

**OCCUPANCY AGREEMENT**

Unit Address: \_\_\_\_\_

File No. \_\_\_\_\_

THIS AGREEMENT (“Agreement”) is made and effective \_\_\_\_\_  
 (“Effective Date,”) by and between Second Walnut Creek Mutual (“Corporation”), a California  
 nonprofit mutual benefit corporation having its principal office c/o Board Services Office, 1001  
 Golden Rain Road, Walnut Creek, California 94595 and \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

and

\_\_\_\_\_  
 (“Designated Occupant”):

WHEREAS, the Corporation has been formed for the purpose of acquiring, owning and  
 operating the Second Walnut Creek Mutual (“SWCM”) cooperative housing project located in  
 the Rossmoor community in the City of Walnut Creek, Contra Costa County, California  
 (hereinafter the “Project”), with the intent that its members and designated occupants shall, as  
 applicable, have the right to occupy the dwelling units and enjoy the common areas thereof under  
 the terms and conditions set forth in this Occupancy Agreement;

WHEREAS, the Project is a common interest development of the type known as a stock  
 cooperative, as those terms are defined in California Civil Code sections 1351(c) and (m),  
 respectively;

WHEREAS, the Project is also a “senior citizen housing development” as defined in  
 California Civil Code section 51.3(b)(3) and is operated as “Housing for Older Persons” as  
 defined in the United States Fair Housing Amendments Act of 1988, 42 U.S.C.S. section  
 3607(b)(2);

WHEREAS, the Corporation leases the dwelling units at the Project to members of the  
 Corporation pursuant to "Occupancy Agreements"; and

WHEREAS, the Member is the owner and holder of one membership in the Corporation.

NOW, THEREFORE, for good and valuable consideration as hereinafter set forth, the parties hereto agree as follows:

**ARTICLE 1. "MEMBER" AND "DESIGNATED OCCUPANT"; NO TRANSFER OF RIGHT TO OCCUPY SEPARATE FROM MEMBERSHIP.**

- 1.1 "Member" shall mean the record owner of a membership in the Corporation.
- 1.2 Member, if a natural person at least fifty-five (55) years of age or older, will automatically be deemed to also be the "Designated Occupant" unless the Member will not be residing in the Unit (as defined herein). If the Member is not a natural person or will not be residing in the Unit (as defined herein), the Member shall designate a Designated Occupant who shall be either at least fifty-five (55) years of age or a "Qualified Permanent Resident" as that term is defined in the "Senior Housing Residency Restrictions" which the Corporation's Board of Directors may from time to time adopt and publish and as may be described in the Corporation's Bylaws ("Bylaws").
- 1.3 Member's right to occupy the Unit is appurtenant to the Member's membership in the Corporation. Accordingly, Member may not transfer the membership in the Corporation separate and apart from the Member's right to occupy the Unit.
- 1.4 Both the Member and the Designated Occupant shall execute this Occupancy Agreement. Upon any change in the Designated Occupant, the Member and the new Designated Occupant shall sign a new Occupancy Agreement in the form then utilized by the Corporation.

**ARTICLE 2. LEASED PREMISES AND TERM.**

- 2.1 The Corporation hereby leases to the Member, and the Member hereby hires and takes from the Corporation, subject to the terms and conditions contained herein, the dwelling unit commonly known as \_\_\_\_\_ (referred to herein as the "Manor" or "Unit"), together with the patio, deck, veranda, balcony, storage space, carport, parking space and/or garage (as applicable) assigned and/or appurtenant to such Unit (collectively described in California Civil Code section 1351(i) as "exclusive use common area").
- 2.2 Member agrees that the Unit and any appurtenant exclusive use common area shall be used for private residential dwelling purposes only, on the terms and conditions set forth herein and, from the Effective Date of this Agreement, for a term terminating on \_\_\_\_\_ or until such earlier termination date as provided herein, and renewable thereafter for successive three-year periods under the conditions provided for in Article 8 herein.

- 2.3 The Corporation shall have the right to require the Member and the Designated Occupant to execute a new Occupancy Agreement upon expiration of the original term or any renewal term, in the form then utilized by the Corporation.

**ARTICLE 3. CARRYING CHARGES AND CASH REQUIREMENTS.**

- 3.1 Commencing on the Effective Date, the Member agrees to pay to the Corporation during each calendar year as rental an aggregate amount, referred to herein as "Carrying Charges," consisting of the following components:
- (a) a sum equal to 1/1387th of the Corporation's Cash Requirements (as defined in Section 3.5 below) for each calendar year as determined by the Corporation's Board of Directors, *i.e.*, an equal share for each of the One Thousand Three Hundred and Eighty Seven (1,387) units in the Project;
  - (b) the Unit's proportionate share of real property taxes and assessments based on the Unit's assessed value as determined by the Contra Costa County Tax Assessor and the then current property tax rate;
  - (c) the Unit's proportionate share of any principal, interest, mortgage insurance premiums, and expenses in connection therewith, associated with any mortgage or loan obtained by the Corporation where the real property on which some or all of the units are located has been pledged as security;
  - (d) a sum equal to 1/1387<sup>th</sup> of any Special Assessment (as described in Article 5 below) levied by the Board of Directors during the calendar year as provided in this Agreement, *i.e.*, an equal share for each of the One Thousand Three Hundred and Eighty Seven (1,387) units in the Project; and
  - (e) the amount of any Reimbursement Assessment levied against the Member as provided in Article 6 of this Agreement.
- 3.2 That portion of the annual Carrying Charges which is 1/1387<sup>th</sup> of the Cash Requirements (as defined in Section 3.5 below) for the year shall be payable in twelve (12) equal monthly installments, and the amount of any other component of the Carrying Charges allocated to the Member and levied during any year shall be payable at the time, and in accordance with, the terms established by the Board at the time of the levy.
- 3.3 Payment of the monthly Carrying Charges shall commence on the Effective Date of this Agreement and shall be prorated for any portion of a month based on a thirty (30) day month. Thereafter the Member shall pay the monthly Carrying Charges in advance on the first day of each month.

