

Return to Allen, Stahl + Kilbourne, Box 80

References: Book 1369, Page 155
Book 1470, Page 69
Book 1541, Page 103
Book 1760, Page 520
Book 2515, Page 497
Book 4604, Page 1151
Book 5172, Page 696
Book 5400, Page 1481
Book 5614, Page 925
Book 5807, Page 1866

**SECOND AMENDED AND RESTATED DECLARATION OF CONDOMINIUM
FOR SUNSET RIDGE CONDOMINIUM**

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY
OF THE FLAG OF THE UNITED STATES OF AMERICA OR STATE OF
NORTH CAROLINA**

THIS DOCUMENT REGULATES OR

**PROHIBITS THE DISPLAY OF POLITICAL SIGNSTHIS AMENDED AND
RESTATED DECLARATION OF CONDOMINIUM FOR SUNSET RIDGE CONDOMINIUS**
is made this the __ day of _____, 2024, by and between Sunset Ridge Condominium Association,
Inc, and the Owners of Units located within the development known as Sunset Ridge
Condominiums.

WITNESSETH

WHEREAS, on October 10, 1984, Southern U.S. Realty Corporation, a South Carolina
Corporate (“Declarant”) recorded a Declaration of Condominium (“Original Declaration”) for
Sunset Ridge Cluster One Condominium (“Condominium”) at Book 1369, Page 155, with said
Declaration submitting the property to the provisions of N.C.G.S. 47A, the North Carolina Unit
Ownership Act, with Article X of said Declaration designating Sunset Ridge Condominiums
Cluster One Association as the entity responsible for the administration and management of the
Condominium; and

WHEREAS, ON September 14, 1984, Sunset Ridge Condominiums Cluster One Association (“Association”) was incorporated as a non-profit corporation with the North Carolina Secretary of State; and

WHEREAS, on April 7, 1987, the Association recorded a First Amendment to Declaration of Condominium and Bylaws of Sunset Ridge Condominiums Cluster One (“First Original Amendment”), recorded at Book 1470, Page 94, Buncombe County Registry, with said First Original Amendment subjecting the Condominium to the provisions of N.C.G.S. 47C, the North Carolina Condominium Act (“Act”); and

WHEREAS, May 19, 1987, the Association changed its name to Sunset Ridge Condominium Association, Inc. by the filing of Articles of Amendment with the North Carolina Secretary of State; and

WHEREAS, on November 22, 1988, the Association recorded an Amended and Restated Declaration and Bylaws for Sunset Ridge Condominium (“Declaration”), at Book 1541, Page 103, Buncombe County Registry; with said Declaration amending the Original Declaration and the First Original Bylaws by striking them in their entirety except for those exhibits attached thereto or parts thereof which were preserved specifically for the purpose of preserving legal descriptions and the whole of the Condominium Property as found in the Original Declaration; and

WHEREAS, on August 27, 1993, the Association recorded an Amendment to Declaration of Condominium for Sunset Ridge Condominium (“First Amendment”) at Book 1760, Page 520, Buncombe County Registry; and

WHEREAS, on June 19, 2001, the Association recorded an Amendment to Declaration of Condominium for Sunset Ridge Condominium (“Second Amendment”) at Book 2515, Page 497, Buncombe County Registry; and

WHEREAS, on September 3, 2008, the Association recorded a Third Amendment to the Declaration of Condominium of Sunset Ridge Condominium (“Third Amendment”) at Book 4604, Page 1151, Buncombe County Registry; and

WHEREAS, on December 18, 2013, the Association recorded a Fourth Amendment to Declaration of Condominium of Sunset Ridge Condominiums to Reassign Parking Spaces (“Fourth Amendment”) at Book 5172, Page 696, Buncombe County Registry; and

WHEREAS, on February 29, 2016, the Association recorded a Fifth Amendment to Declaration of Condominium of Sunset Ridge Condominiums to Reassign Parking Spaces (“Fifth Amendment”) at Book 5400, Page 1481, Buncombe County Registry; and

WHEREAS, on November 28, 2017, the Association recorded a Sixth Amendment to Declaration of Condominium for Sunset Ridge Condominiums (“Sixth Amendment”), at Book 5614, Page 925, Buncombe County Registry; and

WHEREAS, on September 5, 2019, the Association recorded a Seventh Amendment to Declaration of Condominiums to Reassign Parking Spaces, (“Seventh Amendment”), at Book 5807, Page 1866, Buncombe County Registry.

WHEREAS, the Unit Owners and the Association desire to amend and restate the Declaration in order to clarify, modernize and streamline the Declaration and to account for changed circumstances that have arisen since the recording of the Declaration, and all amendments thereto, and for the purpose of more efficient administration, operation and governance of the Sunset Ridge Condominium; and

WHEREAS, pursuant to Article 14 of the Declaration and to Section 47C-2-117 of the Act, the Declaration may be amended by the vote of Unit Owners having at least sixty seven percent (67%) of the total vote in the Condominium; and

WHEREAS, at a duly called meeting of the Association, held on _____, 2024, Unit Owners having at least sixty-seven percent (67%) of the total vote in the Condominium, voted to adopt this Second Amended and Restated Declaration of Condominium for Sunset Ridge Condominium, for the purposes stated above; and

NOW, THEREFORE, the Declaration, and all amendments thereto, is now amended by striking the Declaration, and all amendments thereto, in their entirety and substituting therefor this Second Amended and Restated Declaration of Condominium for Sunset Ridge which shall

supersede all previous Declarations and any amendments thereto and shall govern all the business of the Sunset Ridge Condominium.

ARTICLE I

DEFINITIONS

In accordance with Section 47C-1-103 of the Condominium Act and unless specifically provided otherwise or the context otherwise requires, the following terms as used in this Second Amended and Restated Declaration of Condominium for Sunset Ridge Condominiums shall have the following meanings:

Section 1.1. "Assessment" means a Unit Owner's share of the Common Expenses assessed against such Unit Owner and his or her Unit from time to time by the Association, in the manner hereinafter provided.

Section 1.2. "Association" or "Condominium Association" means the Sunset Ridge Condominium Association, Inc., a North Carolina non-profit corporation.

Section 1.3. "Board" or "Board of Directors" means the Board of Directors of Sunset Ridge Condominium Association, Inc., and "Director" or "Directors" means a member or members of the Board.

Section 1.4. "Building" or "Condominium Building" means that six (6) story building housing all of the Condominium Units and as located on that 7.20- acre tract of land as shown on that plat recorded in Plat Book 50, Page 137.

Section 1.5. "Bylaws" means the corporate Bylaws for the Association.

Section 1.6. "Common Areas" or "Common Elements" means all the Condominium Property excluding the Units but including Limited Common Areas and Limited Common Elements.

Section 1.7. "Common Expenses" means all or any of:

- A. All expenses incident to the administration, improvement, maintenance, repair or replacement of the Common Areas or Common Elements.
- B. Expenses determined by the Association to be Common Expenses, and

which are lawfully assessed against the Unit Owners.

- C. Expenses declared to be Common Expenses by the Condominium Act or the Condominium Documents.
- D. Expenses agreed upon as Common Expenses by the Association.
- E. Such reasonable reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Areas or Common Elements any other real or personal property acquired or held by the Association.

Section 1.8. “Common Expense Liability” means the liability for Common Expenses allocated to each Unit pursuant to the Condominium Act and for any other Common Expense or charge in accordance with the Declaration and Bylaws.

Section 1.9. Condominium means Sunset Ridge Condominium being that real estate as described in the Declaration and exhibits thereto portions of which are designated for separate ownership by Unit Owners and the remainder of which is designated for ownership solely by the Condominium Unit Owners.

Section 1.10. “Condominium Act” or “Act” means the North Carolina Condominium Act, Chapter 47C of the General Statutes of North Carolina, as amended.

Section 1.11. "Condominium Documents" means and includes this Second Amended and Restated Declaration, the Plat subjecting property to the covenants, conditions and restrictions contained in this Second Amended and Restated Declaration and previous Declarations, the Articles of Incorporation, the Bylaws and such Rules and Regulations and Architectural Guidelines as may be created to govern the use of the Condominium Property.

