is entitled to seek reimbursement from the person and/or Owner that is responsible for the water intrusion.

If the Common Area is damaged, the Owner responsible for the cause is required to reimburse the Association for repairs made to the Common Area.

Unless negligence can be proved, the Association is not responsible to make any repairs to or for any damage to a Unit caused by water leaks or water intrusion. Owners shall purchase insurance coverage to protect from such events.

If the water intrusion is coming from a source that is Common Area, and notice is provided to the Association, the Association shall promptly repair the cause of the intrusion and thus interior damage can be minimized. Failure of the Association to respond in a diligent manner may constitute negligence. Likewise, if an Owner fails to promptly report a leak and there is damage to the Unit as a result of that failure to report, or exacerbated damage for lack of timely reporting, the Owner would be negligent and shall share in the responsibility for the damage.

The same applies to any leaks or water damage situations. Failure of the responsible party to act quickly or the party with the damaged Unit to act responsibly to mitigate losses shall be a factor and may have bearing on whether an Owner who suffers damage to their Unit because of water intrusion will be able to recover any of the costs for the repairs he or she must make to their Unit. ,

Owners are responsible for repairing or replacing any personal property that is damaged. Each Owner or resident that desires to be protected with regard to recovery of costs in a water damage (or fire or other casualty) loss for personal property, an insurance deductible, on the master policy, or other related cost, should procure insurance coverage for these things.

The Board may adopt a Water Damage/Mold Remediation Policy to provide more detail in the handling of issues or claims that arise due to water leaks and/or intrusion.

“Responsible Party” as it relates to Owners means that Owners are responsible for their actions or omissions as well as those of their family members, tenants, guests, service providers, or any occupant of their Unit.

- (f) **Appliances and Fixtures.** All refrigerator tubing, hoses, utility connectors and appliances within a Unit affecting the plumbing lines, venting and or electrical service items should be checked periodically by Owners to avoid accidents causing water damage. None may be installed or relocated that would touch or concern shared utility, electrical or plumbing systems without receiving specific written approval under Article VII and adherence to all Association policies, rules or standards.
- (g) **Plumbing Facilities/Wiring/Utilities/Telephone/Cable Installations.** Each Owner is responsible for maintaining, repairing, and replacing as needed all fixtures, appliances, showers, bathtubs, sinks, and toilets, and all wiring systems, breaker boxes, plumbing systems and facilities, and all utilities installations that are located within the Unit and/or that provide separate service to the individual Unit. Likewise, said Owner is responsible for all damages caused by misuse or failure to maintain the individual or common plumbing facilities or utility systems. The electrical wiring and plumbing facilities and ducts, drains and pipes that serve an individual Unit are considered exclusive use common area and maintenance, repair and replacement of these items is the responsibility of the Unit Owner.

Modification, replacement, or repair of any wall containing electrical conduit or plumbing or any wiring or plumbing systems that connect to systems serving other Units and/or the Common Area requires specific written architectural approval under Article VII.

Each Owner is responsible for all telephone lines, computer cabling, and TV cable access as needed but must receive written approval for any changes in current systems or additions or modifications that could in any way affect another's systems or the Common Area.

Common electrical lines, plumbing facilities and lines that serve more than one Unit and that exist outside a Unit including within Common Area walls are the Association's responsibility to repair and replace. However, if any Unit Owner or his guest causes damage to these systems, this Owner of the Unit may be held responsible for the costs of repair and/or replacement in the form of a Reimbursement Assessment properly imposed under Article IV.

- (h) **Windows, Glass and Doors/Window Locks and Hardware.** Each Owner is responsible for the maintenance, repair, and replacement of all broken glass and all windows and doors and frames of his or her Unit, the sliding glass door and frame in his or her Unit leading to the back yard patio or balcony. the front door of the Unit, and the assigned Storage Area door, including repair and replacement of all door/window

locks and hardware. All such replacements are subject to standards set by the HOA and subject Architectural Control approval.

- (i) **Leaks from Vehicles.** Each Owner is responsible for the cleanup of any fluids leaked or spilled from vehicles that are on premises due to occupants or guests of the Unit.
- (j) **Move In-Move Out Damages.** Each Owner is responsible for move in – move out damages to the Common Area that is caused by their tenants or by any residents moving items in or out. The Board may adopt policies relating to move in-move out procedures that must be followed.
- (k) **Satellite Dishes/Antennas.** Each Owner shall be responsible for maintenance, repair, and removal if the component falls into disrepair. Dishes are subject to removal by the Board if not approved under Article VII herein. The Board may require execution of a recordable agreement establishing conditional responsibilities and liability related to entry on the roof, and the appliance including installation, repair, and removal.