- 3.4 As of \_\_\_\_\_, the monthly Carrying Charges are \$\_\_\_\_\_. This amount may be adjusted from time to time based upon revisions in assessed value as determined by the Contra Costa County Tax Assessor and related real property taxes and assessments associated with the Unit. The monthly Carrying Charges may also be increased or decreased from time to time by the Board of Directors depending on the amount of Cash Requirements determined by the Board, from time to time, to be needed for operation of the Project and the Corporation in accordance with Section 3.5 below.
- 3.5 "Cash Requirements" as used herein shall mean the amount that the Board of Directors of the Corporation (hereinafter referred to as the "Board of Directors" or the "Board") determines to be needed for the operation of the Project and of the Corporation for the calendar year, including but not limited to the following items:
- (a) The cost of all operating expenses of the Project and services furnished, including charges by the Golden Rain Foundation of Walnut Creek (hereinafter referred to as the "Foundation") for facilities and services furnished by the Foundation;
  - (b) The cost of all operating expenses of the Project and of the management and administration services furnished for the benefit of the Project and the Corporation;
  - (c) The amount of all taxes and assessments, exclusive of real property taxes and assessments associated with the units, levied against the Project and against the Corporation or which it is required to pay, if any;
  - (d) The cost of fire and extended coverage insurance on the Project and such other insurance as the Corporation may maintain or as may be required by any mortgage on all or a portion of the Project;
  - (e) The cost of furnishing water, gas, electricity, garbage and trash collection, cable television and broadband service, if any, and other utilities to the extent furnished by the Corporation (and as more fully described in Article 16 below entitled "Utilities");
  - (f) All reserves and contingency funds set up by the Board of Directors, including the general operating reserve and the reserve for replacements;
  - (g) The estimated cost of maintenance, repairs, alterations and replacements of the Project made, or to be made, by the Corporation;
  - (h) Legal and accounting fees;
  - (i) Any liens or charges on the Project;

- (j) Expenses and liabilities incurred by the Corporation by reason of this or other occupancy agreements on any portion of the Project; and
- (k) Any other expenses of the Corporation approved by the Board of Directors, including, but not limited to, operating deficiencies, if any, for prior periods, but excluding Reimbursement Assessments (as defined in Article 6 below), which are individual obligations and not a part of Cash Requirements.

3.6 The Board of Directors shall determine the Cash Requirements for each year on or before November 30 of the preceding year. However, the failure of the Board of directors to determine the Cash Requirements for any given year shall not be deemed a waiver or modification of the covenants and provisions hereof, or a release of the Member from the obligation to pay Carrying Charges; instead, the Carrying Charges computed for the previous year shall continue until a new determination of Cash Requirements has been made and written notification of same has been provided to the Member.

#### **ARTICLE 4. FAILURE TO FIX CARRYING CHARGES.**

The omission of the Board of Directors to fix Carrying Charges on a timely basis hereunder shall not be deemed a waiver or modification of this Agreement or a release of the obligation to pay Carrying Charges, provided that such Carrying Charges shall ultimately be fixed.

#### **ARTICLE 5. SPECIAL ASSESSMENTS.**

If at any time during any calendar year, the Cash Requirements for that year prove to be inadequate for any reason, including nonpayment of any member's share thereof or the unexpected repair, replacement or reconstruction of improvements located on the Project, or if funds are otherwise required for any authorized activity of the Corporation, the Board may levy a Special Assessment. Such Special Assessment shall be allocated equally among all of the units in the Project. Except in the case of an emergency situation as defined in Civil Code section 1366, in any year the Board may not levy Special Assessments which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Corporation for that year, except upon the affirmative vote of a majority of the members voting on any such Special Assessment, provided that a quorum is established. For purposes of the preceding sentence, a "quorum" shall mean more than fifty percent (50%) of the members of the Corporation, notwithstanding any different quorum requirements that may be set forth in the Bylaws.

## ARTICLE 6. REIMBURSEMENT ASSESSMENTS.

6.1 In addition to the Special Assessments levied in accordance with Article 5 of this Agreement, the Board of Directors may impose a Reimbursement Assessment against the Member in any of the circumstances described in subsections (a), (b), and (c) below, provided that no such Reimbursement Assessments may be imposed against the Member until the Member has been afforded prior notice and an opportunity for a hearing before the Board of Directors. Subject to the foregoing, the acts and circumstances giving rise to liability for Reimbursement Assessments include (but are not necessarily limited to) the following:

- (a) Damage to Common Area or Common Facilities. In the event that any damage to or destruction of any portion of the common area is caused by the willful misconduct or negligent act or omission of the Member or the Designated Occupant, any family or household member, or any sublessees, guests, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith (to the extent not compensated by insurance proceeds) may be assessed and charged solely to and against the Member (including, without limitation, the Member's estate) and to the fullest extent possible, all other persons subject to this Agreement in accordance with Article 25 of this Agreement, as a Reimbursement Assessment.
- (b) Expenses Incurred in Gaining Member Compliance. In the event the Corporation incurs any costs or expenses to accomplish: (i) the payment of delinquent Carrying Charges; (ii) any repair, maintenance or replacements to any portion of the Project which the Member is responsible to maintain under this Agreement or the Corporation's governing documents (including but not limited to the Corporation's rules, regulations, and policies) but has failed to undertake or complete in a timely fashion; or (iii) to otherwise bring the Member and/or the Unit (and any exclusive use common area) into compliance with any provision of the Corporation's governing documents or this agreement, all amounts so incurred, including but not limited to title company fees, accounting fees, court costs and attorneys' fees incurred (regardless of whether suit has been filed), may be assessed and charged solely to and against the Member (including, without limitation, the Member's estate) and to the fullest extent possible, all other persons subject to this Agreement in accordance with Section 25 of this Agreement, as a Reimbursement Assessment.
- (c) Monetary Penalties for Violation of Governing Documents. Governing Documents shall include this Agreement, Bylaws, CC&Rs, Rules, Regulations and Policies of the Corporation. In the event that the Corporation levies a monetary penalty (*i.e.*, fine) against the Member, for a violation of any provision of the Governing Documents, then the amount

of such penalty may be assessed and charged to and against such Member as a Reimbursement Assessment.

- 6.2 Once a Reimbursement Assessment has been levied against the Member for any reason described herein, and subject to the conditions imposed in this Article 6, such Reimbursement Assessment shall be recorded on the Corporation's assessment roll, notice thereof shall be mailed to the Member, and the Reimbursement Assessment shall thereafter be due as a separate debt of the Member payable in full to the Corporation within thirty (30) days after the mailing of notice of the Reimbursement Assessment. Such Reimbursement Assessment shall be considered on a parity with, and as a component part of, the Member's Carrying Charges, and shall be subject to the same terms and conditions as are applicable to Carrying Charges throughout this Agreement, including collection in the same manner as Carrying Charges as provided in this Agreement, except that the lien securing payment of a monetary penalty (*i.e.*, fine) shall not be subject to collection through non-judicial foreclosure of the Corporation's leasehold interest in the Unit, unless otherwise specifically permitted by law.

#### **ARTICLE 7. DELINQUENT PAYMENTS.**

- 7.1 Member shall pay to the Corporation the Carrying Charges payable by the Member under this Agreement upon the terms, at the times and in the manner herein provided, without any deduction on account of any set-off or claim which the Member may have against the Corporation. Any installment of Carrying Charges not received within fifteen (15) days after the due date shall be deemed delinquent and shall be subject to interest, late charges and costs of collection as provided in Civil Code section 1366, or any successor statute, and as set forth below. All monies received on delinquent accounts shall first be applied to Carrying Charges due and then to applicable interest, late charges and collection costs. Corporation may refuse to accept delinquent payments of less than the total amount due, including interest, late charges and collection costs.
- 7.2 In addition to other sums that have become, or will become, due pursuant to the terms of this Agreement, the Member shall pay to the Corporation all of the following with respect to any Carrying Charges which have become delinquent as hereinabove described:
- (a) Reasonable costs incurred in collecting the delinquent amount, including reasonable attorneys' fees whether or not suit has been filed;
  - (b) A late charge not to exceed ten percent (10%) of the delinquent amount; and

- (c) Interest on all such sums, including the delinquent amount, collection costs and late charges, at an annual percentage rate not to exceed twelve percent (12%) commencing thirty (30) days after the due date of any installment of Carrying Charges and continuing on all delinquent amounts until paid in full.

**ARTICLE 8. MEMBER'S OPTION TO RENEW.**

- 8.1 It is covenanted and agreed that the term herein granted shall be automatically extended and renewed from time to time by and between the parties hereto for further periods of three (3) years, each from the expiration of the term herein granted, upon the same covenants and agreements as herein contained unless:
- (a) Notice of the Member's election not to renew shall have been given to the Corporation in writing at least four (4) months prior to the expiration of the then current term; and
  - (b) The Member shall have on or before the expiration of said term (1) endorsed the Member's membership certificate (if any) for transfer in blank and deposited same with the Corporation, (2) is not in compliance with all provisions of and paid all amounts due under this Agreement, or (3) vacated the Unit (and any exclusive use common area), leaving same in good state of repair. Should the Unit (or any exclusive use common area) not be left in a good state of repair, the Corporation may expend reasonable sums to bring the premises to a good state of repair and may charge said reasonable amounts to the Member, deducting such charges from the proceeds of sale due the Member who has sold the subject membership. Upon compliance with the requirements of this Article 8, the Member shall have no further liability under this Agreement and shall be entitled to no payment from the Corporation hereunder.
- 8.2 As provided in Section 2.3 above, the Corporation shall have the right to require the Member and the Designated Occupant to execute a new Occupancy Agreement upon expiration of the original term or any renewal term, in the form then utilized by the Corporation.

**ARTICLE 9. DESIGNATION OF RESPONSIBLE PARTY.**

- 9.1 Member or Designated Occupant shall, during the initial execution of this Agreement and at the time of all renewals hereof, designate as set forth below, the name, address, and means to contact a responsible party which the Association may contact in the event of an emergency, disability of Member or Designated Occupant or other reasonable purpose related to this Agreement. Member shall keep the responsible party designation updated so that the Corporation will



any damage arising from the act or neglect of other members, occupants or of any owners or occupants of adjacent or contiguous property, or others.