Section 1.12. "Condominium Property" or "Property" means all of the property submitted to the covenants, conditions and restrictions of the Declaration, as the same has been subsequently amended, as shown in Plat Book 50, Page 137 and as further shown on those Condominium Plats recorded at Condominium File 85-A as revised at Condominium File 327, all of the Buncombe County Registry.

Section 1.13. "Declaration" means this Second Amended and Restated Declaration for Sunset Ridge Condominiums.

Section 1.14. Governing Documents shall mean and include all of those documents pertaining to the governance of the Condominium, which shall include, without limitation, the Association's Articles of Incorporation and Bylaws of the Association, this Declaration, and any Rules and Regulations promulgated by the Board of Directors.

Section 1.15. "Guest" shall mean and refer to a Person residing temporarily in another Unit Owner's Unit for a period not to exceed thirty (30) days, from which the Unit Owner receives no rent, benefit, emolument.

Section 1.16. "Limited Common Area" means and includes those Common Areas and Common Elements which are agreed upon by all the Unit Owners to be reserved for use by specific Units to the exclusion of other Units, and to include those areas designated as parking areas on the Plans to the Declaration.

Section 1.17. "Majority" or "Majority of the Owners" means the Owners of more than fifty percent (50%) of the aggregate interest in the Common Areas or Common Elements.

Section 1.18. "Mortgage" means any deed of trust, mortgage, security agreement, and financing statement, or any and all other similar instruments given to secure the payment of a debt by granting a security interest in a Unit.

Section 1.19. "Mortgagee" means any secured party under a security agreement or mortgage and the beneficiary under or a holder of a deed of trust.

Section 1.20. "Notice and Opportunity to be Heard" means the right of a Unit Owner to receive notice of an action proposed to be taken by or on behalf of the Association and the right for an opportunity to be heard thereon. The procedures for such notice and opportunity to be heard are set forth in Article XIV of this Second Amended and Restated Declaration.

Section 1.21. "Officer" shall mean those individuals who are elected by the Board to serve as officers of the Association to include President, Secretary, Treasurer and such other support and offices as the Board may determine necessary.

Section 1.22. "Percentage Interest" or "Allocated Interest" means the percentage of undivided interest each Unit Owner owns in the Common Areas or Common Elements, and as the same is set forth in Exhibit D attached to the Declaration as defined above..

Section 1.23. "Person" means a natural person, corporation, business, partnership,

association, trustee, fiduciary or other legal entity.

Section 1.24. "Plat" means a site survey depicting the boundary of the Sunset Ridge Condominium which shows the location of the foundations and the Units and which was submitted as a separate attachment to the Original Declaration, as amended, and was also recorded on September 17, 1985, at Plat Book 50, Page 137, Buncombe County Registry.

Section 1.25. "Plans" means the plans of the buildings and Units by a Professional Engineer or architect. The Plans for Sunset Ridge Condominium were filed at Condominium File Condominium File 85-A, as revised at Condominium File 327, Buncombe County Register of Deeds, and consists of seventeen (17) pages.

Section 1.26. "Rules and Regulations" means those certain published guidelines, available to all members, governing the use and conduct of the Common Areas of the Condominium, as promulgated from time-to-time by the Board of Directors, and as enumerated as a power of the Association pursuant to Section 47C-3-102(1) of the Act.

Section 1.27. "Unit" or "Condominium Unit" means the physical portion of the Condominium designated for separate ownership or occupancy whose boundaries are as set forth in Article III of this Second Amended and Restated Declaration.

Section 1.28. "Unit Owner" or "Owners" or "Members" means the record legal fee Owner or Owners of a Unit, excluding any lender, trustee, or creditor whose interest in the Unit is merely as security for the performance of an obligation or repayment of an indebtedness.

ARTICLE II

DESCRIPTION OF CONDOMINIUM PROPERTY

Section 2.1. **Name.** The name of the condominium is Sunset Ridge Condominium (sometimes referred to herein as "Sunset Ridge" or Condominium").

Section 2.2. **Location.** The Condominium is located in Asheville, Buncombe County, North Carolina as shown and described on a plat recorded in Plat Book 50, Page 137 ("Plat"), and consisting of a 7.20-acre tract of land, with said Condominium Building specifically located on the Plat, and as shown on those Condominium Plats recorded at Condominium File

85-A, as revised at Condominium File 327. Collectively, these documents consist of and describe the Condominium Property.

Section 2.3. Condominium Building. The Condominium consists of a total of seventy-two (72) condominium Units in a six (6) story building ("Building") which building is located on the Condominium property as defined in Section 1.12 of this Amended and Restated Declaration and as further described in Exhibit A attached to the Declaration as defined above and by this reference made of this Second Amended and Restated Declaration. The Building is of concrete, steel and brick construction with exterior stucco facing over brick finish. The Building has a poured concrete roof covered with TPO (Thermal Plastic Polyolefin).

The Condominium Units are of four (4) types as follows:

- A. **Type A.** Twenty-four (24) two-bedroom, one-bath Units containing approximately 901 square feet.
- B. **Type B.** Thirty-six (36) one-bedroom, one-bath Units containing approximately 601 square feet.
- C. **Type C.** Six (6) studio Units containing one bath, living, kitchen and dressing area with no separate bedroom, and containing approximately 491 square feet of floor area.
- D. **Type D.** Six (6) Studio Units containing one bath, living, kitchen and dressing area with no separate bedroom, and containing approximately 516 square feet of floor area.

The designations of the condominium Units by Unit number and by floor location along with the allocated, undivided interest appurtenant to each condominium Unit are set forth in Exhibit D attached to the Declaration as defined above and by this reference made a part of the Second Amended and Restated Declaration.

ARTICLE III

UNITS

Section 3.1. Nature of Ownership. Every Condominium Unit, together with the corresponding undivided interest in the Common Areas and Common Elements shall constitute a separate parcel of real estate. The Unit Owner is entitled to the exclusive ownership and possession of the Unit, subject only to the covenants, conditions and restrictions contained in the Condominium Documents. The percentage of undivided interest in the Common Areas and Common Elements of each Unit shall not be separated from the Unit to which it appertains and shall automatically be conveyed or encumbered with the Unit, even though such interest is not expressly mentioned or described in the deed or other instrument. A Unit Owner is automatically a member of the Association and shall remain so until his or her ownership ceases for any reason. By acceptance of a deed to a Unit, the Unit Owner agrees to abide by the Condominium Documents.

Section 3.2. Unit Dimensions. Each Unit shall include all the space within the interior finish of all exterior walls or party walls of said Unit. Each Unit is bounded both as to horizontal and vertical boundaries by the interior facing of the exterior perimeter walls of the building, the unfinished lower surface of the subflooring in each floor and the interior surface of the roof sheathing, decking or roof joists. The Unit will include all interior lath, furring, drywall, wallboard, plasterboard, plaster, paneling, molding, tiles, wallpaper, paint, finished and unfinished flooring and any other materials constituting any part of the finished surfaces of any wall, floor or ceiling. The following are also included as a part of the Unit:

- A. Heating and air conditioning systems and dehumidifiers.
- B. The electrical wiring and system, including but not limited to breaker boxes and fuse boxes, wherever located, from the service meter to the place where it connects with all uses within the Unit.
- C. All other utility lines at the point they enter the Unit, other than those items described as Common Elements under Article IV, below.
- D. Plumbing at the point where the water lines enter the Unit to the end use in an individual Unit, including and together with all plumbing fixtures and hot water heaters.

- E. The sewer plumbing and drainage from all points within each individual Unit to the point where the sewer plumbing, or drainage exits from the individual Unit.
- F. Cable systems serving the Unit, wherever located.
- G. Any built-in cabinets and appliances.
- H. Any installed burglar alarm system or intercom system.
- I. Exterior doors, window frames and windowpanes, except that the exterior decoration and painting of the exterior surfaces of such doors and window frames shall be the responsibility of the Association.

Section 3.3. Interpretation. In interpreting this Second Amended and Restated Declaration and its Plans, the actual physical boundaries of a Unit, as originally constructed, or of a Unit reconstructed in substantial compliance with the original plans thereof, shall be conclusively presumed to be its boundaries regardless of settling or lateral movement of the building, and regardless of minor variances between boundaries shown on the Plans and those of the Unit.