**Section 6.3. Board Discretion to Order Maintenance by Owner.** The Board shall have the absolute discretion to determine whether any maintenance, repair, or replacement which is the responsibility of an Owner is necessary to preserve the appearance and value of the property or any portion thereof and may notify an Owner of the work the Board deems necessary. To the extent there is no immediate need or emergency involved, the Board shall give written notice to the Owner, stating with particularity the work of maintenance or repair the Board finds to be required, and requesting that the same be carried out within a period of thirty (30) days from the giving of such notice. If the Owner fails to carry out the maintenance or repair within the period specified by the notice, the Board may cause the work to be done and if so, shall, after holding a hearing and giving the Owner an opportunity to respond, consider assessing the cost thereof to the Owner, pursuant to the provision for Reimbursement Assessments in Article IV. The Board may make emergency repairs to avoid further damage from occurring without said notice, if the owner does not immediately respond, and consider a reimbursement assessment under Article IV.

**Section 6.4. Liability of Owner for Damages.** Owners of Units are responsible for damage caused by themselves, their family members, or their tenants, invitees, or guests. In the event the need for any maintenance, repair, or replacement is caused by the willful or negligent act or omission of an Owner or an Owner's family, tenants, contract purchaser, guests, invitees, or pets, the cost of such maintenance, repair, and replacement, including the cost of materials, labor, supplies and services shall be charged to, and paid by, such Owner in the form of a Reimbursement Assessment. A notice of hearing shall be given under Article IX of the Amended Bylaws. Damage including vandalism to the Common Area by identified parties shall be assessed or prosecuted by any action deemed appropriate by the Board. Any such action could include charges against the Owner of the Unit where the parties can be identified as residents or guests of

residents or a particular Unit Owner or resident. This includes, but is not limited to, any damage caused by installations, construction of any kind, and failure to maintain.

## **ARTICLE VII** **ARCHITECTURAL REVIEW**

**Section 7.1. Review Process.** The Board may appoint Members of the Association to serve on the Architectural Review Committee (hereinafter called ARC) for purposes of architectural review and approval processes or serve as the Committee. ARC members appointed by the Board, if any, shall serve in that capacity for a one year term. The Board may remove an ARC member from the committee without cause and appoint a successor to fill out the term of the removed member. If the Board does not appoint an ARC the Board shall assume all duties and responsibilities of the ARC.

Owners may not commence any of the following without applying for and receiving written architectural approval:

- (a) Any change, modification, rearrangement, or additions or installations in any Unit that involves construction, rewiring, or replumbing that would touch, concern, affect or alter the roof or roofing system, any neighboring Unit, any common walls or common utility or plumbing or other shared systems; or that would affect the supporting structures;
- (b) Any exterior addition, change or installation, including but not limited to an antenna, satellite dish, pole, standard, patio cover, or tower; or installation of any patio shade, storage container, dog house, or other item/structure not within the definition of usual patio or balcony furniture that is placed on or attached to the balcony or deck floor or railing or that is attached to the building, or that is constructed in the back yard of any Unit.

The Board may establish standards, rules, policies or procedures for such construction, and may require recordable documents regarding responsibility for improvements in order that the community and prospective purchasers will have access to the information or constructive notice. The Board shall adopt a policy for architectural review that is consistent with Civil Code §1378, providing for fair and reasonable procedures, timely response to architectural applications, and providing for reconsideration of any decisions made by an Architectural Review Committee which does not consist of the entire Board.

No construction or installation may commence until written approval is received from the ARC, Board, or management, as authorized by the Board.

**Section 7.2. Form of Approval.** The Association ARC or Board shall, except for good cause, review and respond to all applications for improvements within sixty (60) days from the date received including requests for further information. Applications for satellite dish or EVC installations will be given expedited review.



**Section 7.3. Reconsideration.** If there is an ARC separate from the Board that has made recommendations, any Owner whose application is denied shall be entitled to seek reconsideration by the Board if the request is made within 30 days of the date of written denial or approval with conditions is sent to the Owner. The Board shall consider the matter at the next Board meeting scheduled after the request is made, or at a special Board meeting that is an open meeting, scheduled for the purpose of reconsidering the application.

**Section 7.4. Mechanic's Liens.** In the event a mechanic's lien is recorded against the Common Area or any Unit other than that to which work is performed, the Owner of the Unit that is the subject of the work shall forthwith, upon notice by the Association, cause the lien to be released by payment of the sums due or by procuring a bond that will allow for release of the lien. If the Owner fails to clear the lien within 5 days of notice thereof, the Board may expend sums necessary to release the lien and/or procure an appropriate bond. The Owner of the Unit where the work was performed shall be subject to a Reimbursement Assessment to cover all costs incurred by the Association including the amount of the lien, interest from the date of the lien at the legal rate, document recording fees, and all legal costs and fees required to secure release of the lien.