**ARTICLE 11. COMPLIANCE WITH CORPORATION'S GOVERNING DOCUMENTS.**

The Member and Designated Occupant shall preserve and promote the cooperative ownership principles on which the Corporation was founded. The Member, the Designated Occupant and all other persons subject to this Agreement as provided in Article 25 below shall comply with the Governing Documents, including Senior Housing Residency Restrictions, as adopted or enacted from time to time. The Governing Documents shall automatically become part of this Agreement when furnished to the Member.

**ARTICLE 12. OFFENSIVE CONDUCT; NUISANCE; NOISE.**

- 12.1 No noxious, harmful, unsafe or offensive activities shall be conducted upon or within any part of the Project, nor shall anything be done thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to any other members or residents of the Project, or which shall in any way interfere with their use of the common areas or the use and enjoyment of their dwelling units. Without limiting any of the foregoing, the Member, Designated Occupant, other resident(s), and guest(s) shall not permit noise (including but not limited to the barking of dogs, sound from machines, appliances, radios, stereos and televisions) to emanate from their Unit or exclusive use common area, which would unreasonably disturb another member's or resident's enjoyment of their dwelling unit or of the Project's common area.
- 12.2 The Corporation has the sole and absolute authority, but not the obligation to pursue, on behalf of the Corporation, claims against the Member, Designated Occupant, residents and others based on the allegation, existence, or maintenance of a nuisance.

**ARTICLE 13. SUBLETTING.**

- 13.1 The Member shall not sublet the whole or any part of the Unit or the appurtenant exclusive use common area for any term to any person or persons except as authorized under the provisions of this Agreement, or the Governing Documents, including, without limitation, the Senior Housing Residency Restrictions, and then only upon the prior written consent of the Board of Directors. Violation of the foregoing shall, at the option of the Corporation, result in termination and forfeiture of the Member's rights under this Agreement.

- 13.2 Rules, policies and regulations adopted by the Board concerning subleasing may concern, but need not be limited to, (i) the form of sublease agreement that must be used, (ii) the number of units that may be subleased at any given time, (iii) the minimum or maximum terms of subleases, and (iv) the number of subleases within a specific time period.
- 13.3 Any sublease shall expressly provide that it is subject and subordinate to the terms of this Occupancy Agreement. Any sublease shall further require the sub-tenant, during the subtenancy, to abide by the terms of this Occupancy Agreement, and the Governing Documents of the Corporation, including the Senior Housing Residency Restrictions. Sublessees shall further give to the Corporation an irrevocable power to dispossess, evict sublessees, or otherwise act for the sublessor in case of default under the sublease.
- 13.4 The liability of the Member under this Agreement shall continue notwithstanding the fact that the Member may have sublet the Unit with the approval of the Corporation. The Member shall continue to be liable for all obligations hereunder and shall be responsible to the Corporation for the conduct of all sublessees.

#### **ARTICLE 14. TRANSFERS; ASSIGNMENT.**

The Member shall not transfer or assign this Agreement or any interest therein, except in accordance with the requirements set forth in this Agreement and the Governing Documents. No such assignment shall take effect as against the Corporation for any purpose unless and until all of the requirements relating thereto set forth in the Governing Documents have been complied with, satisfied, or waived by the Corporation.

#### **ARTICLE 15. MANAGEMENT, TAXES AND INSURANCE.**

- 15.1 As provided in this Agreement, the Corporation shall: (a) provide necessary management, operation and administration of the Project; (b) pay or provide for the payment of all taxes and assessments levied against the Project and not directly billed to the Unit or the Member by the governmental authority; (c) procure and pay or provide for the payment of fire insurance and extended coverage, and other insurance as required by any mortgage on the Project, and (d) procure and pay for such other insurance as the Corporation may deem advisable on the Project. The Corporation will not, however, provide insurance on the Member's interest in the Unit or on the Member's personal property or that of the Designated Occupant or any other occupant.
- 15.2 Each Member irrevocably appoints the Mutual as that Member's attorney-in-fact for purposes of procuring, negotiating, accepting, compromising, releasing, settling, distributing and taking other related actions in connection with any

insurance policy maintained by the Mutual and any losses or claims related thereto and agrees to be bound by the actions so taken as if the Member had personally taken the action.

- 15.3 Member's Insurance: In addition to the insurance requirements contained in the Bylaws, which are incorporated herein, each Member shall procure and maintain property insurance against losses to personal property located within the Member's unit and personal liability coverage. In addition, owners may obtain insurance covering loss of use and damage to additions and/or alterations approved by the Mutual to cover instances when insurance proceeds from policies maintained by the Mutual are not available to cover any such losses or damage. The Mutual's insurance policies may not provide coverage for (i) losses to the Member's personal property; (ii) losses to any alterations to the unit; (iii) liability for accidents or occurrences within the Member's unit; or (iv) liability from accidents or occurrences within Rossmoor for which the Member may be held responsible and which may not be covered under the Association's General Liability Policy. Each Member should seek the advice of a qualified insurance consultant regarding the Member's property and liability insurance obligations under this section and should provide that consultant with a copy of the Association's Bylaws.