ARTICLE IV

COMMON AREAS AND COMMON ELEMENTS

Section 4.1. Common Areas and Common Elements. Common Areas and Common Elements include and consist of all parts of the Condominium located outside of the Unit boundaries of the respective Units. In general, the terms are used interchangeably, and include but are not limited to the following:

- A. The land on which the buildings are erected and all the land surrounding the buildings that lies within the boundaries of the land subjected to this Second Amended and Restated Declaration.
- B. The foundation and structural members, (including interior loadbearing walls, studs, and supports, columns, girders, and beams), exterior walls, concrete slabs, wall and roof insulation, roofs, roof trusses, roof underlayment and shingles, guttering, party walls, halls, walkways, corridors, entry stairs,

stairways, door and entry steps with railing, stoops and entrances to and exits from the building, ceiling and floor joists, and subflooring.

- C. Lobbies, cabana, club house, pool, two laundry facilities (on the sixth floor and one on the fourth floor), supply, storage and electric service rooms on all other floors as shown on the Plat.
- D. All utilities designed and intended for common use or to serve more than one Unit including but not limited to electrical service, gas, plumbing, sewer pipes, heating and air conditioning, ducts, wires, cables, cable or television antenna systems, whether located in Common Areas or in the Units, excluding from such utilities all items affixed or connected thereto not designed or intended for common use by more than one Unit.
- E. Easements for access, maintenance, improvements, repair, reconstruction or replacement of Common Areas or Common Elements or any property owned by the Association and all other services necessary or convenient to the existence, maintenance, safety and use of the property or any property owned by the Association.
- F. The yards, parking areas, fences, non-public roads and driveways, and trees and shrubberies situated thereon.
- G. Any portion of the property shown and designated on the Plat or Plans as Common Areas or Limited Common Areas.

Section 4.2. Percentage Interest. The undivided interest in the Common Elements appurtenant to each Unit is set forth in Exhibit D attached to the Declaration as defined above and by this reference made a part of this Second Amended and Restated Declaration. The proportional interest in the Common Property that is appurtenant to each Unit has been determined by that ratio formulated by the developer in the Original Declaration, in compliance with the Act. the Allocated Interests, attached. The percentage of undivided interest in the Common Property assigned to each Condominium Unit shall not be changed except with the unanimous consent of all of the Owners of all of the Condominium Units.

Section 4.3. No Partition. The Common Areas and Common Elements shall remain undivided and no right to partition the same or any part thereof shall exist except as provided in the Act, this Amended and Restated Declaration and the Bylaws.

Section 4.4. Use of Common Areas and Common Elements. Each Unit Owner shall have the right to use the Common Areas and Common Elements in accordance with the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of other Unit Owners. In the event of a dispute, the Board, in its sole discretion, may determine the purpose for which a part of the Common Areas or Common Elements is intended. The Board shall have the right to promulgate rules and regulations limiting the use of Common Areas or Common Elements to Unit Owners and their guests as well as provide for the exclusive use of a part of the Common Areas or Common Elements by a Unit Owner and his or her guests for special occasions, which exclusive use may be conditioned upon, among other things, payment of a fee. Any Unit Owner may delegate, in accordance with the provisions of this Amended and Restated Declaration and the Bylaws and reasonable rules and regulations, his or her right to use the Common Areas or Common Elements, to the immediate members of his or her family living in the Unit, or to a limited number of guests or to tenants who reside in his or her Condominium Unit.

Section 4.5. Limited Common Areas and Limited Common Elements. Certain parts of the Common Areas and Common Elements, herein called and designated as "Limited Common Elements" are hereby set aside, and reserved for the exclusive use of the Units to which they are appurtenant, and such Units shall have appurtenant thereto an exclusive easement for the use of such Limited Common Areas or Limited Common Elements.

Section 4.6. Parking spaces located within the gated area are Limited Common Elements. Each such parking space is assigned to a specific Unit in accordance with the chart set forth on Exhibit "D" attached to the Fourth Declaration as defined above and by this reference made a part of this Amended and Restated Declaration. Notwithstanding those spaces as designated, the Board of Directors, with agreement and consent of the Unit Owners affected, have the authority to reassign, exchange or substitute spaces for the individual Units to accommodate and facilitate access for Unit Owners who have or might develop a physical disability or who may experience mobility issues of any sort whatsoever, including but not limited to being confined to a wheelchair.

ARTICLE V

RESTRICTIVE COVENANTS AND USE RESTRICTIONS

Section 5.1. Restrictions in General. The Units and Common Elements of the Condominium are subject to the restrictions contained in this Declaration and as may be set forth in the Bylaws and Rules and Regulations of the Association. All Owners and other persons are subject to these restrictions and subject to their enforcement as set forth in this Second Amended and Restated Declaration, the Bylaws, and the Act.

Section 5.2. Residential Use. Each of the Units shall be restricted exclusively to single-family residential use and shall be occupied only by a single family, its guests, aides, or caretakers.

Section 5.3. Business Activities. No business activities shall be conducted on any portion of the Condominium, provided, however, private offices or home business may be maintained in a Unit so long as those businesses are incidental to the primary residential use of the Unit and generates no additional foot or vehicular traffic. Such home offices or private businesses must be conducted exclusively by a Unit Owner via telephone, internet, or other private means of communication. No face-to-face communication shall be allowed, including but not limited to meetings within a Unit. No products can be bought, sold, or delivered to the Unit and no inventory shall be maintained in the Unit or in any other portion of the Condominium. Under no circumstances shall a Sunset Ridge mailing address be listed or used as a business address by a Unit Owner or by any business entity created by or associated with any Unit Owner.

Section 5.4. Subdividing. No Unit may be subdivided into smaller Units, nor any portion thereof sold or otherwise transferred.

Section 5.5. Parking. The parking areas designated as Limited Common Elements in accordance with Article 4.5 above are parking spaces specifically numbered and assigned to each Unit. These assigned parking spaces are to be used for parking of passenger vehicles by Unit Owners, tenants, families, lessees, and other persons authorized to be on the premises. Other portions of the Common Elements designated as parking areas are to be used for visitor and guest parking of passenger vehicles and are intended to be equitably used by all Unit Owners. To this end, the Board of Directors is hereby authorized to adopt rules and regulations governing parking of vehicles on the Common Elements, including, but not limited to designation of areas to be used

for parking, limitation of the number of vehicles any one Unit Owner may park on the Common Elements, and regulation of the assigned parking spaces.

Except as provided hereafter, leaving any vehicle parked for more than twenty-one (21) consecutive days on the Common Elements, other than in a numbered parking space assigned to a Unit as provided above, is prohibited. Any Unit Owner who wishes to leave a vehicle in a parking space other than an assigned and numbered parking space for more than twenty-one (21) consecutive days must request and receive written permission from the Board of Directors. In no event, however, may a vehicle be left unattended and parked on the Common Elements, other than a numbered and assigned parking space, for more than forty-five (45) days. The Board of Directors may promulgate additional rules and regulations in order to regulate further both Unit Owner and visitor parking.

Section 5.6. Vehicle Restrictions. Owners, their guests, invitees, and tenants shall bring onto and park on the Common Elements only conventional passenger vehicles, defined as those vehicles which may be registered as passenger vehicles. Notwithstanding such definition, no recreational vehicles ("RV's"), including but not limited to motor homes, camping trailers, fifth wheelers or teardrop campers shall be parked within the gated area of the Condominium, nor shall any commercial vehicles, boats, boat trailers, house trailers, single or double wide mobile homes, trucks or vans that do not fit within a designated parking slot (except for those vans commonly known as "minivans" and used strictly as passenger vehicles). The use or parking of all-terrain vehicles, including but not limited to motor driven tricycles, four wheelers or quads, or any motorcycle having a two-stroke engine, or multi-wheeled, motor driven recreational vehicles is prohibited and such vehicles shall not be parked or operated in any fashion in the gated area of the Condominium or any part thereof by any Unit Owner, or his or her agents, employees or invitees. No inoperable vehicle, defined as any vehicle unable to move under its own power or with an expired license plate or registration, is allowed on the Common Elements, and the Association has the authority to have towed at the Owner's expense any inoperable vehicle stored or parked or stored in a parking space on any portion of the Common Elements for more than fourteen (14) consecutive days. An exception to this restriction may be granted by the Board upon written request by the Unit Owner.