**Section 7.5. Liability.** Neither the Architectural Review Committee nor any Director shall be liable to the Association or to the Owner for any damage, loss or prejudice suffered or claimed on account of the approval or disapproval of any plans, drawings, or specifications. Plans and specifications are not approved for adequacy of engineering or structural design. Neither the Committee nor the Association nor the Board Members shall be liable for any damage in any structure constructed pursuant to the specifications.

## **ARTICLE VIII** **INSURANCE**

**Section 8.1. Types.** The Board shall obtain and maintain in effect the insurance coverage described below so as to fulfill the following obligations and mandates:

- (a) **Commercial General Liability:** A comprehensive (combined single limit) public liability insurance policy insuring the Association and the Owners against any liability for property damage and bodily injury, including personal injury incidents to the ownership or use of the Common Area, including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. The limit of the liability insurance coverage shall be not less than two million dollars (\$2,000,000.00) per occurrence, affording the Owners the protections in *Civil Code* §1365.9.
- (b) **Fire/Property/Hazard:** A master or blanket policy to cover fire and extended coverage for hazards and perils commonly insured by such a master policy for the full insurable replacement value (when added to the deductible) of the buildings and Common Area improvements and facilities. The master policy shall include required ordinance upgrades. Units shall be restored to original grade. Betterments and improvements referred to as "upgrades" are the Owner's responsibility.

The Board shall have the authority to choose the deductible which best suits the Association's position in the current insurance marketplace. Owners shall be notified at the earliest possible opportunity of any decrease in the Association's coverage, and annually of the coverage carried by the Association for liability, property damage, fire, casualty, etc., as set forth more fully in the Amended Bylaws and required by Civil Code Section 1365(e).

- (c) **Worker's Compensation:** Worker's Compensation Insurance to the extent necessary to comply with all applicable laws of the State of California or the regulations of any governmental body or authority having jurisdiction over the Development.
- (d) **Fidelity Bond:** A Fidelity Bond to protect funds of the Association in an amount deemed sufficient by the Board to protect against the loss of association funds and, if and as determined prudent, to meet the requirements of mortgagees and the loan purchasers and guarantors such as FNMA, FHLMC, and FHA.
- (e) **Officers and Directors:** Officers and Directors liability insurance (commonly called D&O insurance) in an amount determined to be sufficient, within the Board's discretion, but in no event less than one million dollars (\$1,000,000.00) in coverage.

**Section 8.2. Other Insurance (Earthquake/Flood/Etc.).** The Board may purchase earthquake insurance if there are sufficient funds available and/or if owners approve any resulting assessment increase or special assessment required to pay for the insurance. The Board shall purchase flood insurance to the extent it is legally required by flood zone maps or that it deems prudent. The Board has discretion to purchase, maintain or cancel any insurance policies not required under this Article as it deems necessary and/or prudent. The Board shall not be liable for failing to obtain coverage that is not required by this Restated Declaration.

**Section 8.3. Premiums, Proceeds and Settlement.** Insurance premiums for any blanket insurance coverage obtained by the Association and any other insurance carried by the Association shall be a common expense to be included in the Regular Assessments levied by the Association. Casualty insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried, or otherwise disposed of as provided in the Article IX hereof entitled "DAMAGE OR DESTRUCTION OF BUILDINGS, CONDEMNATION." The Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any two (2) Directors of the Association may sign a loss claim-form and release in connection with the settlement of a loss claim, and such signatures shall be binding on the Association and the Members.

**Section 8.4. Annual Insurance Review.** The Board shall annually determine whether the amounts and types of insurance it has obtained provide adequate coverage for the Development in light of increased construction costs, inflation, practice in the area in which the Development is located, or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies is necessary or

desirable to protect the interests of the Owners, the Mortgagees, and the Association. If the Board determines that increased coverage is necessary or desirable (since it is not covered by the Association's policy), it shall obtain the same.

**Section 8.5. Policy Limits-Duration.** Each policy shall provide that it shall not be canceled without at least thirty (30) days' prior written notice to the Association and to each of the Unit Owners. Each policy may be for a period not to exceed three (3) years provided that the policy permits short-rate cancellation by the insured.