Except as provided above, no Member shall separately insure any property covered by the Mutual's property insurance policy. If any Member violates this provision, and as a result there is a diminution in insurance proceeds otherwise payable to the Mutual, the Member will be liable to the Mutual to the extent of the diminution. The Mutual may levy a reimbursement assessment against the Member's unit to collect the amount of the diminution.

Each Member shall at least annually, provide written evidence of the insurance required by this section.

## **ARTICLE 16. UTILITIES.**

- 16.1 The Corporation shall provide gas and electricity for exterior use, sewage disposal, water for both exterior and interior use, and garbage and trash collection. The cost of these services shall be included in the Carrying Charges provided in Article 3 above.
- 16.2 Gas, electricity, internet and telephone service for the Unit shall be billed by the service provider directly to the Member and paid by the Member directly to such provider.
- 16.3 Cable television and broadband service may be provided from time to time by Golden Rain Foundation of Walnut Creek in its discretion.

**ARTICLE 17. REPAIRS.**

17.1 By Corporation: The Corporation shall provide and pay for all necessary repairs, maintenance and replacement as provided in the Governing Documents and as follows:

- (a) Exterior maintenance of buildings, including walls and roofs, and, except in case of Member or resident alterations, exterior doors, and windows.
- (b) Appliances – major components (motors, refrigeration units, heat exchanges, furnaces and hot water tanks) of appliances and equipment hereafter listed, but only such appliances and equipment specified as being standard equipment in the offering of the original sale. Any of the following equipment installed as optional equipment by the Member or Designated Occupant, or any prior member or occupant, or any other person is not covered by this provision and shall not be maintained, repaired or replaced by the Corporation:
  - (i) Refrigerators;
  - (ii) Ranges, cook tops, hoods and ovens;
  - (iii) Garbage disposals;
  - (iv) Air conditioners;
  - (v) Furnaces;
  - (vi) Dishwashers provided as original equipment; and
  - (vii) Hot water heaters.
- (c) Except as otherwise provided in the Governing Documents, and maintenance guidelines as adopted by the Board from time to time, the Corporation shall provide for and pay for the maintenance (except cleaning), repair and replacement of the exclusive use common area (*i.e.*, balcony, deck, veranda, patio, garage, parking space, carport, and storage space, as applicable) appurtenant to the Unit.

17.2 By Member: The Member agrees to maintain and repair the Unit (including the exclusive use common area) at the Member's own expense as follows:

- (a) Any repairs, replacement or maintenance necessitated by the Member's or Designated Occupant's own negligence or misuse, or that of other occupants of the Unit and/or guests, invitees and/or visitors of either;
- (b) Any redecoration of Unit interiors;

- (c) Maintenance, repair and replacement of all sinks, toilets, faucets and all plumbing, inside the Unit;
- (d) Repairs or maintenance of all fixtures and other interior items in the Unit (except for those identified in Section 17.1(b) above);
- (e) Alterations, additions and equipment installed or constructed by or on behalf of the Member, the Designated Occupant, any resident or any of their predecessors, as more particularly provided in Article 18 below;
- (f) All repairs or maintenance to equipment installed as optional equipment; and
- (g) Except to the extent maintenance, repair or replacement is expressly assigned to the Corporation, the Member shall maintain the Unit and appurtenant exclusive use common area in good condition and repair.

17.3 Right of Corporation to Make Repairs at Member's Expense. In case the Member shall fail to effect the repairs, maintenance or replacements which are the Member's responsibility pursuant to Section 17.2 above in a manner satisfactory to the Corporation and pay for same within thirty (30) days after notification by the Corporation to the Member, the Corporation may, after written notice to the Member and the right of a hearing before the Board, as provided in the Bylaws, cause such work to be done and charge the cost thereof to the Member as a Reimbursement Assessment and add such cost to the Member's Carrying Charges for the next succeeding month.

## **ARTICLE 18. ALTERATIONS AND ADDITIONS.**

18.1 The Member shall not, without the written consent of the Corporation, make any additions or structural alterations in or to the Unit or to any exclusive use common area appurtenant to the Unit (*i.e.*, balcony, deck, veranda, patio, garage, parking space, carport, and storage space, as applicable) or in the water, gas pipes, electrical conduits, plumbing or other fixtures connected therewith or remove any additions, improvements or fixtures from the Unit or any exclusive use common area appurtenant thereto. Upon receipt of such written consent and completion of such work, the Member will be responsible for maintenance, repair and replacement of all such additions or alterations, for any claims or liens arising from such work, and for all damages and liability resulting therefrom. Member agrees to record documentation confirming the obligation of Member and his/or successors to perform said maintenance repair and replacement of all such additions or alterations.

18.2 If the Member for any reason shall cease to own the membership appurtenant to the Unit, the Member shall surrender to the Corporation possession of the Unit

and any appurtenant exclusive use common area, including any alterations, additions, fixtures and improvements, unless the Corporation requires restoration of the premises to its original condition. Such restoration shall be at the expense of the Member.