There shall be no repairing, washing, or other maintaining of vehicles on the Condominium

Property, except in areas that the Board of Directors, in its sole discretion, may choose to designate.

Section 5.7. Alterations. Unit Owners shall not change the exterior appearance of any entrance door, storm doors, porch area, garage doors, walls, deck/deck doors by painting it with a different color, adding fixtures thereto, adding windows to their Unit, changing railings or otherwise making any modifications or alterations to their Unit, nor shall a Unit Owner make structural alterations or modifications to his or her Unit or to any of the Common Elements or Limited Common Elements, without the written approval of the Board of Directors.

Section 5.8. Laundry Facilities. The laundry facilities are for the exclusive use of the Owners, tenants, and guests, The Board of Directors shall hereby have authority to make any and all regulations concerning the operation, use, and maintenance of the laundry facilities including the allocation and use of income from the washers and dryers.

Section 5.9. Security Cameras. The Association operates and maintains security monitoring equipment throughout the property. The Board of Directors shall hereby have the authority to promulgate rules and regulations concerning the security cameras.

Section 5.10. Prohibition of Time-Sharing. Time-sharing and time shares as defined in N.C.G.S. 93A, Article 4, the North Carolina Timeshare Act (“Timeshare Act”) are strictly prohibited. No Unit shall be used, sold, developed, subdivided, or owned in a “time share” form of ownership or as a “time share unit,” as such terms are defined in N.C.G.S. Section 93A-41 of the Time Share Act. Time-share like arrangements, including but not limited to multi-party schemes not fitting within the statutory definition of a time share, are likewise prohibited. By way of example but not limitation a Unit Owner is prohibited from establishing a time share-like arrangement to which such Unit Owner arranges dates of separate occupancy and use of a Unit by persons who are not immediate family members. No Unit Owner or Unit Owners may divide up the use and occupancy of a Unit on any formula that resembles a timeshare-based formula. The determination of whether a specific arrangement is “time share-like” shall be determined by the Board of Directors of the Association in its sole discretion.

Section 5.11. Occupancy Restriction. There shall be no more than two (2) permanent residents in any Studio Unit, nor three (3) permanent residents in any one-bedroom Unit, nor four (4) permanent residents in any two-bedroom Unit.

Section 5.12. Renting. In order to protect the equity of individual Unit Owners in the Condominium, to protect and to preserve the character and the scheme of development of the Condominium as a single-family residential community of predominantly Owner-occupied Units, and to prevent the Condominium from assuming the character of a renter-occupied apartment complex, the leasing of Units is prohibited. No leasing of any term by any Unit Owner shall be allowed. For the purposes of this Amended and Restated Declaration, leasing shall be defined as the regular occupancy of a Unit by any person other than the Unit Owner for which the Unit Owner receives any benefit, emolument including a fee, service, gratuity, or emolument. Under limited circumstances, and at the complete discretion of the Board, the leasing or renting of Units shall be allowed upon the written request of a Unit Owner who demonstrates hardships, as the same is defined below.

Section 5.13. Hardship Rentals. Under limited circumstances, and at the complete discretion of the Board, the leasing or renting of Units by a Unit Owner who demonstrates hardships, as the same is defined below, shall be allowed upon the satisfaction of the following conditions:

- A. A Unit Owner who believes that leasing his or her Unit is necessary to avoid undue hardship, shall make written application to the Board setting forth the circumstances of the alleged hardship. Circumstances wherein the Board may find undue hardship include, but are not limited to the following: 1) when a Unit Owner must relocate and cannot within ninety (90) days from the date the Unit was placed on the market sell the Unit for the current appraised market value after having made reasonable and diligent efforts to do so; 2) the death of the Unit Owner; and 3) where the Unit Owner is required by his or her employer to relocate temporarily and intends to return and reside in the Unit.
- B. If the Board, in its discretion, determines the existence of a hardship, all hardship rentals shall be subject to the following requirements:
 1. Hardship rentals shall be limited to the leasing of no more than five (5) Units at any one time.
 2. The term of a hardship lease shall be for a minimum of ninety (90) days and a maximum of one (1) year. A lease may be renewed, at the Board's

discretion, for a total lease term of no more than two (2) years.

3. Units rented pursuant to this Section may be rented only in their entirety; no fraction or portion may be rented. There shall be no subleasing of Units or assignment of leases unless approved in writing by the Board of Directors. No transient tenants are allowed.
4. The Unit Owner must provide the tenant with copies of this Amended and Restated, the By-laws, and the Rules and Regulations. Tenants shall comply in all respects with the Association's Governing Documents. The Unit Owner is liable for any and all violations of any of the Governing Documents by the Unit Owner's Tenants.
5. Unit Owners who rent their Units pursuant to this section shall use the Board-approved Lease Agreement, available from the Association's management company or from the Association's website.

Section 5.14. Access to Units. The Association and its agents shall have access to each Unit during reasonable working hours, upon twenty-four (24) hours written notice to its Owner, as may be necessary for the maintenance, repair, or replacement of any Common Elements.

Section 5.15. Emergency Access. All Unit Owners shall provide the Association or its agents with a key or a keypad code to the Unit to permit emergency access if the Unit Owner is absent. If the Unit Owner changes the lock or the keypad code to the Unit, a new key or keypad code must be provided to the Association immediately.

Section 5.16. Prohibition of Pets. With the exception of small birds such as parakeets or canaries and aquarium fish, no pets, animals, livestock, or birds of any kind shall be raised, bred, kept, or permitted in any Unit or on the Common Elements. The Board shall strictly enforce this prohibition of pets and animals. Notwithstanding the foregoing, the Board may grant exceptions to this provision if such exception is deemed by the Board to be a reasonable accommodation under the Federal Fair Housing Act.

Section 5.17. Signs. No sign, advertisement, notice, or other lettering shall be exhibited, inscribed, painted, or affixed by any Owner on any portion of the exterior or interior (if visible from the outside) of any Unit or on any portion of the Common Elements. In its sole discretion,

the Board may erect signs on the Common Elements for identification or for such other purposes as the Board finds necessary.

Section 5.18. Prohibitions in Use of Common Areas or Common Elements. Except upon specific approval from the Board or as stated in the Rules and Regulations as adopted by the Board, the Common Elements, Limited Common Elements, shall not be used for temporary or permanent storage of supplies, personal property, trash or refuse of any kind, except in trash receptacles placed in designated areas, nor shall they be used for the drying or airing of clothing, rugs or other fabrics. Entrances, sidewalks, yards, driveways, parking areas and stairways shall not be obstructed. In general, no activity shall be carried on nor condition permitted that will despoil the appearance of the Condominium Property.

Section 5.19. Nuisances. No nuisances shall be allowed upon the Condominium Property and no person shall engage in any use, practice or activity upon such property which is obnoxious, offensive or a source of annoyance to Unit Owners or which reasonably interferes with the peaceful and proper use of the property by any Unit Owner. All parts of the property shall be kept in a clean and sanitary condition. No rubbish, refuse or garbage shall be allowed to accumulate, and no fire hazard shall be allowed to exist. No Unit Owner shall permit any use of his or her Unit or make any use of the Common Areas or Common Elements which will increase the rate of insurance upon the Condominium Property.

Section 5.20. Antennas. There shall be no exterior antenna for television, radio, citizen band, ham radio nor any other exterior fixture or appliance for electronic devices or for transmission or receipt of communication signals.

Section 5.21. Restriction on Transfer of Common Areas or Common Elements. The Association shall not sell, transfer or encumber any portion of the Common Areas or Common Elements without the written approval of Owners and mortgagees of Units totaling ninety percent (90%) of the percentage interest in the Common Areas or Common Elements and all of those having use of Limited Common Areas or Limited Common Elements thereby affected.

Section 5.22. Display of the flags of the United States or the State of North Carolina. The display of the flags of the United States or the State of North Carolina shall be allowed consistent with the provisions of Section 47C-3-121 of the Act.