**Section 8.6. Trustee.** Except as provided otherwise, all insurance proceeds here and in Article IX shall be paid to the Association as a trustee. The trustee shall hold, distribute, and expend such proceeds for the benefit of the Owners, Mortgagees, and others, as his/her respective interests shall appear, pursuant to the provisions of the this Restated Declaration.

**Section 8.7. Inability to Obtain Insurance.** If the insurance required for the Association or Owners by the Governing Documents is not possible to obtain, the Association and Owners shall obtain insurance as nearly equivalent to the required insurance as is reasonably available.

**Section 8.8. Deductibles.** Unless otherwise stated, if a resident or guest of a Unit or a service provider doing work on behalf of either causes an incident leading to an insurance claim, the Owner of that Unit shall be responsible for any deductible required for an insured loss. With respect to all other claims, the Owners of all Units affected share responsibility equally for the deductible.

**Section 8.9. Owners' Insurance Requirements.** Without imposing any responsibility or liability upon the Board to collect and review Owners' insurance policies or declaration sheets, there is an obligation implied by due diligence that Owners should obtain proper insurance coverage for their personal property, loss assessment coverage, coverage for liability for accidents that occur within their Units damaging their Unit or the property or person of others, and any "gap" coverage that is available between what protection the Owner should carry to protect themselves and their property and what the Association's policy provides. Unit betterments and upgrades, often referred to as "upgrades" are the Owner's responsibility. Owners may not make claims on the Association's policies for damages that are insurable through an HO-6 policy, or if that designation changes, any policy that protects condominium Owners and provides usual standard coverage afforded by the HO-6. Owners should consult with insurance professionals familiar with condominium policies to assure that they are not paying for double coverage, but are covering themselves appropriately without interfering with the Association's casualty and fire coverage for the Common Area and commercial liability.

## **ARTICLE IX** **DAMAGE OR DESTRUCTION OF BUILDING, CONDEMNATION**

**Section 9.1. Damage to a Single Unit.** If the building is damaged by fire or other casualty and the damage is limited to a single Unit, all insurance proceeds from covered

events shall be used to rebuild the Unit in accordance with the original plan and specifications, and, to the extent of the Association's coverage, pursuant to any plans approved by the Board. In the event the damage is caused by negligence of the Owner or any resident or guest of that Unit, the Board may seek compensation from the Owner of the Unit for any portions of the loss that are not covered by the Association's insurance policy.

**Section 9.2. Damage to other than a Single Unit.** If such damage extends to two or more Units or extends to any part of the Common Area:

- (a) If the amount available from insurance proceeds and reserve funds for damaged components and any other sources according to established fault is at least eighty-five percent (85%) of the cost of repairing or rebuilding the damaged property to its original design and specifications (and with upgrades if and to the extent covered by the Association's insurance policy), the insurance proceeds paid to the Association shall be used by the Board to contract to repair or rebuild the damaged portions of the Project, including all Units and the Common Area so damaged. In the event the insurance proceeds are insufficient to pay this percentage of the costs of repairing and/or rebuilding, then, subject to Article IV, hereof, the Board shall be authorized to levy a Special Assessment or an Emergency Assessment on all Units pursuant to Article IV.
- (b) In the event that the amount available from such insurance proceeds plus reserve funds and from other sources according to established fault is less than eighty-five percent (85%) of the cost repairing or rebuilding, then such insurance proceeds shall be deposited in a bank, savings and loan association, or trust company designated by the Board to be held for the benefit of all Unit Owners and their Mortgagees, as their respective interests shall appear. The Board shall obtain bids from responsible contractors to restore the Project, including all damaged Units and all damaged Common Area, to its condition immediately prior to such damage or destruction and shall, as soon as possible, call a special meeting of the Association Members to consider such bids. At such special meeting, the Members shall be allowed to vote to accept or reject the bid or bids offered by the Board for a vote. Majority approval (at one vote per condominium) is required for acceptance of any bid.
- (c) In the event a bid is accepted, the Board shall levy a Special or Emergency Assessment against all Unit Owners pursuant to Article IV to make up the deficiency between the total insurance proceeds coupled with any and all reserve funds set aside to replace the damaged components and the contract price for such repair or rebuilding. The Board may investigate the possibility of a loan to cover any shortfall or repair, as set forth in the Amended Bylaws. The Board may combine the voting measures for the special assessment and a loan – which for this purpose would require approval of a majority of a quorum of the voting interests as outlined on Exhibit B/C per condominium. For purposes of this election a quorum is established if 51% of the voting interests return a ballot. All insurance proceeds, including any proceeds subject to liens of Mortgagees shall be used for such rebuilding or repair. If any bid shall be accepted to repair or rebuild, the contractor shall provide a completion bond naming the Association and each Unit Owner as beneficiaries.