- 18.3 In Units where dishwashers were not part of the original equipment provided, dishwashers may be installed at the expense of the Member and where so installed, the Member shall be responsible for the maintenance, repair and replacement of such dishwasher. When installed, the dishwasher shall become a part of the real property and shall not be removed without the written consent of the Corporation.
- 18.4 The Member shall not, without the prior written consent of the Corporation, install or use in the Unit any air conditioning equipment, washing machine, clothes dryer, electric heater or power tools. The Member agrees that the Corporation may require the prompt removal of any such appliance or equipment at any time and that the Member's failure to remove such appliance or equipment upon request shall constitute a default within the meaning of Article 24 of this Agreement. IF EITHER THE UNIT OR ANY APPURTENANT EXCLUSIVE USE COMMON AREA HAS BEEN THE SUBJECT OF WRITTEN PERMISSION OF THE CORPORATION FOR ANY SUCH ALTERATIONS OR ADDITIONS, THE PURCHASER OF THE MEMBER'S MEMBERSHIP SHALL BE REQUIRED TO ACKNOWLEDGE, TO THE CORPORATION IN WRITING, THE FOLLOWING AT OR PRIOR TO CLOSING: (1) THAT PURCHASER HAS RECEIVED FROM THE SELLER THEREOF A COPY OF THE CORPORATION'S WRITTEN CONSENT; (2) THAT PURCHASER KNOWS THAT SUCH ALTERATIONS AND ADDITIONS HAVE BEEN MADE BY THE SELLER OR OTHER PREVIOUS OWNER; AND (3) THAT PURCHASER RECOGNIZES THAT PURCHASER IS RESPONSIBLE FOR THE MAINTENANCE OF ALL SUCH ADDITIONS AND ALTERATIONS, FOR ALL CLAIMS ARISING FROM SUCH WORK, FOR ALL INCREASED COSTS TO CORPORATION TO PERFORM ITS MAINTENANCE OBLIGATIONS AS A RESULT OF THE ALTERATIONS AND ADDITIONS, FOR ALL CLAIMS ARISING FROM SUCH WORK AND FOR ALL DAMAGES AND LIABILITY RESULTING THEREFROM.

#### **ARTICLE 19. MAINTENANCE; CONDITIONS OF PREMISES.**

- 19.1 The Corporation shall maintain and manage the Project in good condition as required under this Agreement; provided, however, that the Corporation shall not be responsible for any maintenance, repair or replacement which is assigned to the Member pursuant to this Agreement or the Corporation's Governing Documents and maintenance guidelines as adopted by the Board from time to time.

- 19.2 Member acknowledges that Member has examined the Unit, the appurtenant exclusive use common area, and all of the areas, equipment and personal property being demised hereunder, and has accepted the same in good, safe and clean condition and repair. The Member agrees to notify the Corporation immediately of any damage, defect, dilapidation or dangerous condition.
- 19.3 Each Member shall maintain property insurance for the contents of their Unit. Said policy shall also provide third-party liability coverage. Damage to or destruction of the contents of the Unit from a property or casualty loss shall be the complete and total responsibility of the Member.

The covenants by the Corporation herein contained are subject, however, to the discretionary power of the Board of Directors to prescribe the manner of maintaining and operating the Project and to determine the Cash Requirements of the Corporation as hereinabove stated. There shall be no diminution or abatement of Carrying Charges or other compensation accruing to the Member or Designated Occupant for the failure by the Corporation to perform its covenants herein, or for interruption or curtailment of service, when such failure, interruption or curtailment shall be due to accident or to alterations or repairs desirable or necessary to be made, or to inability or difficulty in securing supplies or labor, or due to some other cause not constituting gross negligence on the part of the Corporation.

#### **ARTICLE 20. ROOF.**

To the greatest extent provided by law, no outside mast, tower, pole, antenna, satellite dish or solar energy system shall be erected, constructed, or maintained on the roof or exterior of any building or other common area except upon express prior written authorization by the Board of Directors.

#### **ARTICLE 21. RIGHT OF ENTRY.**

On not less than twenty-four (24) hours advance notice, the Member and Designated Occupant must make the Unit and appurtenant exclusive use common area available during normal business hours, except where the Member or Designated Occupant agrees to other hours, for entry by the Corporation or its agents for the purpose of: (a) making authorized, necessary or agreed-on repairs, decorations, alterations, or improvements; (b) supplying authorized, necessary or agreed-on services; (c) showing the Unit to prospective or actual purchasers, mortgagees, repair personnel, lessees, workers or contractors, or representatives of governmental entities; (d) entry after the Member has abandoned or surrendered the Unit; (e) pursuant to court order or request of a governmental entity; or (f) for any other lawful purpose to enable the Corporation to meet its duties and obligations pursuant to the Governing Documents. In case of emergency, or of Member's abandonment or surrender of the Unit, or where notice is impractical, the

Corporation or its agent may enter the Unit at any time without securing the Member's prior consent.

**ARTICLE 22. MECHANIC'S LIENS.**

22.1 In case there shall be filed a notice of mechanic's lien against the Project, for, or purporting to be for, labor or material alleged to have been furnished or delivered at the Project, or the Unit or to or for the Member, or to or for anyone claiming under the Member, the Member shall forthwith cause such lien to be discharged by payment, bonding or otherwise; and if the Member shall fail to cause such lien to be discharged within sixty (60) days after the filing of such notice, the Corporation may cause such lien to be discharged by payment, bonding or otherwise, without investigation as to the validity thereof or of any offsets or defenses thereto, and shall have the right to collect all amounts so expended from Member as a Reimbursement Assessment, including but not limited to, all costs and expenses paid or incurred in connection therewith, including reasonable attorneys' fees and disbursements, together with legal interest thereon from the time or times of payment.

22.2 In connection with any work, material or services performed on or at Member's Unit or exclusive use common area on behalf of a Member, the Corporation may require submission of a release, in form satisfactory to Corporation, from the contractor or supplier certifying that full payment has been received for such work, material or services. If Member performed work and/or procured materials without the use of a contractor, the Member shall certify, on a form acceptable to or provided by the Corporation, that Member did all of the work without a contractor and that all associated bills have been paid in full, and further provide such additional information and certifications as Corporation may require.