Section 5.23. Rules and Regulations. The Board may from time to time promulgate reasonable rules and regulations respecting the Units and the Common Areas or Common Elements. Said Rules and Regulations shall be published such that all of Unit Owners are made aware of them. Publication may be accomplished by posting the Rules and Regulations on the Association's website, by publishing in the Association's newsletter, or by mailing or emailing to all Unit Owners.

ARTICLE VI

EASEMENTS

Section 6.1. Use and Enjoyment. Every Unit Owner, his or her family living in his or her Unit, his or her tenants and permitted guests shall have a right and easement of use and enjoyment in and to the Common Areas and Common Elements, except that Limited Common Areas and Limited Common Elements not allocated to his or her Unit shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

- A. The right of the Board of Directors to control the use and enjoyment thereof, which shall include but not be limited to, the right of the Board to limit use and enjoyment thereof to the Unit Owners and their respective families living in the Unit, tenants and guests, as well as to provide for the exclusive use and enjoyment of specific portions thereof, at certain designated times by a Unit Owner, his or her family, tenants and guests.
- B. After notice and opportunity to be heard, the right of the Board of Directors to suspend the voting rights of a Unit Owner for any period of time during which an assessment against his or her Unit remains unpaid or for infractions of its published Rules and Regulations.

Section 6.2. Maintenance and Repair. There shall be an easement through the Units and the Common Areas for the installation, maintenance, repair and replacement of Units and the Common Areas. Use of this easement shall be only during normal business hours, except that access may be had at any time in the case of emergency.

Section 6.3. Structural Support. Every portion of a Unit or the Common Areas or Common Elements which contributes to the structural support of any other Unit shall be burdened with an easement of structural support.

Section 6.4. Encroachment. If any portion of the Common Areas encroaches upon any Unit or any Unit encroaches upon any other Unit or upon any portion of the Common Areas as a result of settling or shifting of a building or as the result of survey error or error in description, an easement for the encroachment and for the maintenance of the same so long as the building stands, shall exist. If any building, any Unit, any adjoining Unit or any adjoining part of the Common Areas shall be partially or totally destroyed as a result of fire or other casualty or as a result of eminent domain proceedings and then rebuilt upon the original site and upon the same Plans as the original building, encroachments of parts of the Common Areas due to such rebuilding shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the subject building shall stand.

Section 6.5. Utilities. There shall be a general easement upon, across, above and under all of the property for ingress, egress, installation, replacing, repairing and maintaining all utilities including, but not limited to, water, sewer or septic or sewage treatment system, telephone, gas and electricity or other community service (i.e., cable television or security system, if installed) which the Declarant or the Association has installed or the Association might wish to install to serve the property. By virtue of this easement, it shall be expressly permissible to erect and maintain the necessary poles and other necessary equipment on the property and to affix and maintain wires, conduits, cables, and the like on, above, across, under and through the roofs and exterior walls of the Units. Each Unit shall also be subject to a general easement of ingress and egress for the installation, replacement, repair, and maintenance of any utility system existing for the benefit of any other Unit. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only with advance notice to the Unit Owner directly affected thereby.

Section 6.6. Access Easement. Each Unit Owner and the Association shall have an easement as shown on the Plat running from town Mountain Road to the Condominium Property which is labeled on the Plat as "Community Access Drive," which easement shall be used for ingress, egress, and regress from Town Mountain Road to the Condominium Property.

Section 6.7. Combined Units. In the event that the same Unit Owner owns adjoining Units, that Unit Owner may construct a passageway between the adjoining Units, and such passageway shall be an easement through the Common Element walls of the adjoining Units. Any such passageways now in existence shall be deemed easements between the adjoining Units. A Unit Owner of adjoining Units may construct such passageways, which shall be deemed easements between the two adjoining Units; however, before doing so said Unit Owner shall notify the Association prior to the construction of the any passageway and shall present plans and specifications for the construction of the passageways, so that a determination can be made that no structural elements of the Condominium will be disturbed or compromised.

Section 6.8. Other. There shall be a general easement to the Association, its directors, officers, agents, and employees (including, but not limited to, any manager employed by the Association) to enter upon the property or any portion thereof in the performance of their duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to the Unit Owner directly affected thereby. In case of any emergency originating in or threatening any Unit, regardless of whether the Unit Owner is present at the time of such emergency, the Board of Directors or any other person authorized by it, including but not limited to any managing agent, shall have the right to enter such Unit for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate, including, if necessary, the right to make a forcible entry. In the event such forcible entry is necessary, the Association and its agents and employees shall be held harmless from and not be liable for any damage caused by such forcible entry.

ARTICLE VII

ASSOCIATION OF UNIT OWNERS

Section 7.1. Association Authority. The Association shall manage and administer the Condominium and shall have all powers and duties granted to it by the applicable provisions of the Condominium Act and the Governing Documents.

Section 7.2. Delegation of Unit Owner Authority to Association. The Unit Owners, for themselves and for their heirs, assigns and successors in interest, and pursuant to the terms of this Amended and Restated Declaration and to the terms of the Act, do hereby delegate any and

all responsibility to the Association for the management and administration of the affairs of the Condominium, with such delegation of authority to run with the land.

Section 7.3. Association Membership. All Unit Owners by virtue of their ownership of a Unit in the Condominium are members of the Association and shall be entitled to vote on all matters upon which members of the Association are entitled to vote pursuant to the Amended and Restated Declaration and in accordance with the Bylaws. Such Owners shall be entitled to vote the allocated percentage interest for each Unit. The membership of the Association shall be limited to and consist of all the Unit Owners.

Section 7.4. Powers and Duties. Acting by and through its Board of Directors, the Association shall have the powers and duties necessary for the administration of the affairs of the Condominium which shall include, but not be limited to the following:

- A. Adopt and amend Bylaws as well as Rules and Regulations;
- B. Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for Common Expenses from Unit Owners;
- C. Hire and terminate management agents and other employees, agents and independent contractors;
- D. Institute, defend or intervene in its own name in litigation or administrative proceedings on matters affecting the Condominium;
- E. Make contracts and incur liabilities;
- F. Regulate the use, maintenance, repair, replacement, and modification of the Common Elements;
- G. Cause additional improvements to be made as a part of the Common Elements;
- H. Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that common elements may be conveyed or subjected to a security interest only pursuant to N.C.G.S. 47C-3-112;
- I. Grant easements, leases, licenses, and concessions through or over the common elements;
- J. Impose and receive any payments, fees, or charges for the use, rental, or operation of

- the common elements other than limited common elements described in N.C.G.S. 47C-2-102(2) and (4) and for services provided to Unit Owners;
- K. Impose charges for late payment of assessments, not to exceed the greater of twenty dollars (\$20.00) per month or ten percent (10%) of any assessment installment unpaid and, after notice and opportunity to be heard, suspend privileges or services provided by the Association (except rights of access to Units) during any period that assessments or other amounts due and owing to the Association remain unpaid for a period of thirty (30) days or longer, and levy reasonable fines not to exceed one hundred dollars (\$100.00), pursuant to Section 47C-3-107.1 of the Act for violations of the Amended and Restated Declaration, Bylaws or Rules and Regulations of the Association;
 - L. Impose reasonable charges for the preparation and recordation of amendments to the Amended and Restated Declaration, resale certificates required by Section 47C-4-109 or statements pursuant to Section 47C-3-107.1 of unpaid assessments of the Act;
 - M. Provide for the indemnification of and maintain liability insurance for the officers, executive board, directors, employees and agents;
 - N. Assign its right to future income, including the right to receive Common Expense assessments;
 - O. Exercise all other powers that may be exercised in this State by legal entities of the same types of the Association; and,
 - P. Exercise any other powers necessary and proper for the governance and operation of the Association.

ARTICLE VIII

MAINTENANCE RESPONSIBILITIES

Section 8.1. By the Association. The Association shall maintain, repair, and replace the Common Areas and Common Elements and the cost shall be charged to the Unit Owners as a Common Expense. Notwithstanding this, each Unit Owner shall be responsible for the

maintenance, repair and replacement of the Limited Common Areas and Limited Common Elements allocated to his or her Unit.

Section 8.2. By the Unit Owner. Unit Owners are financially responsible for any maintenance, repair or replacement of those items contained within the Unit Dimensions as defined in Article III of this Declaration.