- (d) In the event any or all bids are rejected by more than fifty percent (50%) of the Owners, 1 vote per condominium, the Board shall recommend alternative reconstruction of the damaged or destroyed improvements at a lesser cost as it deems reasonable or adequate, which alternatives shall be placed to bid and voted upon as previously provided. Notice of same shall be provided to Eligible Mortgage Holders of any "alternative reconstruction" plan. "Eligible Mortgage Holders" are those that have provided contact information to the association and requested such notices. In the event that no such alternatives are accepted by the Unit Owners, the Board is hereby empowered, as the agent for all Unit Owners, to sell the entire Project, or any portion of it, including Units and the Common Area in its then present condition, on terms satisfactory to the Board.
- (e) In the event no rebuilding alternatives are accepted by the members, which would lead to the necessity of sale of the damaged Units and the Common Area, as indicated, the Board is authorized to take reasonable measures to clear the land, prepare the subject property for sale, sell it for fair market value to the highest bidder, and distribute proceeds from such sale, as well as insurance proceeds, and remaining funds held by the Association for the benefit of the subject Units. All such proceeds shall be distributed by the Association among Unit Owners and their respective Mortgagees, as their interests appear.

**ARTICLE X**  
**RIGHTS OF MORTGAGEES (LENDERS)**

**Section 10.1. Conflict.** Notwithstanding any contrary provision contained elsewhere in this Declaration, in the AMENDED BYLAWS, Articles or Rules, the provisions of this Article shall control with respect to the rights and obligations of Mortgagees specified herein.

**Section 10.2. Notices to Eligible Holders.** An Eligible Mortgagee is entitled to timely written notice of:

- (a) Any condemnation loss or casualty loss which affects either a material portion of the Project or the Condominium on which the Eligible Holder holds a First Mortgage;
- (b) Any delinquency in the payment of assessments or charges owed by the Owner of a Condominium which is subject to a First Mortgage held by the Eligible Holder if the delinquency is not cured within sixty (60) days after its due date;
- (c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- (d) Any proposed amendment to the Project Documents effecting a change in Unit boundaries, interests in the general or exclusive use Common Area, voting rights, any default by an Owner-Mortgagor of a Condominium in the performance of his/her obligation under this Restated Declaration or the Amended Bylaws, which is not cured within sixty (60) days;

(e) Any material amendment to the governing documents that could adversely affect the Mortgagee's interest in the property that is the subject of the Mortgage.

**“Eligible Mortgagee or Mortgage Holder”** includes any Institutional Mortgagee (1) that has delivered a written notice to the Association containing its name, address and the number or address of the Condominium encumbered by the Mortgage, and (2) that has requested the Association deliver written notice to it of any of the matters in this Article. Notices sent to the last mailing address provided by said Eligible Mortgagee are deemed sufficient to satisfy the requirements herein.

**Section 10.3. Inspection of Books and Records.** Upon request, any Owner or First Mortgagee shall be entitled to inspect the accounting books, records and financial statements of the Association, this Declaration, the Bylaws, the Articles and the Rules and any amendments thereto during normal business hours or under other reasonable circumstances.

**Section 10.4. Financial Statements.** The Association, at the Mortgagee's expense unless otherwise agreed, shall provide any review or audit that has been prepared and the financial statement for the immediately preceding fiscal year and furnish the same within one hundred twenty (120) days after written request from any Institutional Mortgagee.

**Section 10.5. Priority of First Mortgagees.** No provisions of the Governing Documents shall provide or be deemed to provide a Unit Owner, or any other person, priority over any rights of First Mortgagee of the Unit pursuant to its Mortgage in the case of a condemnation award for losses to or taking of Units and/or common elements.

**Section 10.6. Priority of Liens.** Any First Mortgagee who obtains title to a Unit pursuant to foreclosure of the Mortgage will not be liable for such Unit's unpaid assessments and fees, late charges, fines or interest levied in connection therewith which accrue prior to the acquisition of title to the Unit by Mortgagee except that if California law changes to allow for a different priority, the law shall control over this provision.

**Section 10.7. Distribution of Insurance or Condemnation Proceeds.** No Owner, or any other party, shall have priority over any rights of First Mortgagees pursuant to their Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Common Area property.

**Section 10.8. Sharing of Information.** The Mortgagee shall be entitled to share information relating specifically to payment history on the loan with the Association and the Association shall be entitled to share payment history with regard to assessments and sums due to the Association without recourse by the Owner.

