

**BOARD OF DIRECTORS  
TAHOE DONNER ASSOCIATION**

**SUMMARY OF SIGNIFICANT FEATURES AND CHANGES  
IN THE PROPOSED REVISED GOVERNING DOCUMENTS**

**BACKGROUND OF GOVERNING DOCUMENT UPDATE PROJECT**

Tahoe Donner Association is a “common interest development” and, as such, it is governed by provisions of California law, including the Corporations Code and the Civil Code (the Davis-Stirling Act). Our Association’s governing documents were last updated in 1992. Since then, there have been many changes in the laws which have resulted in our existing articles of incorporation, bylaws, and CC&Rs being outdated, incomplete, or inaccurate concerning important aspects of our operations. For this reason, the Board has been working with the Association’s legal counsel to develop the updated governing documents that are enclosed in this package.

**OBJECTIVES OF THE PROJECT**

The objectives of this governing document project are: (i) to update the articles of incorporation, bylaws, and CC&Rs to reflect the many changes that have occurred in the law since our community was established, (ii) to provide clarity about issues in a manner that reflects the principles contained in the current documents and applicable law, (iii) to reorganize the documents so that the updated and clarified information will be more accessible to the membership, Board and committee members, the manager, and others who have an interest in the community. There are other changes that are what we call “Best Practices” which are recommended changes that will help the Association operate more effectively and efficiently.

The “New” Davis-Stirling Act was signed into law and became effective on January 1, 2014. The proposed documents reflect the new numbering scheme contained in New Davis-Stirling. For instance, Civil Code section 1351(a) under the “old” law is now referred to by its new number location, Civil Code section 4080.

**THIS SUMMARY**

Because the information has been reorganized, it was not possible to prepare new documents in such a way that they can be usefully “redlined” or “compared” to the old documents. To assist you in reviewing the proposed new documents, we have asked legal counsel to prepare this “executive summary.” This summary provides a road map of how the information in the new documents is organized and outlines features and changes in the documents that the Board feels are significant. It should

not be solely relied upon in making your decision on how to vote. Each document is discussed below.

\* \* \*

## **ARTICLES OF INCORPORATION**

The **Articles of Incorporation** of a homeowners association is the document that is filed with the California Secretary of State. The Articles of Incorporation establish the Association as a corporate entity. The Amended and Restated Articles include provisions that are required under the Corporations Code and provisions that are required for a homeowners association under the Davis-Stirling Act. A legal description of the property has been added. Under the Amended and Restated Articles, future amendments of the Articles of Incorporation will continue to require approval of a majority of the Total Voting Power of the Association.

## **BYLAWS**

The **Bylaws** of a homeowners association govern organizational matters and matters of corporate governance. This is distinct from the Declaration or CC&Rs, which address real property rights, interests, and obligations and related real property matters. The Amended and Restated Bylaws are updated to include a number of specific “Member protective” provisions that have been added to the law. The Amended and Restated Bylaws conform to the current provisions of the Corporations Code and the Davis-Stirling Act, particularly those that detail the duties and powers of the Association and the Board’s many disclosure obligations to the Members.

**Article 1:** States the corporate name, location, and purpose of the Association.

**Article 2:** Contains a comprehensive set of definitions to clarify the terminology of the Bylaws and help ensure the same words are used with a consistent meaning throughout the document. The CC&Rs define these words in the same way.

The purpose of the definitions is to ensure that important terms have the same meaning wherever they are used in the documents and that, as much as possible, the whole definition is in one place in the document. This is not intended to be a dictionary, so some of the definitions do include the words being defined and sometimes the “definition” refers you to another part of the document.

**Article 3:** Discusses membership and voting rights. As under the current bylaws, every Owner of a Lot or Unit is automatically a Member, and every Lot or Unit is entitled to one (1) vote.

**Article 4:** The Davis-Stirling Act was amended some years ago to require that common interest development associations use certain voting and election procedures that are different from the procedures contained in the Corporations Code and used by

other (non-CID) corporations. The Association has been complying with this law, but the existing bylaws do not reflect these provisions of the law.

Highlights of changes from our existing bylaws include: All voting by Members for matters listed in Civil Code section 5100(a) will be by mail using the “secret ballot” method created by the voting and election law. These matters include voting on increases in assessments over the permitted amount, voting for directors, voting to amend governing documents, and voting on a grant of Exclusive Use Common Areas to an Owner. Secret Ballots will be opened at either a Member meeting or a Board meeting. Voting by written ballot is permitted for all other Member votes (for example there is no requirement of double envelopes and ballots may be delivered electronically to all Members who have opted for electronic communications). Proxies will no longer be used, since they are irrelevant since Members are no longer required to vote at Member meetings. Since there will not be any voting at meetings (other than tabulating the ballots that were sent out and returned), there is no quorum requirement for Member attendance at meetings.

The quorum for a valid vote remains twenty-five percent (25%) of the Total Voting Power of the Members. Under the Amended and Restated Bylaws, every Member entitled to vote will receive a ballot and at least twenty-five percent of the Members entitled to vote must return a ballot for the result of the vote to be valid, with the following exceptions: (i) elections of directors will be like public elections in which the number of ballots cast will constitute a quorum, (ii) when the law requires a Member vote to approve certain changes in assessments, the quorum requirement is more than half of all the Owners, (iii) in any Member vote to amend the CC&Rs, the quorum requirement is at least fifty percent (50%) of the Members in good standing, and (iv) there is no quorum requirement for Member attendance at Member meetings. These lower or no quorum provisions are designed to help the Association operate more effectively and efficiently.

**Article 5:** Spells out the process of nominating and electing Board members. There is no change in the number of directors (it remains five [5]) or their term of office (it remains three (3) years and for continuity on the Board, the directors serve “staggered” terms of office). Directors are volunteers and are not entitled to receive compensation.

Only Members in good standing are eligible to be elected to or serve on the Board of Directors. Co-Owners of one (1) or more Lots or Units may not serve on the Board at the same time. Candidates for the Board may be nominated by a nominating committee or by placing their own name in nomination before the nomination deadline. The names of all qualified candidates received by the Board by the published deadline for nominations will be included on the ballot sent to the Members for the election of directors. Because ballots must be sent out at least thirty (30) days in advance and voting will begin as soon as ballots are mailed out, taking nominations from the floor at a meeting is not feasible.

**Please Note:** If the number of candidates is less than or equal to the number of seats to be filled (in other words, there is no question about the outcome of the election), the inspector of elections can declare the candidates elected and notify the Members of their election without going through the cost and unnecessary process of balloting. Election by Acclamation is intended to permit the Association to avoid a costly election ballot mailing when there is an uncontested election.

In the election of directors, Members may cast one (1) vote per candidate for each vacancy being filled, and the candidates receiving the highest number of votes are elected, up to the number of directors to be elected. If there is a tied vote, the candidates will draw lots to break the tie. Consistent with your existing Bylaws, cumulative voting (giving more than one vote to a candidate for the Board) is not permitted.

**Article 6:** This Article deals with meetings of the Board and the rights of the membership to have notice of Board meetings and to speak to the Board as provided by law. Board meetings are held monthly and are open to any Owner who wants to attend (except for executive session meetings, which can only be held for certain purposes as specified by law). If the Board determines that the business of the Association can be managed with less frequent meetings, the Board may meet less often, but the Board must meet at least once every three (3) months. Directors and Members both are entitled to notice of Board meetings. Members are given at least four (4) days' notice of open Board meetings and at least two (2) days' notice of executive session meetings. The notice must include the agenda except in the case of an emergency meeting. Permitted reasons for executive sessions are listed. Items not on the agenda cannot be decided by the Board except in very limited emergency situations.

**Articles 7 & 8:** Describe the duties and powers of the Board, including many important periodic notifications and disclosures to the membership which have been added by changes in the law.

**Article 9:** Describes the positions of the corporate officers. All of the principal offices (president, vice-president, secretary, and treasurer) must be held by members of the Board.

**Article 10:** Concerns Association record keeping and financial management, as well as Members' right to review the Association's accounting books and records, minutes of proceedings, and other records. The law requires the Board to keep minutes of all open Board meetings and Members are entitled to have copies of minutes thirty (30) days after the Board meets.

**Article 11:** Under the Amended and Restated Bylaws, future amendments of the Bylaws will continue to require approval of a Majority of a Quorum of the Members. To allow the Association to keep the Bylaws up to date with changes in the law, this Article also authorizes the Board to approve an amendment if it is to eliminate a conflict between the existing Bylaws and the law or if it is to add some new requirement

imposed by law, and the amendment is prepared by the Association's legal counsel. The idea is to provide a mechanism for this limited category of changes to be made in an expeditious and low-cost manner so that it will be easier to keep the documents current with future changes in the law.

**Article 12:** States which of the Governing Documents will control in the event of a conflict. The likelihood of conflicts is reduced under the Amended and Restated Bylaws and the Amended and Restated CC&Rs because they do not cover overlapping subject matter.

### **DECLARATION OF CC&Rs**

The **Declaration (or CC&Rs)** of a common interest development address real property rights, interests, and obligations and related real property matters. This is different and distinct from the Bylaws which govern organizational matters and matters of corporate governance of the Association.

The proposed CC&Rs have been drafted using consistent terminology and are organized to collect in each part of the document the provisions that relate to a particular topic and to avoid repetition or excessive cross-referenced provisions. The remaining content has been updated to conform to the current law and has been organized into a more logical order.

**Article 1:** Contains a comprehensive set of definitions consistent with the definitions in the Bylaws.

**Article 2:** Describes our Association generally and the fact that the Association has authority over the development. To avoid repetition and the potential for inconsistent provisions in the Bylaws and the CC&Rs, detailed provisions concerning corporate governance are in the Bylaws only.

**Article 3:** Describes the overall "lay of the land" of the development. Section 3.5 reflects the provisions of state law restricting partition of the condominium project/development. Sections 3.8 through 3.10 contain provisions that limit the power of the Board to enter into certain transaction concerning the property.

**Article 4:** Deals with taxes and mechanic's liens and collects together the provisions concerning easement rights.

**Article 5:** Contains the provisions concerning use of the property within the development and the Common Area. These provisions ally to all of the Lots within the development.

**Article 6:** Contains the provisions concerning use of the Residential Lots and Condominium Lots within the development, such as conducting businesses, vehicles and parking, pets, and signs. These provisions do not apply to the Commercial Lots.

**Article 7:** Contains the provisions concerning use of the Commercial Lots and within the development, such as the restrictions on certain kinds of business use, vehicles and parking, and nuisances. These provisions do not apply to the Residential Lots or to the Condominium Lots.

**Article 8:** Contains the provisions concerning use of the minimum construction standards that apply to the lots and any structures erected on a Lot within the development. These provisions are the same as the provisions in your existing CC&R's.

**Article 9:** Describes when architectural approval is required. State law has imposed procedural requirements and other standards on architectural control functions of common interest developments. Describes the application, approval, and inspection procedures consistent with applicable law and with sufficient detail so that the procedures will remain generally consistent from year to year and so all Members can know what their rights and obligations are when they want to make changes to their Lots or Units. Some common architectural issues are outlined which require prior approval. The Association may adopt architectural rules as long as they are consistent with the CC&Rs.

Requests for architectural approval must be made in writing. Architectural decisions must also be made in writing, must be made within sixty (60) days after an Owner submits a complete application, and if an application is denied, an explanation must be given for the decision. If the architectural committee or the Board does not act in a timely manner, the Owner may demand "internal dispute resolution" (meet and confer with the Board). All architectural decisions must be made in good faith in accordance with the standards in the CC&Rs. The Board may grant reasonable variances to deal with special circumstances as long as the variance is not contrary to the intention of the CC&Rs, and variances do not set precedents for other situations.

**Article 10:** Deals with assessments. The provisions have been updated to conform to the Davis-Stirling Act in terms of categories of assessments and enforcement. Regular and Special Assessments continue to be allocated among the Lots or Units in the same manner as under the current governing documents. Consistent with our existing documents, there are provisions in this article to address special assessments for capital improvement projects known as the Development Fund Special Assessment.

This Article describes the procedures that by law are available to the Association to enforce the obligation to pay assessments. These provisions are designed to ensure that the Association is able to raise the funds needed to conduct the Association's affairs in a timely manner and that each Member pays his or her fair share.

Regular Assessments continue to be due and payable annually and are delinquent if unpaid fifteen (15) days after they are due.

The assessment provisions describe a category of assessment to reimburse the Association for costs incurred in the process of enforcing the Governing Documents against a particular Unit ("Reimbursement Assessments"). Reimbursement Assessments can be enforced by lien and non-judicial foreclosure of the Lot or Unit, in the same manner as Regular and Special Assessments. The assessment provisions also describe a category of assessments that are fines ("Enforcement Assessments"). Enforcement Assessments are also enforceable by lien but cannot be foreclosed by non-judicial foreclosure. These categories of assessments and the powers and procedures to enforce them reflect the powers available to the Association under the provisions of applicable law.

If an Owner does not pay assessments when they are due, the Association must give certain notifications to the Owner before a Notice of Delinquent Assessments can be recorded and foreclosed upon. Delinquent Owners are responsible for late charges, interest, and collection costs in addition to the unpaid assessments. Owners are also personally responsible for payment of assessments if there is not enough equity in the Lot or Unit to pay what the Owner owes to the Association. If an Owner is delinquent but is still collecting rent from a tenant who is renting the Unit, the Association can direct the tenant to pay the rent to the Association to collect what the Owner owes to the Association. (This right does not interfere with any rights of lenders to do the same thing if the Owner is delinquent on a mortgage loan.) The homestead exemption is waived so as to increase the ability of the Association to recover what a delinquent Owner owes to the Association.

**Article 11:** Describes the respective maintenance responsibilities of the Association and the individual Owners. This Article reflects the maintenance scheme as provided in our existing governing documents. It clarifies the existing obligations of the Association and the Owners, respectively, as to maintenance, repair, and replacement responsibilities.

**Article 12:** Sections 12.2, 12.3, 12.4, and 12.5 describe the insurance to be carried by the Association, including particular liability insurance policies that may give the Members and the volunteer directors and officers the benefit of certain limitations on liability as provided by law.

Section 12.6. describes the Lot or Unit Owners' responsibility to carry certain kinds of insurance which the Association policies do not cover. The described insurance is intended to provide a reasonable amount of coverage for normal foreseeable risks so Owners will have financial resources to deal with events that are likely to occur. This section does not require Owners to carry this insurance. Section 12.6 states that the Association is not responsible if a Lot or Unit Owner fails to carry insurance that is the Owner's responsibility. It is the Owner's sole responsibility to carry

such insurance, and if Owners do not carry insurance, they are still financially responsible.

**Article 13:** Contains provisions dealing with damage or destruction of the development or eminent domain or condemnation of any part of the development by governmental agencies. These are the provisions of our existing documents slightly reorganized.

**Article 14:** Describes the enforcement powers that by law are available to the Association if Members fail or refuse to comply with the Governing Documents. This Article describes the Members' right to enforce the CC&Rs as well. Describes in sequential order the enforcement process, from investigating complaints, to notice and hearing whether called by the Board, the Architectural Standards Committee, the Covenants Committee, or requested by a Member, to "internal dispute resolution" and "alternative dispute resolution" procedures for resolving disputes between the Association and an Owner, or between Owners for certain compliance issues, consistent with the Davis-Stirling Act.

**Article 15:** Future amendments of the CC&Rs will require approval of a Majority of a Quorum of the Members. Also contains the same provision as in the Bylaws authorizing certain kinds of amendments to be adopted by the Board if they are to remove conflicts with law or conform to requirements of law.

**Article 16:** Contains general provisions concerning the document.

\* \* \* \*

The Board would like to thank you for taking the time to review this information. We look forward to seeing you on **[time, date, place]**, for a full and open discussion of the proposed amended governing documents.

O:\WDOCS\7751\04\GOV\DOCS\00705955.DOCX