Section 8.3. Liability for Damages to Units and Common Area. Damages to any portion of the Unit caused by agents or employees employed by the Association shall be repaired by the Association. All damages to the Common Areas and Common Elements and Limited Common Areas and Limited Common Elements intentionally or negligently caused by Unit Owner, their family invitees, agents and lessees, employees or contractors shall be repaired promptly by such Unit Owner, except to the extent such damage is covered by hazard insurance maintained by the Association. If the Unit Owner fails to repair said damage within fifteen (15) days from written demand by the Board, the Association may repair said damages and costs thereof shall be assessed against the responsible Unit Owner.

Section 8.4. Restrictions on Unit Owners. No Unit Owner shall perform any maintenance, repair, or replacement upon his or her Unit which disturbs the rights or the quiet enjoyment of property of the other Unit Owners, or which jeopardizes the soundness or the safety of the Condominium Property. Any work so performed, which in the sole opinion of the Board violates the terms of this paragraph, shall be immediately corrected. If the Unit Owner fails to correct said work within fifteen (15) days from written demand by the Board, the Association may remove, modify, or alter the work and costs thereof shall be assessed against the responsible Unit Owner. A Unit Owner shall not repair, alter, or replace any of the Common Areas or Common Elements without the prior written consent of the Board.

ARTICLE IX

ASSESSMENTS

Section 9.1. Computation of Operating Budget and Annual Assessment. It shall be the duty of the Board to prepare and approve a budget covering the estimated cost of operating the Association during the coming fiscal year and amounts necessary to provide working capital; a

general operating reserve; and reserves for contingencies, replacements and maintenance items not performed annually. The Board shall cause the budget and the annual assessments to be levied against each Unit for the coming fiscal year. Within thirty (30) days after adoption of any proposed budget for the Condominium the Board shall provide to all Unit Owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board shall set a date for a meeting of the Unit Owners to consider ratification of the budget, such meeting to be held not less than ten (10) and not more than sixty (60) days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget and the assessment established is ratified unless at the meeting a majority of all the Unit Owners in the Association rejects the budget. In the event that the membership rejects the proposed budget, the Board may prepare an alternate budget, which shall be ratified by the members in the manner described herein, or alternatively the budget in effect for the current year shall continue for the succeeding year.

Section 9.2. Purpose of Assessments. The assessment fixed pursuant to this Section shall be used to pay the Common Expenses including, but not limited to, all expenses, costs and charges incurred by the Association in connection with the administration, management and operation of the Condominium; the costs of maintenance, repair and replacement of the Common Areas and Common Elements and reasonable reserves; the cost of insurance; and any and all expenses agreed upon as Common Expenses by the Association.

Section 9.3. Apportionment of Common Expense Assessments. Except for assessments under subsections (4) and (5) of this Article, all Common Expenses shall be assessed against all the Units in accordance with the allocation of percentage interest in the common expenses as set forth in this Second Amended and Restated Declaration and pursuant to N.C.G.S. 47C-2-107(a) and attached hereto as Exhibit B. Any combined Units shall for all purposes be assessed as if there were still two separate Units.

Section 9.4. Limited Common Expense Assessments. Unit Owners shall be responsible for paying for the maintenance, repair and replacement of Limited Common Elements as described and defined in Section 5.6 of this Declaration. Should the maintenance, repair and replacement of these Limited Common Elements fall below a certain standard as determined in the sole discretion of the Board, the Board may, after reasonable notice, exercise its right of entry,

as defined Section 14.5 of this Amended and Restated Declaration and accomplish any maintenance, repair or replacement of the Limited Common Element and assess the Unit Owner or Unit Owners that benefit from the Limited Common Area.

Section 9.5. Assessments for Misconduct. If a Common Expense is caused by the misconduct of a Unit Owner, the Association may assess that expense exclusively against that Unit Owner's Unit. Fees, charges, late charges, fines, all collection costs, including reasonable attorney's fees actually incurred and interest charged against a Unit Owner pursuant to the Act, the Amended and Restated Declaration, the Bylaws and the Rules and Regulations are enforceable as Common Expense assessments.

Section 9.6. Special Assessments. If the annual assessment proves inadequate for any calendar year or in the event of an emergency, the Board may at any time levy a special assessment against all Unit Owners for the purpose of supplementing the annual assessments. The Board may levy special assessments for capital improvements upon the Common Areas and Common Elements and for other such matters as the Association shall determine; provided, however, that prior to becoming effective, any such special assessments shall be approved by an affirmative vote of a majority of votes of Unit Owners represented in person or by proxy at a meeting at which a quorum is present, and duly called for that purpose.

Section 9.7. Assessments to Satisfy a Judgement. Assessments to pay a judgment against the Association (G.S. 47C-3-117(a)) shall be assessed and paid on a pro rata basis as between all of the existing Units.

Section 9.8. Reallocation of Common Expense Liabilities. If Common Expense liabilities are reallocated, Common Expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense liabilities.

Section 9.9. Lien for Non-payment. Any assessment attributable to a Unit which remains unpaid for a period of thirty (30) days or longer, together with interest at a rate not to exceed eighteen percent (18%) per annum, collection costs and reasonable attorney fees shall be a continuing lien upon that Unit when a claim of lien is filed on record in the office of the Clerk of Superior Court of Buncombe County in the manner provided in the N.C.G.S. 47C-3-116. Once filed, a claim of lien secures all sums due the Association through the date filed and any sums due to the Association thereafter. Fees, charges, late-charges, and other charges may be imposed

pursuant to N.C.G.S. 47C-3-102, 47C-3-107, 47C-3-107.1 and 47C-3-115. Such fees, charges, late-charges, and other charges are subject to the claim of lien under this section as well as any other sums due and payable to the Association under the Declaration, the provisions of N.C.G.S. 47C, or as the result of an arbitration, mediation, or judicial decision. The Association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45.

Section 9.10. Extinguishment of Lien. A lien for an unpaid assessment is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the full amount of the assessment becomes due; provided, that if an Owner of a Unit subject to a lien under this Section files a petition for relief under the United States Bankruptcy Code, the period of time for instituting proceedings to enforce the Association's lien shall be tolled until thirty (30) days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.

Section 9.11. Judgement, Order or Decree. A judgment, decree or order in any action brought under this Section must include costs and reasonable attorney's fees for the prevailing party.

Section 9.12. Priority of Assessment Lien. The lien under this Section shall be prior to all other liens and encumbrances on a Unit except (a) liens for ad valorem taxes and other governmental assessments or charges against the Unit, (b) mortgages or deeds of trust recorded before the docketing of the assessment lien and (c) materialmen's and mechanic's liens. The sale or transfer of any Unit shall not affect the assessment against such Unit; provided, however, where the holder of a first mortgage or first deed of trust of record, or other purchaser of a Unit, obtains title to the Unit as a result of foreclosure of a first mortgage or first deed of trust, such purchaser, and its heirs, assigns and successors in interest shall not be liable for the assessments against such Unit which became due prior to acquisition of title to such Unit by such purchaser, and its heirs, assigns and successors in interest. Such unpaid assessments shall be deemed to be Common Expenses collectible from all of the Unit Owners including such purchaser and its heirs, successors, and assigns.

Section 9.13. Acceleration. If the Unit Owner shall be in default in payment of any assessment or charge, including, but not limited to, the regular installments based on the annual budget, the Board may accelerate the remaining assessments, including regular installments based on the annual budget, special assessments and specific assessments, upon ten (10) days written notice

to such Unit Owner, whereupon the entire unpaid balance shall become due and payable upon the date stated in such notice.

Section 9.14. Personal Liability of Unit Owners. The Unit Owner of a Unit at the time any Common Expense assessment or portion thereof is due and payable is personally liable for such assessment, for any interest, if applicable, and for all costs of collection including, but not limited to, reasonable attorney's fees actually incurred. The grantee of a Unit shall be liable, jointly, and severally, with the grantor for all unpaid assessments due and owing against the latter at the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. The Association may bring an action at law against the Owner personally obligated to pay the assessment, and any interest, reasonable attorney's fees and costs of such action shall be added to the amount of such assessment.