## **ARTICLE XI** **POWERS AND AUTHORITY OF THE ASSOCIATION**

The Association shall have all powers set forth in the Articles of Incorporation, the AMENDED BYLAWS, and this Declaration to generally do any and all things that a

homeowners' association organized under the laws of the State of California may lawfully do in operating for the benefit of its Members and to perform any and all acts which may be necessary, proper, or incidental, to the exercise of any powers of the Association or for the peace, health, comfort, safety and/or general welfare of the Owners, tenants, and guests of Owners, subject to any specified limitations.

## **ARTICLE XII** **DISCLOSURE AND OTHER OBLIGATIONS OF OWNERS**

**Section 12.1. Documents to Purchaser.** An Owner shall, as soon as practicable before sale of a Unit, provide the prospective purchaser all of the information required by Civil Code Section 1368. To the extent proper notice and a demand is made, the Association shall provide the documentation as required by that statute, or face the penalties therein stated.

**Section 12.2. Notification of Record Ownership to Association.** Upon or within at least ten (10) days after the consummation of any sale or other transaction which results in a change in the record ownership of the fee interest in a Unit, the transferring Owner(s) shall provide the following information to the Association in writing:

- (a) The name(s), phone number(s) and email address(es) of the new record Owners;
- (b) The Unit number and street address of the residence transferred;
- (c) The date of transfer.

Proof of ownership in the form of a deed or executed contract may be required by the Board. Each Member shall have the duty and responsibility to keep the Association Secretary or authorized agent apprised of his or her current address and telephone number at all times, even when the Unit is rented to or occupied by another party.

### **Section 12.3. Other Owner Obligations.**

- (a) **Compliance of Lessee.** Any Owner who leases his/her Unit to any person or entity shall be responsible for compliance by his lessee with the Association governing documents.
- (b) **Transfer of Responsibility for Delinquent Assessments.** Upon a proper legal conveyance, sale, assignment, or transfer of a Unit to a new Owner, and satisfaction of any outstanding delinquent assessments, the transferring Owner shall not be personally liable for any assessments levied with respect to such Unit after the date of such transfer, and no person, after the termination of its status as an Owner prior to his/her again becoming an Owner, shall incur any of the obligations or enjoy any of the benefits of an Owner under this Declaration. The conveyance of a Unit to a new Owner, however, will not extinguish any obligation for unpaid assessments against said Unit being conveyed, or the Owner that is transferring the Unit prior to transfer. The obligation shall not be extinguished for assessments that occur after the transfer if the transfer is not legal and is accomplished in order to avoid paying assessments.

There is no one form of action limitation on collections: the Association may proceed to take action to record a lien and foreclose for delinquent assessments as set forth in Article IV and allowed by California law, or pursue the transferring Owner with a personal debt action, or both, until such time as the delinquencies are paid in full.

- (c) Severability of Membership and the Association from Ownership of a Unit. No purchaser or Owner of any Unit shall convey his interest in any such Unit without simultaneously conveying his interest in the Association.

### **ARTICLE XIII** **GENERAL PROVISIONS**

**Section 13.1. Binding.** This Restated Declaration shall be for the benefit of and be binding upon all Unit Owners, their respective heirs, legatees, devisees, executors, administrators, guardians, conservators, successors, purchasers, lessees, encumbrances, donees, grantees, Mortgagees, lien holders, and assigns.

**Section 13.2. Enforcement.** The Association, or any Owner, shall have the rights to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now and hereafter imposed by the provisions of this Restated Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The prevailing party in any legal action is entitled to recover legal fees as provided in Civil Code §1354.

**Section 13.3. Construction of Provisions.** The provisions of this Restated Declaration shall be liberally construed to effectuate its purposes of creating a uniform plan for the Development.

**Section 13.4. Internal Dispute Resolution (IDR) and Alternative Dispute Resolution (ADR).** If any dispute arises under this Declaration, the parties should consider IDR under Civil Code §1363.810 and/or ADR under Civil Code §1369.510.

**Section 13.5. Severability of Provisions.** Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions which shall remain in full force and effect.

**Section 13.6. Amendment.** The covenants and restrictions of this Restated Declaration shall run with and bind the land for a term of twenty (20) years from the date this Restated Declaration is recorded, after which time it shall be automatically extended for successive periods of ten (10) years. This Restated Declaration may be amended at any time in a legally valid election resulting in approval of fifty-one percent (51%) of the membership interests of the Owners as set forth on Exhibit C. Any amendment must be properly recorded in the official County records to be effective. Upon recording of an amendment, Owners shall be provided a recorded copy.



**Section 13.7. Notices.** Any notice permitted or required to be delivered shall be as set forth in the Amended Bylaws.


**Section 13.8. Conflicting Provisions.** In the case of any conflict between this Declaration and the Restated Articles of Incorporation or the Amended Bylaws, this Declaration shall control. In the event of any conflict between the Restated Articles and the Amended Bylaws, the Restated Articles shall control.


**Section 13.9. Number; Gender.** The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine and feminine shall each include the masculine or feminine, as the context requires.

**Section 13.10. Successor Statutes:** To the extent any state statute referenced herein is modified, relocated in the California Codes, or repealed , the new law controls over the related section herein, except as to any existing condition that was legally acceptable under the statutory language currently in effect when this Restated Declaration is approved and recorded.

**Section 13.11. Anti-Discrimination Clause.** The governing documents shall be enforced in a manner that shall not constitute discrimination under Federal or State law. Reasonable accommodation shall be made in circumstances where it is requested, where proper verification of disability is provided, and where the requested accommodation may be necessary to afford a person equal opportunity to use and enjoy the premises within the Association.

IN WITNESS WHEREOF, we being the President and Secretary of THE COMSTOCK CONDOMINIUMS HOMEOWNERS ASSOCIATION aka THE COMSTOCK HOMEOWNERS ASSOCIATION have hereunto set our hands this 27<sup>th</sup> day of DECEMBER, 2012.

  
\_\_\_\_\_  
President

  
\_\_\_\_\_  
Secretary

Both signing on behalf of THE COMSTOCK CONDOMINIUM HOMEOWNERS ASSOCIATION

**CERTIFICATION OF APPROVAL PER CIVIL CODE SECTION 1355**

The undersigned hereby declare under penalty of perjury that the foregoing is true and correct. The foregoing Restated Declaration was approved by the requisite percentage of Owners pursuant to the original Declaration. The Restated Declaration shall be recorded in all counties in which the Development is located. The property to which this Restated Declaration attaches is as described on Page 1 above.

We are the duly elected and acting President and Secretary THE COMSTOCK CONDOMINIUM HOMEOWNERS ASSOCIATION and this Certification is signed on this 27<sup>th</sup> day of DECEMBER, 2012.

  
\_\_\_\_\_  
President

  
\_\_\_\_\_  
Secretary

Both signing on behalf of THE COMSTOCK CONDOMINIUM HOMEOWNERS ASSOCIATION

Note: There are many references in these documents to California Codes. These laws can be located at no cost by going to <http://www.leginfo.ca.gov/calaw.html> on the web. The reason so many references are made rather than fully explaining the law is that California law is comprehensive, complicated and not easy to interpret, as well as ever changing, and these CC&Rs are intended to be flexible enough to change with it. In addition, it would be very cumbersome to include the exact wording of the statutes. There is a new law that has been passed at the time these Amended Bylaws are provided to members which is intended to improve the Davis Stirling Act currently found at Civil Code Section 1371 – 1378. According to drafters there will not be material changes to the laws, but simply a longer restatement breaking up the subject matter. The Davis Stirling Act will be relocated January 1, 2014, each reference to a subject/law will apply as written in the changed body of law. The Attorney who drafted these documents will supply a cross-reference chart upon request for any changes in statute references. The law allows board members to amend the documents as to any material changes without membership approval, after the new body of law is effective.

## EXHIBIT A

### MAINTENANCE MATRIX - IF ANY CONFLICT WITH ARTICLE VI, ARTICLE VI CONTROLS.

ITEM, COMPONENT, SITUATION	PARTY RESPONSIBLE
Repair, replacement, and maintenance of all facilities, improvements, residential and other structures, and other buildings and pool facilities, storage sheds and buildings that are common area, except as set forth herein and in Article VI.	Association
Paint and related preparation work on exteriors of the buildings, repairs and all structural items (all repairs of improvements and systems outside the units)	Association
Landscaping, trees, and irrigation in the common area, except for landscaping on EUCA balconies or in fenced back yards.	Association
Termite/dry rot repair in common area, preventive measures and fumigation of entire buildings as determined necessary by the board Relocation costs during fumigation or repairs	Association Owner
Pest control/eradication within any unit (including bed bugs, cockroaches, fleas, etc.) And/or dry rot in any area caused by condition caused by residents within unit or on balcony/deck, including failure to perform maintenance or exacerbated damages due to failure to report leak at first signs or any condition caused by resident of Unit	Owner
Garage damage caused by vehicle or other resident-related incidents, cleanup of debris, fluid spills	Owner
Roofs on all buildings, roof structures, gutters and downspouts	Association
Foyer entry areas and foyer doors, laundry rooms and laundry room door and hardware	Association
Balconies, decks – structural	Association
Repair, maintenance and replacement of preventive treatments and surface coating on flooring of balcony and/or decks *	Association
Any and all damages to structure caused by and/or due to modifications, alterations, repair, maintenance, placement of damaging items or damage to coating on balcony or deck flooring	Owner
Exterior unit door and door frame – exterior re-painting between paint cycles, maintenance/replacement hardware, locks, all interior doors, all individual shed or closet doors	Owner
Windows and frames, sliding glass doors and frames, glass in all windows and all hardware, locks and screens	Owner
Utilities, pipes, conduits, electric and plumbing facilities and fixtures in within the unit space or located in the common area but serving the individual Unit – which are considered EUCA	Owner
Common area including in-wall shared utilities and water and sewer, gas, electric systems serving two or more units	Association
Water damage to unit interior and personal property, from Unit improvements** including mold remediation	Owner** of Unit of cause
Water damage to Common Area, from any source not within the control or maintenance responsibility of Owner**including mold remediation	Association**