**ARTICLE 23. MEMBERSHIP IN THE FOUNDATION.**

Membership in the Foundation and the voting rights and privileges of Foundation members shall be as prescribed in the governing documents and agreements of the Foundation, as amended from time to time. No Member shall transfer any membership and/or interest in the Foundation except in compliance with the provisions of the Foundation's governing documents and agreements.

**ARTICLE 24. DEFINITION OF DEFAULT BY MEMBER AND EFFECT THEREOF.**

24.1 The Member shall be deemed to have committed a material breach of this Agreement, and shall be subject to all the remedies available to the Corporation in the event of a default as provided in this Agreement and the Governing Documents, including, without limitation, fines, forfeiture of the Member's membership in the Corporation and termination of Member's leasehold interest in the Unit, all in accordance with the Governing Documents and the laws of the State of California, upon the occurrence of any of the following events:

- (a) Except as otherwise authorized by the Bylaws, the Member shall cease to be the owner and legal holder of the membership in the Corporation to which this Agreement is appurtenant or pledges such membership without consent of the Corporation;
- (b) In the event the Member attempts to sublet or assign this Agreement without full compliance with all applicable provisions of this Agreement and of the Governing Documents;
- (c) In the event the Member shall be declared a bankrupt under the laws of the United States and that bankruptcy results in financial loss or damage to the Mutual;
- (d) In the event a receiver of the Member's property shall be appointed under any of the laws of the United States or any state;
- (e) In the event the Member shall make a general assignment for the benefit of creditors;
- (f) In the event the membership in the Corporation owned by the Member to which this Agreement is appurtenant shall be duly levied upon and sold non-judicially or under the process of any court;
- (g) In the event the Member fails to effect and/or pay for repairs, replacement and maintenance as provided for in Article 17 of this Agreement;
- (h) In the event the Member shall fail to pay any sum due pursuant to any of the provisions of this Agreement;
- (i) In the event the Member fails to maintain individual insurance as required at Article 15 of this Agreement;
- (j) In the event the Member shall default in the performance of any of the Member's obligations under this Agreement;
- (k) In the event the Member, without the prior written approval of the Corporation, permits unauthorized persons to temporarily or permanently

occupy the Unit contrary to the Corporation's Governing Documents, including the Senior Housing Residency Restrictions; or

- (l) In the event Member becomes physically or mentally impaired or incapacitated as determined by the Board of Directors, after consultation with physical and/or mental health professionals, to the extent that continuing to occupy the Unit presents a danger or risk to the Member or others or constitutes a nuisance which significantly denies other residents their quiet enjoyment.

- 24.2 After a breach of this agreement, the Corporation may give to the Member a notice that this Agreement will expire at a date not less than thirty (30) days thereafter (except that in the case of the default specified in Section 24.1(h), such date in the notice shall be fifteen (15) days instead of thirty (30) days), this Agreement and all of the Member's rights under this Agreement will expire on the date so fixed in such notice, unless in the meantime the breach has been cured in a manner deemed satisfactory by the Corporation, and it shall thereupon be lawful for the Corporation to institute actions at law or in equity to repossess the Unit, recover unpaid Carrying Charges, damages, attorneys' fees and costs. In the event of a default, this Agreement may not be terminated unless the Member has been provided an opportunity to be heard, orally or in writing, before the Board of Directors. At least fifteen (15) days before the hearing date, the Corporation shall notify the Member of the nature of the default, the effective date of termination and the hearing date, and such hearing date shall be held not less than five (5) days prior to the effective date of termination. Upon termination, the Member shall forthwith turn over possession of the Unit to the Corporation.
- 24.3 The Member hereby expressly waives any and all right of redemption in the event the Member shall be dispossessed by judgment or order of any court or judge. The words "enter," "re-enter," and "re-entry," as used in this Agreement are not restricted to their technical legal meaning, and in the event of a breach or threatened breach by the Member or Designated Occupant of any of the covenants or provisions hereof, the Corporation shall have the right of injunction and the right to invoke any remedy allowed at law or in equity.
- 24.4 The Member expressly agrees that there exists under this Occupancy Agreement a landlord-tenant relationship and that in the event of a breach or threatened breach by the Member or Designated Occupant of any covenant or provision of this Agreement there shall be available to the Corporation such legal remedy or remedies as are available to a landlord for the breach or threatened breach under the laws of the State of California by a tenant of any provision of a lease or rental agreement.
- 24.5 Notwithstanding any other provisions of this Agreement, the Member, in case of default hereunder, hereby expressly waives any and all notices and demands for possession as provided by the laws of the State of California.

- 24.6 Waiver by the Corporation of any breach of any term or condition of this Agreement shall not constitute a waiver of subsequent breaches. The acceptance of any payment after any default or breach hereof shall not be construed to waive any right of the Corporation or affect any notice or legal action heretofore given or commenced, or which, by reason of said default or breach, the Corporation may give or commence. Moreover, the acceptance of the Corporation of some but not all of any payment specified in a notice shall not bar the Corporation from commencing appropriate legal proceedings predicated on the notice given for the amount specified therein, less the partial payment.

**ARTICLE 25. PERSONS SUBJECT TO THIS AGREEMENT.**

Without in any way limiting any other provisions of this Agreement, the references in this Agreement to the Corporation shall be deemed to include its successors and assigns, and the references herein to the Member shall be deemed to include the Designated Occupant, any joint or co-owner of the membership to which this Agreement is appurtenant, and to the executors, administrators, legal representatives, legatees, distributes, successors, and assigns of all such persons; and the covenants and agreements herein contained shall apply to, bind and inure to the benefit of the Corporation and its successors and assigns, and to such Member and the executors, administrators, legal representatives, legatees, distributes, successors and assigns of the Member, except as hereinbefore otherwise stated.

**ARTICLE 26. DAMAGE OR DESTRUCTION OF THE UNIT OR THE PROJECT.**

- 26.1 If the Project or a portion thereof shall be partly damaged by fire or other cause, it shall be repaired or restored as speedily as is reasonably possible, at the expense of the Corporation, so as to conform substantially to the plans and specifications under which the Project was constructed. To the extent that proceeds are provided from insurance maintained by the Mutual, the Mutual shall also repair or restore modifications or alterations to the Unit, so long as those alterations were approved in writing by the Mutual. In case the damage shall be so extensive as to render the Unit untenable, the Board of Directors shall have the discretion to determine if an adjustment to the Carrying Charges is appropriate until the Unit shall again be rendered tenable.
- 26.2 In case of the total destruction of the Project by fire or otherwise, the Corporation shall decide whether to restore the Project. If the Corporation elects to restore the Project, Carrying Charges shall abate wholly or partially as determined by the Board until the Project has been restored. If the Corporation elects not to restore the Project or portion thereof, the Carrying Charges shall cease as of the date of such destruction, and this Agreement and all rights and obligations of the parties

hereunder and the tenancy hereby created shall wholly cease and expire. In addition, the Corporation shall determine the amount which shall be paid to the Member to redeem the membership interest and to reimburse him/her for such loss as he/she may have sustained using the calculation method provided in the Liquidation Rights as specified in the Bylaws.

**ARTICLE 27. CONDEMNATION.**

Should all or any portion of the Unit or appurtenant exclusive use common area or the building in which the premises are located be taken by any governmental or quasi-governmental agency or entity under the power of eminent domain, this Agreement shall terminate as of 12:01 A.M. on the date title to the portion taken by eminent domain vests, or the date actual physical possession of the portion taken by eminent domain is taken by the agency or entity exercising the eminent domain power. Any and all compensation or damages awarded for the taking by eminent domain, except that awarded the Member for the moving of or damage to personal property owned by the Member, shall belong to the Corporation and neither the Member nor anyone claiming under the Member shall have any claim against the Corporation or the agency, or entity exercising eminent domain, for the value of the unexpired term of the Agreement. Notwithstanding the foregoing, the Corporation shall calculate and make payment to Member an amount to compensate Member for the loss of his membership interest in accordance with the Liquidation Rights as specified in the Bylaws.

**ARTICLE 28. NOTICES.**

Any notice by the Corporation to the Member shall be deemed to be duly given, and any demand by the Corporation upon the Member shall be deemed to have been duly made, when personally delivered or enclosed in an envelope, postage prepaid, addressed to the Member at the Member's address as the same appears on the books of the Corporation, or at such other address as may be designated by the Member, and mailed by first class mail. Any notice by the Member to the Corporation shall be deemed to be duly given, and any demand by the Member upon the Corporation shall be deemed to have been duly made, when personally delivered or enclosed in an envelope, postage prepaid, addressed to the Corporation at the address set forth on the first page of this Agreement, or at such other address as may be designated by the Corporation by written notice in compliance with the provisions of this Article 28.

**ARTICLE 29. ORAL REPRESENTATIONS NOT BINDING; ENTIRE AGREEMENT.**

29.1 No representations either oral or written other than those contained in this Agreement shall be binding upon the Corporation.

29.2 This document represents the entire agreement between the parties and there are no understandings or agreements save and except as are herein expressly set forth or to the extent applicable, contained in the Corporation's Governing Documents. This Agreement may only be altered by a written instrument executed by all of the parties hereto.

**ARTICLE 30. REMEDIES.**

30.1 The exercise of any of the rights or remedies as herein provided with respect to any default shall not preclude or affect the subsequent exercise of such rights or remedies at different times and for different defaults.

30.2 The respective rights or remedies, whether provided by this Agreement or by law, or available in equity, shall be cumulative and the exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such right or remedies for the same or different defaults, or for the same or different failures of the Member to perform or observe any provision of this Agreement.

**ARTICLE 31. ATTORNEYS' FEES AND COSTS.**

If the Corporation incurs attorneys' fees and costs, regardless of whether suit is filed, due to a breach or default by the Member hereunder, the Member shall be responsible to pay attorneys' fees and costs to Corporation which shall be recoverable as a Reimbursement Assessment. Should any litigation be commenced between the parties to this Agreement arising from or relating to its terms or the Governing Documents, the party prevailing in that litigation shall recover attorneys' fees and costs in an amount determined by the court.

**ARTICLE 32. DISPUTE RESOLUTION.**

Resolution of disputes arising out of this Agreement which are subject to California Civil Code sections 1369.510-.580, or successor statutes, shall be attempted in accordance with the provisions thereof.

**ARTICLE 33. MISCELLANEOUS PROVISIONS.**

33.1 Headings. The headings used in this Agreement are for convenience only and are not to be used in interpreting the meaning of any of the provisions of this Agreement, or otherwise.