Section 9.15. Owner's Non-Use. No Unit Owner may exempt himself or herself from liability for payment toward Common Expenses by waiver of the use or enjoyment of any portion of the Common Areas or Common Elements or by the abandonment or sale of his or her Unit.

Section 9.16. Surplus Funds. Any surplus funds of the Association remaining after payment of or provisions for Common Expenses and any prepayment shall be retained in the general operating funds or long-range fund of the Association in the sole discretion of the Board, and no such surplus funds shall be paid to Unit Owners, nor shall such surplus funds be used as a credit to reduce future Common Expense assessments.

ARTICLE X

INSURANCE

Section 10.1. Coverage. To the extent reasonably available, the Board shall obtain and maintain insurance coverage, as a Common Expense.

Section 10.2. Property Casualty Insurance. The Association shall procure and maintain property and casualty insurance on the Common Areas and Common Elements insuring against all risks of direct physical loss, including fire and extended coverage perils. The total amount of insurance after application of deductibles shall not be less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal

date, exclusive of land, excavations, foundations, and other items normally excluded from property policies.

Section 10.3. Liability Insurance. The Association shall procure liability insurance in reasonable amounts, covering all occurrences commonly insured against, including, but not limited to, death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Areas and Common Elements.

Section 10.4. Unavailability of Insurance. If the insurance described in Sections 2 and 3 of this Article is not reasonably available, the Board shall promptly cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Unit Owners.

Section 10.5. Policy Requirements. Insurance policies carried pursuant to Sections 2 and 3 of this Article must provide that:

- A. Each Unit Owner is an insured person under the policy with respect to liability arising out of his or her interest in the Common Areas or Common Elements or membership in the Association;
- B. The insurer waives its right to subrogation under the policy against any Unit Owner or members of his or her household;
- C. No act or omission by any Unit Owner, unless acting within the scope of his or her authority on behalf of the Association, will preclude recovery under the policy;
- D. If, at the time of the loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

Section 10.6. Receipt and Distribution of Proceeds. Any loss covered by the property policy under Sections 2 and 3 of this Article shall be adjusted with the Association, and all proceeds covering property losses shall be paid to the Association, as Trustee for all Unit Owners, and not to any mortgagee or beneficiary under a Deed of Trust. Policies may contain reasonable deductibles and the amount thereof shall be added to the face amount of the policies in determining the amount of coverage. The Association shall hold any insurance proceeds in trust for Unit Owners and lienholders as their interests may appear. Subject to the provisions of Section 8 of this Article, the proceeds shall first be disbursed for the repair or restoration of the damaged

property, and Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Condominium is terminated.

Section 10.7. Unit Owner Responsibility. Each individual Unit Owner shall provide Form HO6 insurance coverage for each of their respective Units, for any and all fixtures and personal property located within their respective Units and may provide their own insurance coverage for the repair and/or replacement of any items in a Unit not insured by the Association under Section 11.2 and 11.3 of this Article.

Section 10.8. Other Insurance. The Association may obtain as a Common Expense:

- A. Officers and Directors Liability Insurance to protect the officers and members of the Board.
- B. Worker's Compensation Insurance if and to the extent necessary to meet the requirements of North Carolina law.
- C. Such other insurance as the Board may determine to be necessary.

ARTICLE XI

DAMAGE, REPAIR AND RECONSTRUCTION

Section 11.1. Duty to Repair. Any portion of the Condominium for which insurance is required under this Article which is damaged or destroyed shall be repaired and replaced promptly by the Association. Any insurance proceeds shall be paid to defray the costs of repair. All proceeds remaining after defraying such costs shall be distributed to the Association. If the proceeds are not sufficient to defray the costs of construction and repair, as determined by the Board of Directors, or if at any time during the reconstruction and repair or upon completion and repair, the costs thereof are insufficient, assessments shall be made against all the Unit Owners, but any such assessment shall be limited to the amount needed to restore the Common Areas and Common Elements and the cost of repair or replacement in excess of insurance proceeds is a Common Expense. No such assessment shall be made to repair the Unit as such costs, if any, would be the responsibility of the Unit Owner or the insurance carrier for the Unit. All proceeds remaining after defraying such costs shall be distributed to the Association.

Section 11.2. Determination Not to Repair. A determination not to repair any portion of the Condominium which is damaged or destroyed may be made only under the following conditions:

- A. The Condominium is terminated. N.C.G.S. 47C-2-118 governs the distribution of insurance proceeds if the Condominium is terminated.
- B. Repair or replacement would be illegal under any State or local health or safety statute or ordinance; or
- C. The Unit Owners decide not to rebuild by an eighty percent (80%) vote including one hundred percent (100%) approval of Owners of Units not to rebuild or Owners assigned to Limited Common Areas and Limited Common Elements not to be rebuilt.

Section 11.3. Distribution of Insurance Proceeds in Event of Non-repair. Proceeds from the payment of insurance shall be distributed as follows:

- A. The insurance proceeds attributable to the damaged Common Areas or Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium;
- B. The insurance proceeds attributable to Units and Limited Common Areas or Limited Common Elements which are not rebuilt shall be distributed to those Owners of those Units and the Owners of the Units to which those Limited Common Areas or Limited Common Elements were allocated or to lienholders, as their interests may appear, in proportion to their Common Element interest; and
- C. The remainder of the proceeds shall be distributed to all the Unit Owners or lienholders as their interest may appear, in proportion to their Common Element interest.

Section 11.4. Re-allocation of Interests. If the Unit Owners vote not to rebuild any Unit, that Unit's allocated interests are automatically reallocated upon the vote as if the Unit had been condemned under N.C.G.S. 47C-1-107(a), and the Association shall promptly prepare, execute and record an amendment to the Amended and Restated Declaration reflecting the reallocations.

ARTICLE XII

ARCHITECTURAL CONTROL

Approval Required for Changes. No exterior construction, change, alteration, or modification of any kind except as allowed in this Declaration shall be commenced on the exterior of any Unit or upon the Common Property without prior approval of the Board. Such limitation on construction, change, alteration, or modification shall include the design and appearance of the exterior surfaces or facades, and the re-painting, decorating or change of color of any exterior surface, gate, fence, roof, or sign. Nor shall any exterior addition or change be made unless and until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same have been submitted to and approved in writing as to harmony of exterior design, color and location in relation to the surrounding structures by the Board, including, without limitation, the erection or construction of any fence or wall; the expansion, addition, removal or enclosure of any deck; any changes in window and door structures; and any installation of awnings, painting or otherwise decorating the outside appearance of the building or the Limited Common Areas or Limited Common Elements serving his or her Unit. A written application accompanied by detailed plans as well as specification and proof of contractor insurance shall be submitted to the Board who shall acknowledge in writing the receipt of said application. The Board shall approve or deny the application in writing within thirty (30) days of the issuance of the written acknowledgement of the receipt. The Board may promulgate reasonable Rules and Regulations pertaining to the application process, including devising forms which the Unit Owner must complete as part of the application process.

The Board or its designee shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. Any member of the Board or its representatives shall have the right, during reasonable hours, and with no less than twenty-four (24) hours' notice, to enter upon any Unit to inspect any Unit and any improvements thereon for the purpose of ascertaining whether this Declaration has been or is complied with. Such person or persons shall not be deemed guilty of trespass by reason of such entry.

ARTICLE XIII

ENFORCEMENT POWERS

Section 13.1. Rules Making Authority. The Condominium shall be used only for those uses and purposes set out in this Amended and Restated Declaration and the Bylaws. The Board shall have the authority to make, modify, repeal and to enforce reasonable Rules and Regulations governing the conduct, use and enjoyment of the Units and the Common Areas or Common Elements so long as copies of all such Rules and Regulations are furnished to all Unit Owners. Such Rules and Regulations shall be binding on all Unit Owners unless specifically overruled at a regular or special meeting by the vote of a majority vote of a quorum present at said meeting. No provision of such Rules and Regulations shall be in conflict with either this Amended and Restated Declaration or the Bylaws.