See additional notes below.

\*\*The above matrix expresses the threshold for responsibility. However, responsibility can shift to another if any party is negligent and that causes damage to neighboring units or common area.

\*\*\*To the extent the Association master insurance policy covers any item above, the proceeds available to the Association shall be used for such repairs. However, Association policies do not cover losses that are the Owners' responsibility and Owners are expected to purchase an HO-6 policy to provide protection within the Units for the Owner of the Unit and for loss assessment and other costs not covered by the Insurance Master Policy.

All of the above requirements are subject to architectural and Board standards.

**EXHIBIT "B"**

The Annual Assessments shall be allocated proportionately with all Units of the same type paying an equal amount. The proportionate share of the Annual Assessments shall be allocated pursuant to the following ratio:

TYPE OF UNIT:

(A) TWO-BEDROOM	1.0X
(B) THREE-BEDROOM	1.2X

The value factor of "X", shall be determined as follows:

- (1) The total number of each type of Unit (i.e., two-bedroom or three-bedroom) in the Project shall be determined;
- (2) The above specified factor (i.e., 1.2 or 1.0 for each type of Unit shall be multiplied by the total number of that type of Unit then in the Project;
- (3) The product of the two (2) multiplications arrived at under (2) above shall be added together;
- (4) Thus, by dividing on (1) by the total of the products determined in (3) above, the weighted factor for a TYPE (A) Unit percentage, the proportionate percentages for each TYPE (B) unit will be properly determined.
- (5) The result of (3) and (4) above for each type of Unit shall be multiplied by the total Annual Assessment, which will result in the dollar amount to be paid by each type of unit.

The percentage factors provided for the above shall be rounded off to seven decimal places in each operation; the Annual Assessment to be paid by each Unit shall be rounded off to the nearest cent.

**EXHIBIT "C"**

**SCHEDULE OF UNDIVIDED INTEREST IN COMMON AREA**

Each owner shall own an undivided interest in the common area of the entire project as follows:

TYPE OF UNIT:

(A) TWO-BEDROOM	0.8210%
(B) THREE-BEDROOM	1.0195%

NOTARY ACKNOWLEDGMENT

STATE OF CALIFORNIA )  
COUNTY OF CONTRA COSTA ) ss.

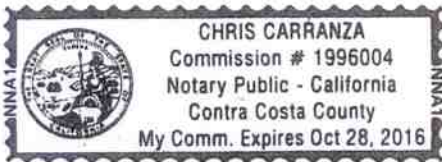
On Dec 27<sup>th</sup> 2012, before me, Chris Carranza,  
[Print Name of Notary Public]

A Notary Public, personally appeared  
Lito Alejo Calimlim,

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

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

WITNESS my hand and official seal.



Chris Carranza

Signature of NOTARY PUBLIC

[MAKE SURE SEAL IS LEGIBLE or INCLUDE THE NOTARY CURE FORM REQUIRED FOR RECORDING PURPOSES]

NOTARY ACKNOWLEDGEMENT

STATE OF CALIFORNIA )  
COUNTY OF CONTRA COSTA ) ss.

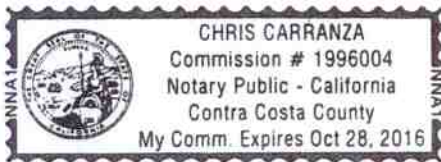
On Dec 27<sup>th</sup> 2012, before me, Chris Carranza,  
[Print Name of Notary Public]

A Notary Public, personally appeared  
Stephen Hans Hiller,

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

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

WITNESS my hand and official seal.



Chris Carranza

Signature of NOTARY PUBLIC