Section 13.2. Defaults and Remedies. Enforcement of the covenants, conditions and restrictions contained in this Amended and Restated Declaration shall be by any proceeding at law or equity against any person or persons violating or attempting to violate or circumvent any provision herein contained, either to restrain or enjoin violations or to recover damages. The remedies granted and reserved herein are distinct, cumulative remedies and the exercise of any of them shall not be deemed to exclude the rights of other Owners to exercise any or all of the other remedies or those which may be permitted by law or equity,

Section 13.3. Fining Powers. Pursuant to Sections 47C-3-102(a)(11) and 47C-3-107.1 of the Act, after notice and an opportunity to be heard, the Board shall have the power to impose fines in an amount not to exceed One Hundred Dollars (\$100.00) per violation, such amount to be assessed per day for a continuing violation, for any violation of any duty imposed under the Act, the Amended and Restated Declaration, the Bylaws or Rules and Regulations duly adopted pursuant thereto against Unit Owners or occupants, which fine(s) shall constitute an assessment against the Unit in accordance with Article IX of this Amended and Restated Declaration, and become a personal obligation of the Unit Owner, and a lien upon the property; to suspend a Unit Owner's or occupant's right to use the Common Areas or Common Elements; and to suspend a Unit Owner's right to vote. The failure of the Board to enforce any provision of the Act, this Amended and Restated Declaration, the Bylaws or Rules and Regulations, shall not be deemed a

waiver of the right of the Board to do so thereafter. Additionally, Unit Owners waive and release any defense that enforcement is or may be selective.

Section 13.4. Suspension of Planned Community Privileges or Services. Condominium privileges or services shall be suspended only pursuant to the provisions contained in Section 47C-3-107.1. Voting privileges in Association affairs may be suspended if a member is delinquent in his or her assessments and the procedure for suspending said voting privilege shall be satisfied by sending notice of the delinquent assessments and filing a lien on the member's property securing payment of the delinquent assessment.

Section 13.5. Right of Entry, Abatement and Enjoinment of Violations. In addition to any other remedies provided for herein, the Association through the Board shall have the power to enter a Unit or any portion of the Common Areas or Common Elements to abate or remove any erection, thing or condition which violates the Amended and Restated Declaration, the Bylaws or Rules and Regulations and any condition that is causing harm to the Units or the Common Property. Except in the case of an emergency, the Board shall give the violating Unit Owner twenty-four (24) hours written notice of its intent to exercise such right of entry or abatement and an opportunity to be heard. All costs of abatement, including reasonable attorney's fees actually incurred, shall be assessed against the violating Unit Owner, and shall be collected as provided for herein for the collection of assessments.

Section 13.6. Recovery of Attorney Fees and Costs. In any proceeding arising because of an alleged default by a member, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorney's fees as may be allowed by the court, with interest thereon at the highest rate allowed by law at the time the costs are incurred, from the dates such costs are uncured until paid.

Section 13.7. Nonwaiver of Covenants. The failure of the Association or any member thereof to enforce any term, provision, right, covenant or condition that may be granted by this Amended and Restated Declaration, the Bylaws, the Articles of Incorporation, the Rules and Regulations, or the Act, as the same may from time to time be amended, shall not constitute a waiver or abrogation of the right of the Association or a member to enforce such term, provision, right, covenant, or condition in the future, irrespective of the number of violations or breaches thereof that may have occurred.

ARTICLE XIV

ENFORCMENT PROCEDURES

Failure to abide by the Amended and Restated Declaration, the Bylaws or the Rules and Regulations shall be grounds for an action to recover damages or obtain injunctive and equitable relief, or both. In addition to these remedies, the Board may, after providing notice and an opportunity to be heard, impose fines, or suspend a Unit Owner's privileges pursuant to Section 47C-3-107.1 of the Act.

If it appears that a Unit Owner is in violation of the Amended and Restated Declaration, the Bylaws or the Rules and Regulations, the Board shall give the violator written notice of the alleged violation. This notice shall state: (i) the nature of the alleged violation; (ii) the date, time and location that the violator will have the opportunity to be heard to explain why the Unit Owner is not in violation of the Amended and Restated Declaration, the Bylaws or the Rules and Regulations; (iii) that any statements, evidence, and witnesses may be produced by the violator at the hearing; and (iv) that the Unit Owner has the right to be represented by an attorney at the hearing.

The hearing shall be held before the Board of Directors and the violator shall be given a reasonable opportunity to be heard. If it is decided that a fine should be imposed, a fine not to exceed one hundred dollars (\$100.00) may be imposed for the violation and without further hearing, for each day more than five (5) days after the decision that the violation occurs. Such fines shall be assessments secured by liens under G.S. 47C-3-116. If it is decided that a suspension of Condominium privileges or services should be imposed, the suspension may be continued without further hearing until the violation of delinquency is cured. The Board shall render its Final Decision to the Unit Owner regarding imposition of the fine or suspension of Condominium privileges or services.

ARTICLE XV

CONDEMNATION

If part or all of the Condominium is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with Section 47C-1-107 of the Condominium Act.

ARTICLE XVI

TERMINATION OF UNIT OWNERSHIP

The Condominium property may be removed from the provisions of this Amended and Restated Declaration and the Act only by agreement of Unit Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated by an instrument to that effect, duly recorded, approved by all Unit Owners and pursuant to the requirements of Section 47C-2-118 of the Act.

Upon removal of the Condominium property from the provisions of this Amended and Restated Declaration and the Act, the property shall be deemed to be owned as tenants in common by the Unit Owners. The undivided interest in the property owned as tenants in common which shall appertain to each Unit Owner shall be the percentage of the undivided interest previously owned by such Unit Owner in the Common Areas or Common Elements.

ARTICLE XVII

AMENDMENTS

This Amended and Restated Declaration may be amended by the affirmative vote of, or a written agreement signed by, the Unit Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated. No such amendment shall be effective until recorded in the Buncombe County Registry.

ARTICLE XVIII

PERCENTAGE INTEREST OF COMMON AREAS AND COMMON ELEMENTS AND VOTING RIGHTS

Each Unit shall have the percentage ownership of the Common Areas and Common

Elements and voting rights in Association affairs as shown in Exhibit D of this Declaration.

ARTICLE XIX

GENERAL PROVISIONS

Section 19.1. Covenants Running with the Land. All provisions of this Amended and Restated Declaration shall be construed to be covenants running with the land.

Section 19.2 Captions. The captions contained in the Documents are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope of the Documents nor the intent of any provision thereof.

Section 19.3. Gender. The use of the masculine gender refers to the feminine and neuter genders and the use of the singular includes the plural, and vice versa, whenever the context of the Documents so requires.

Section 19.4. Waiver. The failure of the Association or any Unit Owner to enforce any covenant or provision of the Act or the Condominium Documents affecting the Condominium Property shall not constitute a waiver of the right to do so thereafter.

Section 19.5. Severability. Invalidation of any covenant, condition, restriction, or other provision of this Amended and Restated Declaration or the Bylaws shall not affect the validity of the remaining portions thereof, which shall remain in full force and effect.

Section 19.6. Conflict. The Documents are intended to comply with the requirements of the Condominium Act and Chapter 55A of the North Carolina General Statutes. In the event of any conflict between the Documents and the provisions of the statutes, the provisions of the statutes shall control. In the event of any conflict between this Amended and Restated Declaration and any other Document, this Amended and Restated Declaration shall control.

IN WITNESS WHEREOF, the undersigned officers of Sunset Ridge Condominium Association, Inc. hereby certify that the above Second Amended and Restated Declaration for Sunset Ridge Condominiums is duly adopted by the Association and its membership in accordance with and pursuant to the Declaration, and as the same has been subsequently amended and subjected to N.C. Gen. Stat. Section 47C, the North Carolina Condominium Act.

This ____ day of _____, 2023.

SUNSET RIDGE CONDOMINIUM ASSOCIATION, INC.

By: _____

Printed Name:

Title: President

Attest: _____

Printed Name:

Title: Secretary

NORTH CAROLINA

BUNCOMBE COUNTY

I _____, Notary Public for Buncombe County, North Carolina, certify that _____ came before me this day and acknowledged that he/she is Secretary of Sunset Ridge Condominium Association, Inc., a North Carolina nonprofit corporation, and that by authority duly given as the act of the corporation, the foregoing instrument was signed in its name by its President and attested by herself as its Secretary.

Witness my hand and official seal, this the ____ day of _____, 2024.

Notary Public

My commission expires:

