



ROSSMOOR
WALNUT CREEK

Walnut Creek Mutual No. Thirty

Covenants, Conditions and Restrictions

If these documents contain any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates State and Federal Fair Housing Laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

**RECORDED AT THE REQUEST OF AND
WHEN RECORDED RETURN TO:**

WALNUT CREEK MUTUAL NO. THIRTY
c/o Hughes Gill Cochrane, P.C.
Attn: Stephanie J. Hayes, Esq.
1600 South Main Street, Suite 215
Walnut Creek, CA 94596

06/18/2012, 20120143882

**FIRST AMENDMENT TO AMENDED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
WALNUT CREEK MUTUAL NO. THIRTY**

This First Amendment to the Amended Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. Thirty (the "First Amendment") is made on the date hereinafter set forth by WALNUT CREEK MUTUAL NO. THIRTY, a California nonprofit mutual benefit corporation (the "Mutual").

RECITALS

A. WHEREAS, an instrument entitled "Amended Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. Thirty" was recorded on May 23, 2003 as Document No. 2003-0243523 in the Official Records of Contra Costa County, California (the "Declaration"),

B. WHEREAS, the Declaration establishes certain limitations, easements, covenants, restrictions, conditions, liens and charges which run with and are binding upon all parties having or acquiring any right, title or interest in those certain parcels of real property located in the City of Walnut Creek, Contra Costa County, State of California and described as follows:

Lot 1, as shown upon the "Map of Subdivision 4297, City of Walnut Creek, Contra Costa County, California," filed July 6, 1972, in Book of Maps, Pages 7, 8 and 9, Contra Costa County Records.

C. WHEREAS, all of the real property described herein, including all improvements thereon, constitute a "condominium project" within the meaning of California Civil Code section 1351(f).

D. WHEREAS, the Mutual desires to amend the Declaration as set forth below.

E. WHEREAS, pursuant to Article 11.1 of the Declaration, the Declaration may be amended with the approval of Members representing at least an Absolute Majority of the Members, that is, a majority of the Total Voting Power of the Mutual.

F. WHEREAS, all approvals required to amend the Declaration have been obtained.

NOW, THEREFORE, the Mutual amends the Declaration as set forth in this First Amendment.

1. Section 7.1 of the Declaration (entitled "Damage to a Unit or Units") shall be deleted in its entirety and the following inserted in its place:

7.1 Damage to a Unit or Units. As set forth in Section 13.6 of this Declaration, each Unit Owner is responsible for insuring the contents of his or her Unit. Regardless of the insurance carried by the Unit Owner, 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 Unit Owner. If damage occurs to property within the Unit that is insured by the Mutual pursuant to Section 13.2.1(ii) of this Declaration, the insurance proceeds shall be paid to the Mutual, and the Mutual shall use same to rebuild or repair such property. In the event the insurance proceeds and available Mutual funds are insufficient to cover the complete cost of repair of such property, the Board shall levy a Special Assessment against all Owners in the amount necessary to complete the repairs to the damaged property.

2. New ARTICLE 13 (entitled "INSURANCE") shall be added to the Declaration as follows:

13.1 Liability and Fidelity Insurance. The Mutual shall obtain and maintain the following liability policies:

13.1.1 Commercial General Liability Policy: A Commercial General Liability policy insuring the Mutual, any manager, the Mutual's directors and officers, and the Owners against liability arising from any bodily injury or property damage as a result of an accident or occurrence within the Common Area. Subject to the terms and conditions of the policy, the policy also shall cover bodily injury or property damage from an accident or occurrence within any Unit related to any maintenance or repair work required to be performed by the Mutual pursuant to the Declaration and/or the Mutual's Maintenance Policies, including, but not limited to, work performed in the Common Area. The policy shall include, if obtainable, cross liability or severability of interest coverage. The limits of such insurance (including the commercial general liability and any excess liability coverage) shall not be less than the general liability insurance requirements set forth in Civil Code section 1365.9 or any successor statute thereto covering all claims for bodily injury and property damage arising out of a single occurrence. The coverage may be a combination of primary and excess policies.

The insurance shall be provided with coverage terms provided by Insurance Services Offices (ISO) form CG 0001, or equivalent or better coverage. Such insurance shall include coverage against liability for owned, non-owned and hired automobiles and other liability or risk customarily covered with respect to projects similar in construction, location and use. The policy shall be primary and noncontributing with any other liability policy covering the same liability.

13.1.2 Directors and Officers Liability Policy: A Directors and Officers Liability policy containing such terms and conditions as are normally and customarily carried for directors and officers of a common interest development and in sufficient amounts to satisfy the insurance requirements of Civil Code section 1365.7 or any successor statute thereto.

13.1.3 Crime Insurance: A blanket Commercial Crime Insurance Policy covering the Mutual, any organization or person who either handles or administers or is responsible for Mutual funds, whether or not any person receives compensation for services. The policy amounts shall satisfy the Federal National Mortgage Association ("FNMA") and Federal Housing Administration ("FHA") requirements and in no event shall be less than the sum of three months of Annual and Special Assessments on all Units subject to Assessments.

13.2 Mutual Property Insurance. The Mutual shall obtain and maintain a master property insurance policy that satisfies each of the following conditions:

13.2.1 Property Covered. The Mutual's policy shall cover the following real and personal property:

(i) *Common Area*. All Common Area *improvements*, including buildings and any additions or extensions thereto; all fixtures, machinery and equipment permanently affixed to the building; windows; fences; monuments; lighting fixtures situated outside the Units; exterior signs; and personal property owned or maintained by the Mutual; but excluding land; excavations; and other items typically excluded from property insurance coverage.

(ii) *Units*. Permanently affixed improvements situated within the Unit, including interior walls and doors; ceiling, floor and wall surface materials (e.g., paint, wallpaper, carpets and hardwood floors); utility fixtures (including gas, electrical and plumbing); cabinets; built-in appliances; heating and air-conditioning systems; water heaters and any replacements thereto; but excluding any personal property located in the Unit. If the Unit Owner renovates, upgrades or replaces any permanently affixed improvement within the Unit or adds new improvements to the Unit (collectively, the "Alterations") and the replacement cost of the Alterations exceeds the cost of the improvements prior to the Alterations, the Unit Owner shall be responsible for procuring

and maintaining insurance to cover the excess unless the Owner has obtained written approval from the Mutual to make the Alterations and, to the extent required, approval from governmental authorities.

(iii) *Landscaping.* Lawn, trees, shrubs and plants located in the Common Area.

13.2.2 Covered Cause of Loss. The Mutual's policy shall provide coverage against losses caused by fire and risks of direct physical loss, as insured under the ISO "Causes of Loss - Special Form (CP 1030)" or its equivalent or better coverage. Such policy shall include coverage for loss resulting from the enforcement of any ordinance or law regulating the construction, use or repair of any property, or requiring the tearing down of any property, if caused by a peril insured by such policy. Equipment Breakdown Insurance shall also be maintained covering boilers and related equipment, heating, air-conditioning, electrical and mechanical equipment that is used in the generation, transmission or utilization of energy.

13.2.3 Dollar Limit. The dollar limit of the Mutual's policy shall not be less than the full insurable replacement value of the covered property described in Section 13.2.1 above based on insurance industry standards for determination of replacement values, provided that there may be lower dollar limits for specified items as is customarily provided in property insurance policies.

13.2.4 Primary. The Mutual's policy shall be primary and noncontributing with any other insurance policy covering the same loss provided, however, that where an Owner's individual insurance policy (discussed in Section 13.6 below) provides overlapping coverage, the Owner's individual insurance policy shall be the primary coverage and the Mutual's policy shall be excess/supplemental/secondary coverage as the case may be.

13.2.5 Endorsements. The Mutual's policy may contain such endorsements as the Board may select after consultation with a qualified insurance consultant.

13.2.6 Waiver of Subrogation. The Mutual waives all subrogation rights against any Owner or occupant and their family members and invitees. The policy shall include an acknowledgment of the Mutual's right to waive all subrogation rights against the Owner.

13.2.7 Deductible. Except as otherwise provided by separate agreement, when a claim is made on the Mutual's property insurance policy, the Owner is responsible for payment of the deductible on the Mutual's policy in circumstances: (i) where damage to Common Area and/or Unit improvements is caused by the fault of the Owner, tenants,

Contract Purchasers, Residents of the Unit, and agents, invitees, family members, guests and pets of any of the foregoing; or (ii) where damage to Common Area and/or Unit improvements is caused by the failure of some portion of the Unit or Common Area which the Owner is responsible for maintaining. In cases where fault cannot be determined, the Mutual shall pay the deductible.

The Mutual may enter into a deductible sharing agreement with other Rossmoor mutuals. In this event, to the extent there is any conflict between the payment of deductibles as set forth in this Section 13.2.7 and the agreement, the agreement shall control.

13.3 FNMA, FHLMC and FHA Requirements. Notwithstanding anything herein to the contrary, the Mutual shall maintain such policies, containing such terms, amount of coverage, endorsements, deductible amounts, named insureds, loss payees, standard mortgage clauses, notice of changes or cancellation, and an appropriate insurance company rating that shall satisfy the minimum requirements imposed by the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC") and the Federal Housing Administration ("FHA") or any successor thereto. If the FNMA, FHLMC or FHA requirements conflict, the more stringent requirements shall be met.

13.4 Insurance Rating and Cancellation. The insurance company providing the Mutual's insurance under Sections 13.1 and 13.2 shall have an A.M. Best rating of not less than A:VII if licensed to do business in the State of California and a rating of not less than A:X if approved but not licensed to do business in the State of California, provided that if the Board determines that insurance from insurance companies with the required ratings is not available at commercially reasonable rates, the Board may reduce the rating requirements after consultation with a qualified insurance consultant. If the A.M. Best ratings are no longer available, the insurance ratings shall be based on equivalent ratings issued by an independent insurance rating company used by financial institutions for insurance rating purposes.

13.5 Board's Insurance Authority. The Board has the authority on behalf of the Mutual and each of its Owners to participate with the Golden Rain Foundation of Walnut Creek or any successor or assign thereto (the "Foundation") and other Rossmoor mutuals in a group policy or policies procured and maintained by the Foundation as long as the group policy or policies provide equivalent or better coverage than the applicable requirements described in Sections 13.1 and 13.2 subject to the Board's right to deviate from the requirement as described herein.

The Board shall have the power and right to deviate from the insurance requirements contained in this Article 13 in any manner that the Board, in its discretion, considers to be in the best interests of the Mutual, provided that the Board shall maintain

the minimum insurance requirements set forth in Civil Code sections 1365.7 and 1365.9 or in any successor statute thereto and as required in Section 13.3. If the Board elects to materially reduce the coverage from the coverage required in this Article 13, the Board shall, as soon as reasonably practicable, notify the Members, in writing, of the reduction in coverage.

The Board is authorized to negotiate and agree on the value and extent of any loss under any policy carried by the Mutual, including, but not limited to, the right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

Each Owner irrevocably appoints the Mutual, as that Owner'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 Owner had personally taken the action.

13.6 Owners' Individual Insurance Requirements. Each Owner shall procure and maintain property insurance against losses to personal property located within the Owner's Unit and personal liability coverage. The Mutual's insurance policies will not provide coverage for: (i) losses to the Owner's personal property; (ii) losses to any Alterations to the extent not covered under Section 13.2.1(ii); (iii) liability from accidents or occurrences within the Owner's Unit or portions of the Common Area set aside for the exclusive use or possession of the residents of the Unit (that is, Exclusive Use Common Area); or (iv) liability from accidents or occurrences within Rossmoor for which the Owner may be held responsible and which may not be covered under the Mutual's Commercial General Liability policy. Each Owner should seek the advice of a qualified insurance consultant regarding the Owner's property and liability insurance obligations under this Section 13.6 and other applicable coverage available to Owners of Units.

Nothing herein imposes any duty on the Mutual, its directors, officers or agents (including the Mutual's managing agent) to confirm or otherwise verify that the Owners are carrying the insurance required in this Section 13.6.

No Owner shall separately insure any property covered by the Mutual's property insurance policy described in Section 13.2 above unless the Owner's individual insurance policy permits the application of any overlapping coverage under Owner's policy as primary without a reduction in benefits from the coverage under the Mutual's policy. If any Owner violates this provision and, as a result, there is a diminution in insurance proceeds otherwise payable to the Mutual, the Owner will be liable to the Mutual to the

extent of the diminution. The Mutual may, subject to Mutual's compliance with the notice and hearing requirements set forth in the Governing Documents, levy a Reimbursement Assessment against the Owner and the Owner's Unit to collect the amount of the diminution.

3. Unless otherwise expressly provided herein to the contrary, capitalized terms not defined in this First Amendment shall have the meanings ascribed to them in the Declaration, unless the context clearly requires otherwise.

4. In all other respects the provisions of the Declaration are deemed to remain in full force and effect except as herein modified.

IN WITNESS WHEREOF, the undersigned duly authorized officers of WALNUT CREEK MUTUAL NO. THIRTY hereby certify that this First Amendment has been approved, in accordance with Section 11.1 of the Declaration, by Members representing at least an Absolute Majority of the Members, that is, a majority of the Total Voting Power of the Mutual.

WALNUT CREEK MUTUAL NO.
THIRTY

Dated: JUNE 7, 2012

By: John Herron
John Herron, President

Dated: June 7, 2012

By: Roseanne Wright
Roseanne Wright, Secretary

ACKNOWLEDGMENT

STATE OF CALIFORNIA
COUNTY OF Contra Costa

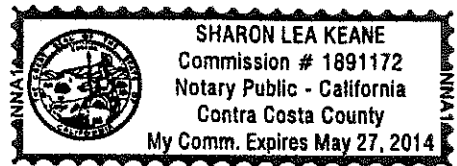
On 6-7-12, before me, Sharon Lea Keane, Notary Public, personally appeared, John Neuron, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Sharon Lea Keane

(Seal)



ACKNOWLEDGMENT

STATE OF CALIFORNIA
COUNTY OF Contra Costa

On 6-7-12, before me, Sharon Lea Keane, Notary Public, personally appeared, Roseanne Wright, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Sharon Lea Keane

(Seal)





CONTRA COSTA Co Recorder Office
STEPHEN L. WEIR, Clerk-Recorder

DOC- 2003-0243523-00

Check Number

Friday, MAY 23, 2003 13:28:02

MIC \$1.00 MOD \$58.00 REC \$62.00

TCF \$57.00

Ttl Pd \$178.00

Nbr-0001508047

lrc/R9/1-58

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

WALNUT CREEK MUTUAL NO. THIRTY
c/o Berding & Weil, LLP
3240 Stone Valley Road West
Alamo, CA 94507
(925) 838-2090

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**AMENDED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
WALNUT CREEK MUTUAL NO. THIRTY**

This Amended Declaration of Covenants, Conditions and Restrictions is made on the date hereinafter set forth by Walnut Creek Mutual No. Thirty, a California nonprofit mutual benefit corporation (hereinafter referred to as the "Mutual").

RECITALS

A. WHEREAS, the Mutual is the successor in interest to Terra California, a California corporation, which, as Declarant, executed that certain Declaration of Covenants, Conditions and Restrictions, dated May 16, 1972, and recorded on July 6, 1972, in Book 6690, Pages 462 *et seq.*, as Instrument/Series No. 62001, Official Records of Contra Costa County, State of California (hereinafter referred to as the "1972 Declaration"); and

B. WHEREAS, the 1972 Declaration establishes certain limitations, easements, covenants, restrictions, conditions, liens, and charges which run with and are binding upon all parties having or acquiring any right, title, or interest in that certain parcel of real property located in the County of Contra Costa, State of California, and more particularly described as follows:

Lot 1, as shown on the "Map of Subdivision 4297, City of Walnut Creek, Contra Costa County, California," filed July 6, 1972, in Book 148 of Maps, Pages 7, 8 and 9, in the Office of the County Recorder of Contra Costa County;

and

C. WHEREAS, the Project (as defined herein) 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); and

D. WHEREAS, Terra California, a California corporation, as "Declarant" (and/or the predecessors of Declarant), entered into one or more Agreements Establishing Covenants, Conditions and Restrictions with Golden Rain Foundation of Walnut Creek, including the "Agreement Establishing Covenants, Conditions and Restrictions" dated April 4, 1972 and recorded on July 6, 1972 as Instrument/Series No. 62000 in the Office of the County Recorder of Contra Costa County, State of California (the "Establishing Agreement"); and

E. WHEREAS, the Members, constituting the record owners of at least three-fourths (3/4) of the Units (as defined herein) in the Project (as defined herein), desire to amend, modify, and otherwise change the 1972 Declaration pursuant to Article XV, Section 1 thereof; and

F. WHEREAS, the Establishing Agreement provides at Subsection B of Section 13 that any amendment, modification or termination of said Establishing Agreement shall require: (i) the approval of Golden Rain Foundation of Walnut Creek and three-fourths (3/4) of the record owners of all of the property described in Exhibit "B" attached to the Establishing Agreement, and (b) recordation of an instrument documenting such approval; and

G. NOW, THEREFORE, pursuant to Article XV, Section 1 of the 1972 Declaration, the Members constituting the record owners of at least three-fourths (3/4) of the Units (as defined herein) in the Project (as defined herein), do hereby declare that the aforesaid 1972 Declaration, be and it is hereby, AMENDED AND RESTATED IN ITS ENTIRETY as set forth in the within Amended Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. Thirty; and

H. FURTHER, it is the intent of the Mutual and its Members that this Amended Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. Thirty does not supersede the Establishing Agreement or any of the Declarations of Covenants, Conditions and Restrictions entered into and/or recorded by Declarant (or the predecessors of Declarant) and Golden Rain Foundation of Walnut Creek for the other projects and/or mutuels within the Rossmoor valley; and

I. IT IS FURTHER HEREBY DECLARED that all of the real property described herein constitutes a "condominium project" within the meaning of section 1351(f) of the California *Civil Code*; and

J. IT IS FURTHER HEREBY DECLARED that all of the real property described herein is held and owned and shall be held, owned, operated, managed, conveyed, hypothecated, encumbered, leased, used, occupied, and improved subject to the following covenants, conditions, and restrictions, all of which are declared and agreed to be in furtherance of a plan and purpose of protecting, preserving, and enhancing the value, desirability, and attractiveness of the said real property and every part thereof, and of fostering the development, management, improvement, enjoyment, and sale of the said real property and any part thereof; and

K. IT IS FURTHER HEREBY DECLARED that all of the covenants, conditions, and restrictions herein set forth shall constitute enforceable equitable servitudes as provided in section 1354 of the California *Civil Code*, shall constitute covenants that shall run with the said real property, and shall be binding upon and inure to the benefit of each Owner of any portion of the said real property or of any interest therein and their heirs, successors, and assigns.

ARTICLE 1 DEFINITIONS

- 1.1 Absolute Majority. "Absolute Majority" shall mean a majority of the Total Voting Power of the Mutual.
- 1.2 Additional Charges. "Additional Charges" shall mean all costs, fees, charges, and expenditures, including without limitation, interest, late charges, attorneys' fees, recording and filing fees, and all other costs actually incurred by the Mutual in collecting and/or enforcing payment of Assessments, fines, and/or penalties.
- 1.3 Annual Assessments. "Annual Assessments" shall have the meaning set forth in Section 6.5.
- 1.4 Articles. "Articles" shall mean the Articles of Incorporation of Walnut Creek Mutual No. Thirty, as they may be amended from time to time, and as filed with the Office of the Secretary of State of California.
- 1.5 Assessments. "Assessments" shall mean any or all of the following: Annual Assessments, Special Assessments, Reimbursement Assessments, and Enforcement Assessments.

- 1.6 Board of Directors. "Board of Directors" or "Board" shall mean the governing body of the Mutual.
- 1.7 Bylaws. "Bylaws" shall mean the Bylaws of the Mutual as they shall be adopted by the Board of Directors and Members and any duly-adopted amendments thereof.
- 1.8 City. "City" shall mean the City of Walnut Creek.
- 1.9 Common Area. "Common Area" shall mean all of the property comprising the Project which is owned by all of the Owners in common, but excluding the Units.
- 1.10 Condominium. "Condominium" shall mean an estate in real property as defined in California *Civil Code* sections 783 and 1351(f), consisting of an undivided interest in common in the Common Area, and a separate fee interest in a Unit together with any easements or other interests in the Project or any portion thereof as are described in the Declaration, in the Condominium Plan, or in the deed conveying a Condominium.
- 1.11 Condominium Plan. "Condominium Plan" or "Plan" shall mean the condominium plan or plans (including any amendments thereto) of the type described in *Civil Code* section 1351 or predecessor statute which applies to the Project and has been recorded in the Office of the County Recorder of Contra Costa County, California.
- 1.12 Contract Purchaser/Contract Seller. "Contract Purchaser" and "Contract Seller" shall mean the purchaser and the seller, respectively, under an installment land contract in which title to the property is transferred after the final installment payment is made.
- 1.13 County. "County" shall mean the County of Contra Costa.
- 1.14 Declaration. "Declaration" shall mean this Amended Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. Thirty, recorded in the Office of the County Recorder of Contra Costa County, California, and any amendments thereof.
- 1.15 Enforcement Assessment. "Enforcement Assessment" shall have the meaning set forth in Section 6.8.
- 1.16 Establishing Agreement. "Establishing Agreement" shall mean the document executed by the Foundation and Terra California, a

California corporation on April 4, 1972 and entitled "Agreement Establishing Covenants, Conditions and Restrictions" and recorded on July 6, 1972 as Instrument/Series No. 62000 in the Office of the County Recorder of Contra Costa County, California.

- 1.17 Exclusive Use Common Area. "Exclusive Use Common Area" shall mean any portion of the Common Area the exclusive use of which is set aside, allocated, assigned, and restricted to the exclusive use or possession of the Residents of a particular Unit. An exclusive easement to such Exclusive Use Common Area may be specifically granted in each individual grant deed conveying a Condominium; however, the failure of any such deed to set forth such grant of easement shall not invalidate the exclusive easement herein granted. Exclusive Use Common Area includes the following (as more particularly described in Section 2.3 below): (i) decks, (ii) patios, (iii) balconies, (iv) assigned carports, (v) assigned storage spaces located in carports, and (vi) private driveways.
- 1.18 Foundation. "Foundation" shall mean the Golden Rain Foundation of Walnut Creek, a California nonprofit mutual benefit corporation.
- 1.19 Foundation's Architectural Control Committee. "Foundation's Architectural Control Committee" shall mean the committee from time to time established by the Foundation in accordance with the Establishing Agreement and as described in Article 9 of the Declaration.
- 1.20 Foundation's Governing Documents. "Foundation's Governing Documents" shall mean, collectively, the Foundation's articles of incorporation and bylaws, as amended from time to time, any rules, policies and resolutions adopted by the Foundation's board of directors and distributed to the Foundation's members, and the Establishing Agreement.
- 1.21 Governing Documents. "Governing Documents" shall mean, collectively, the Articles, Bylaws, Declaration and Rules, and the resolutions duly adopted by the Board and distributed to the Members.
- 1.22 Maintenance. "Maintenance" shall mean the act of caring for property and keeping it in its existing state, preserving it from failure or deterioration, including painting, caulking, cleaning, and minor, non-structural upkeep.

- 1.23 Maintenance Policies. "Maintenance Policies" shall mean the policies adopted by the Board from time to time concerning and governing the respective responsibilities of the Mutual and the Owner as to Maintenance, Repair and Replacement of Common Area, Units and Exclusive Use Common Area. In the case of any conflict between this Declaration and the provisions of the Maintenance Policies, the provisions of the Maintenance Policies shall control.
- 1.24 Manor. "Manor" shall mean "Unit."
- 1.25 Member. "Member" shall mean "Owner."
- 1.26 Member in Good Standing. "Member in Good Standing" shall mean a Member of the Mutual who is current in the payment of all dues, Assessments, fines, penalties, and other charges imposed in accordance with the Governing Documents, and who is in compliance with all of the provisions of the Governing Documents, as more particularly set forth in the Bylaws.
- 1.27 Mortgage. "Mortgage" shall mean a deed of trust as well as a mortgage in the conventional sense.
- 1.28 Mortgagee. "Mortgagee" shall mean a beneficiary under a deed of trust as well as under a Mortgage.
- 1.29 Mutual. "Mutual" shall mean Walnut Creek Mutual No. Thirty, its successors and assigns.
- 1.30 Owner. "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Condominium which is a part of the Project, including Contract Sellers, but excluding Contract Purchasers and excluding those having such interest merely as security for the performance of an obligation.
- 1.31 Policies. "Policies" shall mean "Rules" as defined in Section 1.38.
- 1.32 Project. "Project" shall mean all of the real property comprising the Walnut Creek Mutual No. Thirty condominium project, as described in the Declaration.
- 1.33 Quorum. "Quorum," for the purposes of Membership meetings and Membership votes, is the minimum number of Members entitled to cast votes who must be present, in person or by

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proxy, at a meeting of the Membership in order for business other than adjournment to be conducted or, for purposes of a Board meeting, the minimum number, as established in the Bylaws, of Directors who must be present in person, including present by means of conference telephone equipment or similar communications equipment to the extent permitted by law, at a meeting of the Board in order for business to be conducted. The Quorum for Membership meetings and Membership votes shall be as provided in Section 4.6 of the Bylaws, except where a different Quorum is established or required by law or under this Declaration (*for example*, Sections 6.5.3 and 6.6.3 of this Declaration set forth different Quorum requirements imposed by *Civil Code* section 1366 for Membership votes concerning Annual Assessment increases and Special Assessments, respectively). The Quorum for Board meetings shall be as provided in Section 7.9 of the Bylaws.

- 1.34 Reimbursement Assessment. "Reimbursement Assessment" shall have the meaning set forth in Section 6.7.
- 1.35 Repair. "Repair" shall mean the minor restoration of property that is torn, broken, or otherwise damaged, or has sustained wear, tear, or deterioration such that minor restoration is necessary.
- 1.36 Replacement. "Replacement" shall mean substantial reconstruction, restoration, or substitution of the whole or a substantial part of property that has been damaged or destroyed through usage or through hazard or catastrophe such that it is no longer useable or serviceable in its current condition.
- 1.37 Resident. "Resident" shall mean any person who resides in a Unit within the Project whether or not such person is an Owner as defined in Section 1.30 above.
- 1.38 Rules. "Rules" and "Policies" are synonymous terms which may be used interchangeably and shall mean the rules, regulations and policies governing the use, occupancy, management, administration, and operation of the Project or any part thereof as adopted and published by the Board of Directors from time to time, including but not limited to the Senior Housing Residency Restrictions and the Maintenance Policies.
- 1.39 Senior Housing Residency Restrictions. "Senior Housing Residency Restrictions" shall mean the residency Policy described in Section 4.1.

- 1.40 Simple Majority. "Simple Majority" shall mean a majority of the votes represented and voting at a meeting at which a Quorum is present or by written ballot in conformity with *Corporations Code* section 7513 in which the number of votes cast by ballot equals or exceeds the number required to establish a Quorum.
- 1.41 Special Assessment. "Special Assessment" shall have the meaning set forth in Section 6.6.
- 1.42 Total Voting Power. "Total Voting Power" shall mean the total number of votes of all Members entitled to vote at a particular time, calculated on the basis of one vote for each Unit, excluding any Units as to which an Owner is not then a Member in Good Standing.
- 1.43 Unit. "Unit" and "Manor" are synonymous terms which may be used interchangeably and shall mean the elements of a Condominium that are not owned in common with the other Owners of Condominiums within the Project, which are shown as separately designated numbered and/or lettered areas on the Condominium Plan. Each Unit consists of: (i) the interior space bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, and ceilings of each such interior space; (ii) all interior partitions (*i.e.*, nonbearing walls) that are located entirely within the boundaries of such space and any ducts, vents, or flues located within any such interior partition or nonbearing wall; provided, however, that bearing walls, interior stairs, soffits, and furred down ceilings located within such space are Common Area and not part of the Unit; (iii) interior and exterior doors, screen doors, doorjambes, window assemblies, window frames, window glass, window screens, and hardware and interior trim of all the foregoing; (iv) utility installations, fixtures, and appliances that exclusively serve the Unit, whether located within such space or elsewhere, including but not limited to furnaces, air conditioners, water heaters, and ventilation fans; and (v) electrical wiring and plumbing from the connection at the wall, floor, or ceiling. In interpreting deeds, the Declaration, and the Condominium Plan, it shall be conclusively presumed that the then-existing physical boundaries of a Unit are its boundaries, rather than the metes and bounds or other description expressed in the deed, the Declaration, or the Condominium Plan, regardless of any settling or lateral movement of buildings and regardless of minor variance between the boundaries shown on the deed, the Declaration, or the Condominium Plan and the actual existing physical boundaries.

ARTICLE 2 PROPERTY RIGHTS AND RIGHTS OF ENJOYMENT

2.1 Ownership of Condominium; Exclusive Easements. Ownership of each Condominium within the Project shall include (i) a designated Unit, (ii) the respective one-seventy sixth (1/76th) interest as tenant in common in the Common Area, (iii) a Membership in the Mutual, (iv) to the extent provided in the Foundation's Governing Documents, a membership in the Foundation, and (v) any exclusive easements or easements appurtenant to such Unit upon the Exclusive Use Common Area and such other easements as are applicable, all as described in the Declaration, in the deed to the Unit, or in the Condominium Plan. The undivided interests in the Common Area established in this Declaration cannot be changed. The undivided interests in the Common Area shall not be severed or conveyed separately from the respective Units to which they are appurtenant and each such undivided interest shall in all cases be deemed to be conveyed or encumbered along with the respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit. Any purported severance or separate conveyance of an undivided interest in the Common Area apart from a conveyance of the respective Unit shall, for all purposes, be null, void, and unenforceable.

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

- (a) The right of the Board of Directors to establish and enforce reasonable rules and regulations governing the use of the Common Area and facilities thereon;
- (b) The right of the Board to charge reasonable admission and other fees for the use of any facilities situated upon the Common Area;
- (c) The right of the Board, as more particularly addressed in the Bylaws, to suspend an Owner's rights and privileges

as a Member, including voting rights and right to use the recreational facilities for any period during which any Assessment against such Owner's Condominium remains unpaid and/or for infraction of the Governing Documents of the Mutual;

- (d) The right of the Board, as set forth in Article 3, to grant licenses, easements and rights of way in, on, over, or under the Common Area subject to such conditions as may be agreed to by the Board;
- (e) The right of the Board, as set forth in Section 5.7, to acquire capital improvements;
- (f) The right of the Board, as set forth in Section 5.8, to sell, transfer or dedicate property owned by the Mutual;
- (g) The right of the Board, as set forth in Section 5.9, to grant easements, licenses and rights of way to Owners; and
- (h) The right of the Mutual or its authorized agents, as provided in this Declaration, to perform its obligations under this Declaration, including obligations with respect to construction, Maintenance, Repair, or Replacement for the benefit of the Common Area or the Owners in common.

2.3 Exclusive Use Common Area. Certain portions of the Common Area, referred to as "Exclusive Use Common Areas," are subject, as the servient tenements, to exclusive easements in favor of the Units to which they are attached or appurtenant to, or assigned by the Board, as applicable, as the dominant tenements, and such exclusive easements shall be appurtenant to those designated Units. Exclusive Use Common Area shall include the following:

- (a) decks, patios and balconies (if any);
- (b) assigned carports and assigned storage spaces located in such carports; and
- (c) private driveways.

2.4 Delegation of Use. Any Owner may delegate the Owner's rights of use and enjoyment, including easements, in the Project to the

members of his or her family, tenants, Contract Purchasers, guests and invitees, subject to the terms of the Governing Documents, including, without limitation, the Senior Housing Residency Restrictions. Upon the leasing or renting of the entirety of a Unit, or upon occupancy of a Unit by a Contract Purchaser, the Owner shall be deemed to have delegated and assigned all such rights exclusively to the tenants or Contract Purchasers of such Unit provided, however, that the foregoing delegation shall not apply to roommates who are co-occupying the Unit with the Member. Each Owner shall notify the managing agent of the Mutual of the names of any tenants or any such Contract Purchasers of such Owner's Unit. Each Owner, tenant, or Contract Purchaser shall also notify the managing agent of the Mutual of the names of all members of his or her household (including roommates) to whom such Owner, tenant, or Contract Purchaser has delegated any rights of enjoyment in the Project as provided herein and the relationship which each such person bears to such Owner, tenant, or Contract Purchaser. Any rights of enjoyment delegated pursuant to this Section 2.4 are subject to suspension to the same extent that rights of Owners are subject to suspension as provided in the Governing Documents.

2.5 Common Area Construction. Except as may be authorized by the Board, no person or entity, other than the Mutual or its duly-authorized agents, shall construct, reconstruct, refinish, alter, or maintain any improvement upon the Common Area, or shall make or create any excavation or fill upon the Common Area, or shall change the natural or existing drainage of the Common Area, or shall plant, remove, or destroy any seed, plant material, tree, shrub, or other vegetation upon the Common Area.

2.6 Mechanic's Liens. In the event there shall be filed against the Common Area a Notice of Mechanic's Lien for, or purporting to be for, labor or materials alleged to have been furnished or delivered for any Owner within the Project or his or her Condominium, such Owner shall forthwith cause such lien to be discharged by payment, bond, or otherwise. If the Owner fails to cause the lien to be discharged, the Board may send written notice to the Owner specifying that unless the Owner causes the lien to be discharged within five (5) days from the date of such notice, the Board may cause the lien to be discharged. Within such five (5) day period, the Owner shall be permitted a hearing before the Board regarding the validity of such lien and any offsets or defenses thereto. At that time, the Board shall determine whether the lien adversely and improperly affects and

encumbers the rights and interests of the Mutual or the other Owners. If the Board of Directors determines that the lien does adversely and improperly affect and encumber such rights and interests and that adequate protection of such rights and interests has not been provided, the Board may cause the lien to be discharged by payment, bond, or otherwise. The Board shall have the right to levy a Reimbursement Assessment against the Owner responsible for causing the lien to be discharged in an amount equal to all amounts paid by the Mutual together with interest thereon at the legal rate and all costs and expenses paid or incurred in connection therewith, including reasonable attorneys' fees.

ARTICLE 3 EASEMENTS

3.1 Easements in General. In addition to all easements reserved and granted on the Condominium Plan(s) and the easements provided in Sections 2.1 and 2.3, there are hereby specifically reserved and granted for the benefit of the Units and Unit Owners in common and for each Unit and Unit Owner severally, and for the Mutual, as their respective interests shall obtain, the easements, reciprocal negative easements, secondary easements and rights of way as particularly identified in this Article 3.

3.2 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Unit and such portion or portions of the Common Area adjacent thereto and/or as between adjacent Units due to the unwillful placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon in accordance with the terms of the Declaration; provided, however, that in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, a tenant, or the Mutual.

In the event that a structure on any Unit is partially or totally destroyed and then repaired or rebuilt in accordance with the provisions of the Declaration, the Owners of each Unit agree that minor encroachments over adjoining Units shall be permitted and there shall be easements for the maintenance of said encroachments so long as they shall exist.

3.3 Utility Easements. The Board shall have the power to grant and convey easements over and under the Project or any portion

thereof for the installation, repair, maintenance, and replacement of overhead or underground lines, cables, wires, conduits, or other devices for electricity, cable or satellite television or master television antenna lines, power, telephone, data transmission and other purposes, sanitary sewer lines and facilities, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities, and for any other purposes deemed by the Board to be appropriate and not inconsistent with the purposes and interests of the Mutual, and each purchaser, in accepting a deed to a Unit, expressly consents thereto; provided, however, that no such easements may be granted if such easement would interfere with the use, occupancy, or enjoyment by an Owner or Resident of any Unit and any existing easements over Exclusive Use Common Area appurtenant thereto, if any, without the consent of the Owner(s) affected. The Mutual shall maintain all utility installations located in the Common Area except for (i) those installations maintained by utility companies, public, private, or municipal, and (ii) utility installations which are within a Unit as defined in Section 1.43. The Mutual shall pay all charges for utilities supplied to the Project except those metered or charged separately to the Units.

- 3.4 Easements Granted by The Board. The Board shall have the power to grant and convey to any person or entity easements and rights of way, in, on, over, or under the Common Area for the purpose of constructing, erecting, operating, or maintaining thereon, therein, or thereunder overhead or underground lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities, and for any other purposes deemed by the Board to be appropriate and not inconsistent with the purposes and interests of the Mutual, and each purchaser, in accepting a deed to a Unit, expressly consents thereto; provided, however, that no such easements may be granted if such easement would interfere with the use, occupancy, or enjoyment by an Owner or Resident of any Unit and any existing exclusive easements over Common Area appurtenant thereto, if any, without the consent of the Owner(s) affected.

ARTICLE 4

USE RESTRICTIONS

- 4.1 Senior Citizen Residential Use. Units shall be occupied and used for senior citizen residential purposes only. Business activity shall not be permitted except as provided in Section 4.5. Occupants, including guests, of each Unit shall be subject to the age and other restrictions set forth in a written Policy (*i.e.*, the Senior Housing Residency Restrictions) adopted by the Board in compliance with applicable federal and California law as those laws may be amended from time to time. It is the intention of this provision to restrict occupancy to older persons or senior citizens to the fullest extent permitted by applicable law.
- 4.2 Number of Occupants. No more than two (2) Residents may occupy a one-bedroom Unit and no more than three (3) Residents may occupy a two-bedroom or three-bedroom Unit. The number and regulation of guests shall be governed by Rules adopted by the Board concerning guests.
- 4.3 Rental of Units. Leasing or renting of any Unit shall be subject to all the provisions of the Governing Documents including this Section 4.3.
- 4.3.1 Right to Lease or Rent. Subject to the limitation on the number of Units that may be rented, as set forth in Section 4.3.2, an Owner shall have the right to lease or rent his or her Unit, provided: (i) the tenants comply with the Senior Housing Residency Restrictions and all other occupancy restrictions, (ii) the Owner notifies the Mutual of the names of all the Resident tenants, (iii) no rental shall be for a period of less than three (3) months and no linen service, food service, or other similar services shall be provided, (iv) the Owner enters into a written lease or rental agreement which expressly provides that it is subject to the provisions of the Governing Documents and that the breach of any provision of the Governing Documents shall constitute a default under the lease, and (v) the Owner provides the Mutual with a copy of the signed rental agreement or lease.
- 4.3.2 Restriction on Number of Units Leased. Not more than ten (10) of the Units shall, at any particular time, be leased or rented or occupied by anyone other than an Owner, members of his or her household, or temporary

guests, except as provided in this Section 4.3. The restriction on the number of Units that may be leased or rented as set forth in this Section 4.3.2 shall apply to all Units except that, with respect to any Unit that is being rented or leased on the date this Amended Declaration is recorded, the restriction shall not apply unless and until there is a transfer of title to such Unit subsequent to the date this Amended Declaration is recorded.

4.3.3 Implementation. Upon request from the Board after this Amended Declaration is recorded, each Owner renting or leasing a Unit shall provide such information as the Board may reasonably require to implement the provisions of this Section 4.3, including but not limited to the names of the tenants and the members of the tenants' household and a copy of the signed lease. Any permitted rental or leasing of a Unit commencing after this Amended Declaration is recorded, and the renewal or extension of a tenancy in effect on the date this Amended Declaration is recorded, shall be pursuant to a written lease or rental agreement in accordance with Section 4.3.1.

4.3.4 Exceptions. The Board of Directors shall have the right but shall not be obligated to waive some or all of the provisions of this Section 4.3 either (i) in cases of deserving and unusual hardship, or (ii) for a limited term, not to exceed one (1) year upon written request of an Owner representing that he or she will retake possession and occupancy of the Unit as a Resident thereof upon the expiration of such limited term and subject to such other conditions as the Board may determine and the Board shall have the right to review and approve the lease for such limited term. Exceptions as authorized by the Board shall take precedence over the order of priority established pursuant to Section 4.3.10 below.

4.3.5 Written Request to Board for Permission to Rent Required. Any Owner desiring to lease or rent his or her Unit shall submit a written request to the Board of Directors, which shall state: the name, mailing address, Unit address, and record ownership date of the Owner; the proposed lease term; the number of tenants; and such other information as the Board of Directors may reasonably require from time to time. Each record Owner

shall have the further right, upon written request delivered to the Mutual, to appear in person before the Board of Directors and to discuss the request to lease or rent his or her Unit.

- 4.3.6 Board Review of Request for Permission to Rent. Within thirty (30) days after receipt of the Owner's completed request for permission to lease or rent his or her Unit, the Board of Directors shall review such request, and approve or disapprove it in a written notice transmitted to the requesting Owner. The Board shall approve the request, unless doing so will increase the number of Units leased or rented within the Project to more than allowed under Section 4.3.2, or will otherwise result in the violation of any provision of this Section 4.3. If the request is disapproved, the notice shall specify the reason(s) for disapproval.
- 4.3.7 Rehearing. If the request is disapproved, the Owner concerned shall have a right to rehearing upon written request to the Board of Directors, at its next regular meeting or as otherwise agreed between the Owner and the Board. The Owner shall have the right to appear at the rehearing and present his or her case. Within ten (10) days after the conclusion of such rehearing, the Board shall transmit its written determination to the requesting Owner and, if again disapproved, shall specify the reasons for such disapproval.
- 4.3.8 Decision of Board Conclusive. The decision of the Board of Directors in approving or disapproving the request of an Owner to lease his or her Unit shall be final and conclusive.
- 4.3.9 List of Rented Units. The Board of Directors shall prepare and maintain a list of all Units currently being leased or rented, which list shall include the Owner's name, mailing address, Unit address, date of record ownership, and term of the lease. Such list shall be made available to any Owner of a Unit upon payment of a reasonable administrative charge to be set by the Board of Directors.
- 4.3.10 Priority of Applicants. The Board shall cause to be prepared and maintained a priority list, identifying the

name, mailing address, address of Unit, record date of ownership, and date the completed written application of each Owner to lease or rent his or her Unit was submitted to the Board. When the number of Units leased or rented is less than the number allowed under Section 4.3.2, the Board shall authorize the Owner who submitted the earliest request to lease or rent his or her Unit.

- 4.3.11 No Continuous Rental. Once an Owner has obtained permission to lease or rent, he or she may not lease or rent that Unit to consecutive lessees or renters but must reapply to the Board for permission to lease or rent. If at the time of the Owner's re-application the number of Units then being rented in the Project is more than the number permitted under Section 4.3.2, the Owner shall be added to the priority list maintained by the Mutual under Section 4.3.10 and be entitled to rent when it is his or her turn.
- 4.3.12 Owner Responsibility for Tenant's Actions. Each Owner shall be strictly responsible for and shall be liable to the Mutual for the actions of such Owner's tenant(s) in or about all Units and Common Area and for each tenant's compliance with the provisions of the Governing Documents.
- 4.3.13 Mutual Enforcement Rights. In the event a tenant's conduct involves damage or misuse of any Common Area or facilities on any Common Area or constitutes an unreasonable nuisance to Residents, the Mutual shall be entitled to maintain an eviction action against such tenant to the same extent as the Owner of the Unit, the Mutual being deemed to be a third party beneficiary of any lease or rental agreement involving any Unit. The Mutual's right to maintain an eviction action shall arise only in the event that (i) the Mutual has given notice to the Owner detailing the nature of the infraction and the Owner has had a reasonable opportunity to take corrective action or to appear before the Board to present arguments as to why eviction by the Mutual is not necessary, and (ii) the Owner has not taken action to prevent and/or correct the actions of the tenant giving rise to the damage or nuisance.

4.3.14 Indemnification of Mutual. Every Owner of a Unit that is occupied by persons other than the Owner pursuant to a lease or otherwise, agrees to and shall indemnify and defend the Mutual, its officers, directors, and agents and shall hold them harmless from any cost, loss, claim, or damages of any kind, including but not limited to attorneys' fees, arising out of the conduct or presence of the occupants of the Unit upon the Project, including any such arising or alleged to have arisen out of the enforcement or nonenforcement by the Mutual of the Governing Documents against such occupants. Without limiting the generality of the foregoing, all costs, including attorneys' fees, incurred by the Mutual to enforce the Governing Documents against such occupants, including eviction as provided herein, shall be reimbursed to the Mutual by the Owner and may be assessed by the Mutual as a Reimbursement Assessment.

4.3.15 Mandatory Lease or Rental Agreement Provisions. Each lease or rental agreement shall contain, at a minimum, the following provisions: (i) that the Project is a "senior citizen housing development" and that all guests, visitors and occupants are restricted by and must satisfy the Senior Housing Residency Restrictions and all other occupancy restrictions, (ii) that the tenants have received copies of all of the Governing Documents, and that all tenants and occupants shall comply with all of the Governing Documents, including but not limited to the Senior Housing Residency Restrictions, (iii) that the lease is expressly subject to all of the provisions of the Governing Documents and that the breach of any provision of the Governing Documents shall constitute a default under the lease, and (iv) that in the event a tenant's conduct involves damage or misuse of any Common Area or facilities on any Common Area or constitutes an unreasonable nuisance to Residents, the Mutual shall be entitled to maintain an eviction action against such tenant to the same extent as the Owner of the Unit, the Mutual being deemed to be a third party beneficiary under such lease or rental agreement.

4.3.16 Affidavit or Certificate by Tenant. Each Owner who is leasing a Unit pursuant to a written lease or rental agreement or otherwise shall, upon request by the

Mutual, cause all tenant(s) and occupants to execute and submit to the Mutual an affidavit or certificate on a form prescribed by the Mutual which includes the following and such other items as are reasonably required by the Mutual: that he/she/they understand that (i) the Project is a "senior citizen housing development" and that all guests, visitors and occupants are restricted by and must satisfy the Senior Housing Residency Restrictions, (ii) he/she/they has/have received copies of all of the Governing Documents, including but not limited to the Senior Housing Residency Restrictions, (iii) the lease is expressly subject to all of the provisions of the Governing Documents, that all tenants and occupants must comply with the Governing Documents, and that the breach of any provision of the Governing Documents shall constitute a default under the lease, and (iv) in the event the tenant's conduct involves damage or misuse of any Common Area or facilities on any Common Area or constitutes an unreasonable nuisance to Residents, the Mutual shall be entitled to maintain an eviction action against the tenant.

4.4 Time-Share and Private Exchange Arrangements.

4.4.1 Time-Shares. No Unit or Units shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time sharing agreement, plan, program or arrangement, including, without limitation, any so called "vacation license," "travel club," "extended vacation," or other membership or time interval ownership arrangement. The term "time sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess any Unit or Units rotates among various persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like kind use privileges, according to a fixed or floating interval or period of time.

4.4.2 Private Exchanges. Notwithstanding the provisions of Section 4.4.1 above, an Owner shall not be prohibited from entering into a private exchange arrangement with another person whereby the Owner will occupy the dwelling of the other person to the exchange for a

defined temporary period and that other person will occupy the Owner's Unit during the same period; provided that an exchange period shall not exceed ninety (90) consecutive days and an Owner shall not enter into an exchange arrangement involving his or her Unit for more than two such periods in any calendar year. Each Owner who enters into a private exchange arrangement shall provide written notice to the Board in advance of arrival of the guest(s), which notice shall include the guest(s) name(s) and such other information as the Board shall require. Private exchange arrangements shall not be subject to the numerical limitations set forth in Section 4.3.2 on the number of Units that may be rented at any given time or the requirement at Section 4.3.1(iii) that rental agreements must be for a minimum three (3) month term.

4.5 Restriction on Businesses.

- 4.5.1 Limitations. No business of any kind shall be established, maintained, operated, permitted, or conducted within the Project except: (i) such professional and administrative professions as may be permitted by applicable governmental ordinances, provided that there shall be no external evidence thereof; and (ii) certain facilities to the extent specifically authorized by statute.
- 4.5.2 External Evidence. External evidence may include, but is not limited to, signs, the presence of employees, or business traffic including clients, vendors or delivery services.
- 4.5.3 Indemnification. To the fullest extent permitted by law, every Owner or Resident who conducts or engages in any business, commercial endeavor, or profession within any Unit or the Project, or whose tenant does so, agrees to and shall indemnify and defend the Mutual, its officers, directors, employees, and agents and shall hold them harmless from any cost, loss, claim, or damages of any kind, arising out of the conduct or presence of such activity, including but not limited to attorneys' fees, any claims for consequential damages, and any claims arising or alleged to arise out of the enforcement or nonenforcement by the Mutual of the Governing Documents, including but not limited to the restriction on

business contained in this Section 4.5. Without limiting the generality of the foregoing, all costs, including attorneys' fees, incurred by the Mutual to enforce this Section 4.5 against any occupant of the Unit or to defend any claim subject to this Section 4.5 shall be reimbursed to the Mutual by the Owner of the Unit and may be assessed by the Mutual as a Reimbursement Assessment.

- 4.6 Offensive Conduct, Nuisances, Noise. No noxious, harmful, 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 Residents of the Project, or which shall in any way interfere with their use of the Common Area and facilities thereon or the use and enjoyment of their Units. Without limiting any of the foregoing, no Resident shall permit noise, including but not limited to the barking of dogs, to emanate from the Resident's Unit, which would unreasonably disturb another Resident's enjoyment of his or her Unit or of the Common Area. The Mutual has the sole, absolute authority but not the obligation to pursue, on behalf of the Mutual, claims against Owners and Residents based on the existence or maintenance of a nuisance.
- 4.7 Use of the Common Area. All use of Common Area is subject to the Governing Documents. Without limiting the generality of the foregoing, no alterations or additions to the Common Area shall be permitted without the prior written approval of the Board; nothing shall be altered, constructed, placed, kept, stored, parked, planted on, or removed from the Common Area without the prior written consent of the Board; and the Common Area shall be kept free of rubbish, debris, and other unsightly or unsanitary materials. Each Owner shall avoid causing any damage to the Common Area.
- 4.8 Hazards. There shall be no obstruction of any part of the Common Area. Nothing shall be done, placed, or kept within the Project that will increase the rate of insurance or result in the cancellation of insurance under any insurance policy obtained by the Mutual, or which will be in violation of any governmental statute, ordinance, rule, or regulation. Nothing shall be stored in the Common Area without the prior consent of the Board. Each Owner and Resident shall comply with all requirements of all

federal, state, and local governmental authorities and all laws, ordinances, rules and regulations applicable to his or her Unit.

- 4.9 Requirement of Architectural Approval. Construction, installation, modification, or alteration of buildings, outdoor structures, landscaping, and outdoor lighting are subject to prior approval of the Board and the Foundation's Architectural Control Committee as provided in Article 9 entitled "Architectural and Landscape Control."
- 4.10 Sports Apparatus. No basketball standards (including so-called portable basketball standards) or other portable or fixed sports apparatus shall be placed upon or attached to any portion of the Project without the written permission of the Board and the Foundation's Architectural Control Committee.
- 4.11 Mailboxes and Exterior Newspaper Tubes. Mailboxes shall comply with all applicable postal regulations, and Architectural Rules, if any. Exterior newspaper tubes are expressly prohibited.
- 4.12 Outside Drying and Laundering. No outside clothesline or other outside clothes washing, drying, or airing facilities shall be maintained anywhere in the Project.
- 4.13 Antennas and Satellite Dishes. To the fullest extent permitted by law, the Board may adopt and enforce Rules regarding the installation and maintenance of external antennas, satellite dishes, and other radio or telecommunications facilities.
- 4.14 Animals.
- 4.14.1 Limitation on Pets. No animals shall be kept, bred, or raised within the Project for any commercial purpose. The number of domestic dogs, cats, birds, fish, and common domestic caged pets that may be kept in any Unit shall be established by the Mutual Rules, but in no event shall such numbers exceed those permitted by local ordinance. Notwithstanding the foregoing limitation on the total number of pets, (i) unlimited numbers of fish and other marine life may be kept in an aquarium in a Unit, subject to the Rules, if any, and (ii) unlimited numbers of caged birds may be kept in a Unit, subject to the Rules, if any, and applicable governmental regulations.

- 4.14.2 Owner's Responsibility for Pets. The owner of each pet shall be responsible for immediately removing and disposing of any waste introduced to any portion of the Project by such pet. Each Owner, Resident, and any person bringing or keeping an animal within the Project shall be absolutely liable to the Mutual and all other persons for any injury or damage to persons or property caused by the animal brought upon or kept upon the Project by such person or by members of his or her family, tenants, guests, or invitees. The Owner shall indemnify the Mutual and its officers, directors, and agents against any and all claims, damages, losses, demands, liabilities, and expenses, including but not limited to attorneys' fees, arising out of or resulting from the presence or conduct of any animal brought upon or kept within the Project by the Owner, members of his or her family, guests, tenants, or invitees.
- 4.14.3 Pet Rules; Mutual Authority. The Board may adopt and enforce Pet Rules in addition to the provisions of Section 4.14. The Mutual shall have the right to prohibit the keeping of any animal which constitutes, in the sole and exclusive opinion of the Board, a nuisance to any other person.
- 4.15 Trash Disposal. Trash, garbage, accumulated waste plant material, or other waste and refuse shall be deposited only in covered sanitary containers located in designated areas and concealed from view. No Owner or Resident shall permit or cause any garbage, trash, or other waste or refuse to be kept upon any portion of the Project, except in such containers.
- 4.16 Construction Materials, Construction Debris. No portion of the Project shall be used for the storage of building materials other than in connection with approved construction. All construction debris shall be picked up by the contractor and deposited daily in an appropriate manner outside the Project (as defined in Section 1.32).
- 4.17 Machinery and Equipment. Except as approved by the Board, no machinery or equipment of any kind shall be maintained or operated within the Project except as is customary and necessary in connection with approved construction.

4.18 Signs. No sign of any kind shall be displayed to the public view from any portion of the Project except that this limitation shall not apply to:

- (a) Signs required by legal proceedings;
- (b) Signs which by law cannot be prohibited;
- (c) A single sign of customary and reasonable dimension and design, complying with the provisions of any applicable ordinance and Architectural Rules and reasonably located on a Unit advertising a Unit for sale or rent;
- (d) A single identification sign which has been approved by the Board located on a Unit identifying the number or address of the Unit and/or the names of the occupants;
- (e) Signs approved by the Board located at or near any entrance to the Project identifying the Project;
- (f) Signs required for traffic control and regulation of streets or open areas within the Project; and
- (g) Signs on the Common Area as approved by the Board for a purpose reasonably related to the affairs of the Mutual.

4.19 Vehicles and Parking. Except for golf carts, two-axle passenger vehicles which are of a type customarily used for personal transportation, and pick-up trucks which are capable of being parked entirely within assigned carports, no trailers, campers, motor homes or mobile homes, recreational vehicles, boats, or similar equipment, commercial vehicles, or trucks other than pick-up trucks which are capable of being parked entirely within assigned carports, shall be parked, kept, stored or permitted to remain upon any area within the Project (including assigned carports and designated Common Area parking spaces), other than temporarily in accordance with the Rules.

The private driveway appurtenant to a Unit may be used for parking of permitted vehicles (*i.e.*, golf carts, two-axle passenger vehicles which are of a type customarily used for personal transportation, and pick-up trucks which are capable of being parked entirely within assigned carports) provided such vehicle does not extend into the street or walkway and does not interfere

with pedestrian or vehicular traffic or otherwise create a traffic or safety hazard.

No dilapidated, inoperable, or abandoned vehicle shall be parked, kept, stored, or permitted to remain upon any area within the Project, other than temporarily in accordance with the Rules:

No vehicle which, in its operational condition or configuration, is incapable of being parked entirely within the boundaries of an assigned carport shall be kept within the Project, except temporarily as permitted by the Mutual Rules.

No unreasonably noisy vehicles, as determined by the Board, and no vehicles emitting foul smelling or offensive exhaust fumes shall be operated within the Project. Except for minor emergency repairs, no servicing, maintenance, construction or reconstruction of any vehicle or boat shall be permitted. No boat or vehicle shall be displayed for sale at any time within the Project.

Use of unassigned Common Area parking spaces is restricted to Owners and guests, as designated, on a "first come, first served" basis. Parking is permitted in designated parking spaces only. Time restrictions on such parking spaces shall be regulated by Rules, including guest policies, adopted by the Board from time to time.

- 4.20 Parking Enforcement. In addition to the provisions of Section 4.19 above, the Board shall have the power and authority to adopt, promulgate, and enforce parking rules and shall have the power to impose fines and other sanctions for violations of provisions of the Governing Documents relating to vehicles and parking. Such power shall include the power and authority to cause the towing, at the vehicle owner's expense, of vehicles which are parked within the Project in violation of any of the provisions of the Governing Documents, provided that towing of vehicles of guests and other non-Residents of the Project shall be subject to the provisions of applicable law. Costs incurred by the Mutual relating to the towing and/or storage of any vehicle parked in violation of any provision of the Governing Documents shall be assessed as a Reimbursement Assessment against the Condominium Owner responsible or whose household members, tenants, Contract Purchasers, or guests are responsible for the presence of such vehicle.

- 4.21 Assigned Carports and Storage Spaces. Each Owner and Resident shall keep his or her assigned carport and assigned storage space located in such carport in a neat, orderly, sanitary, and safe condition. Doors to storage spaces shall remain closed when not in use.
- 4.22 Interior Window Coverings. Drapes, window shades, and other window coverings installed in the windows of any Unit that can be seen from the street, walkway or another Unit shall comply with such Rules as may be adopted by the Board from time to time.
- 4.23 Outbuildings. No outbuilding, tent, shack, trailer, shed, or temporary building of any kind shall be located within the Project, except in strict compliance with the provisions of this Declaration, including Article 9 concerning approval by the Board. In no event shall any such structure be used as a residence, either temporarily or permanently.
- 4.24 Outside Fires. There shall be no exterior fires anywhere within the Project except for barbeque and controlled fires contained within receptacles designed for that purpose and located in areas designated by the Board or the Rules. Placement of barbeques and other exterior fires on balconies shall be subject to the Rules and local ordinance.
- 4.25 Floor Coverings. Where there is a permitted change in floor covering materials, in order to reduce sound transmission, all Units that are above other Units shall have all floor areas, except kitchens, bathrooms and entry halls, covered with carpet or other material that provides equivalent insulation against sound transmission to the Unit below. Other than carpeting, no change in the floor covering materials originally installed in the Units shall be permitted except with the prior written consent of the Board.
- 4.26 Combining Units. Contiguous Units may be combined for use as a single residence, and previously combined Units may be reconstructed as independent Units, with prior written approval (which may include conditions) of the Foundation's Architectural Control Committee and authorization of the Mutual Board in each instance. Notwithstanding physical combination of Units, a combined Unit shall be treated as separate Units for purposes of Assessments and voting rights. In addition to architectural plans, the Owner shall provide a certificate of a structural engineer licensed in the State of California and approved by the Board

stating that those portions of the Common Area affected by a proposed combination of Units are not required for structural support, and certificates by electrical and plumbing contractors licensed in the State of California setting forth in detail the effect of the proposed combination or separation of the Units on any Common Area plumbing and wiring. The work must be performed by a contractor licensed in the State of California and a completion bond naming the Mutual and the Board as obligees (or other security acceptable to the Board) shall be provided to assure the prompt completion of the work in a workmanlike manner free of mechanics' liens.

- 4.27 Sale of Combined Units. If Units have been combined, no part of the combined Units shall be separately conveyed, leased, or transferred unless and until reconstruction to separate the Units has been approved by the Foundation's Architectural Control Committee and the Board, and completed.

ARTICLE 5 MUTUAL; FOUNDATION

- 5.1 Management and Operation. The Mutual shall manage and operate the Project in accordance with the applicable provisions of the Governing Documents and the applicable provisions of California and Federal law. The Mutual shall have all of the powers set forth in the Governing Documents together with general power to do any and all things that a nonprofit mutual benefit corporation may lawfully do under the laws of the State of California, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Governing Documents.
- 5.2 Membership. Every Owner of a Condominium within the Project shall be a Member of the Mutual and shall remain a Member thereof until such time as his or her Condominium ownership ceases for any reason. Membership shall be appurtenant to and may not be separated from ownership of a Condominium and shall not be transferred, encumbered, pledged, alienated, or otherwise hypothecated in any way, except in connection with the sale or encumbrance of the Condominium to which it is appurtenant.
- 5.3 Voting. Only Members in Good Standing shall be entitled to vote, and only one vote shall be cast for each Condominium, as more particularly set forth in the Bylaws.

5.4 Board of Directors. The affairs of the Mutual shall be managed by or under the direction of a Board of Directors. The number and qualifications of Directors shall be as established in the Bylaws, and the members of the Board shall be elected as provided in the Bylaws. The Board of Directors shall have all of the powers and duties set forth in any provision of the Governing Documents, including without limitation such powers and duties as may be expressly set forth in this Declaration.

5.5 Mutual Rules. The Board of Directors shall have the power and the authority to establish, promulgate, amend, repeal, and enforce such Rules (including Senior Housing Residency Restrictions and Maintenance Policies) as the Board deems necessary for the management and operation of the Project and the conduct of business and affairs of the Mutual.

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

Members of the Foundation shall be required to pay assessments, fees and other charges to the Foundation and comply with the rules and restrictions of the Foundation in compliance with the Foundation's Governing Documents. The sum for the charges that Mutual is required to pay to the Foundation as the Mutual's pro rata share (based on the number of Units within the Project) or that the Member is required to pay to the Foundation in accordance with this Section 5.6 for services provided by the Foundation for the benefit of the Mutual and/or its Members shall be added to the Mutual's budget and charged to the Mutual's Members in compliance with Article 6 below.

5.7 Capital Improvements. For the purposes of this Section 5.7, the term "capital improvement" shall mean an improvement constructed on or added to the Common Area which previously did not exist in any form. The Board of Directors shall have the power and authority, to provide for the construction, reconstruction, installation, or acquisition of capital improvements upon the Common Area, provided, however, that approval of fifty-one percent (51%) of the Total Voting Power of the Mutual

shall be required for any capital improvement that exceeds \$25,000.00 in cost.

- 5.8 Sale, Transfer or Dedication of Mutual Property. With the approval of a majority of the Total Voting Power (that is, an Absolute Majority), the Board of Directors shall have the power and authority to sell, transfer or dedicate property owned by the Mutual.
- 5.9 Easements, Licenses and Rights of Way to Owners. The Board of Directors shall have the power and authority to grant and convey easements, licenses for use and rights of way in, over, or under the Common Area or any portion thereof to Unit Owners, for such purposes as the Board deems to be appropriate and not inconsistent with the purposes and interests of the Mutual.
- 5.10 Access. The Board and its duly authorized agents or representatives shall have the right to enter any Unit and Exclusive Use Common Area to perform the Maintenance, Repair or Replacement authorized herein or to inspect such Unit or Exclusive Use Common Area, and for any other purpose reasonably related to the performance by the Mutual or the Board of their responsibilities. Such entry shall be made with as little inconvenience to the Residents as practicable and only upon reasonable advance notice of not less than twenty-four (24) hours, except in emergency situations.

ARTICLE 6 ASSESSMENTS AND LIENS

- 6.1 Covenant of Owner. Each Owner of a Condominium within the Project, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, shall be deemed to have covenanted and agreed to pay to the Mutual: (i) Annual Assessments, (ii) Special Assessments, (iii) Reimbursement Assessments, (iv) Enforcement Assessments levied by the Mutual, and (v) the Unit's share of charges that the Mutual or the Owner is required to pay to the Foundation, together with all Additional Charges. Such deed or conveyance shall be deemed to vest in the Mutual the right and power to initiate all actions and procedures as the Board shall deem necessary or appropriate for the collection of such Assessments and Additional Charges and for the enforcement of the liens hereinafter provided for. Each Assessment levied by the Mutual under this Article 6, together with the Unit's share of

charges that the Mutual or the Owner is required to pay to the Foundation and all Additional Charges, shall be a separate, distinct, and personal debt and obligation of the Owner against whom it is assessed, and shall bind his or her heirs, devisees, personal representatives, successors, and assigns. Such obligation to pay Assessments, the Unit's share of charges that the Mutual or the Owner is required to pay to the Foundation, and Additional Charges and the right and power of the Mutual to initiate all actions and procedures for collection shall run with the land, so that each successive Owner or Owners of record of any Condominium within the Project shall, in turn, become liable to pay all such Assessments (including the Unit's share of charges that the Mutual or the Owner is required to pay to the Foundation), and Additional Charges assessed during the time he or she is record Owner of such Condominium. After an Owner transfers of record any Condominium he or she owns, he or she shall not be liable for any Assessments or other charges levied thereafter (including the Unit's share of charges that the Mutual or the Owner is required to pay to the Foundation) with respect to such Condominium. Such Owner shall remain personally liable, however, for all unpaid amounts due and owing at the time of transfer, together with Additional Charges accruing until time of collection. A Contract Seller of any Condominium shall continue to be liable for all Assessments (including the Unit's share of charges that the Mutual or the Owner is required to pay to the Foundation), and Additional Charges until a conveyance by deed of such Condominium is recorded in the Office of the Recorder of the County.

- 6.2 Creation of Lien. Each Assessment levied by the Mutual pursuant to this Declaration, together with the Unit's share of charges that the Mutual or the Owner is required to pay to the Foundation and all Additional Charges, shall be a charge upon the land and upon levy shall be secured by a continuing lien upon the property against which such Assessment and charges is levied. The Mutual shall have a separate lien and a separate lien is hereby created upon each Condominium to secure the payment of any such Assessments (including the Unit's share of charges that the Mutual or the Owner is required to pay to the Foundation), and such Additional Charges as may be levied under this Declaration. The lien provided for herein shall continue to secure all Assessments as well as the Unit's share of charges that the Mutual or the Owner is required to pay to the Foundation and Additional Charges levied upon any Condominium notwithstanding the transfer of record title to such Condominium, and any such

transfer shall be subject to the Mutual's lien, provided that, prior to such transfer, a Notice of Delinquent Assessment has been recorded as provided in the Declaration and by law. The priority of all such liens on each Condominium shall be in inverse order so that upon the foreclosure of the lien for any particular charge on any Condominium, any sale of such Condominium pursuant to foreclosure of the lien will be made subject to all liens securing the respective monthly Assessments, the Unit's share of charges that the Mutual or the Owner is required to pay to the Foundation, and Additional Charges on such Condominium for succeeding months.

- 6.3 Annual Assessments Generally. The Assessments levied by the Board shall be used exclusively to pay for the costs of management and operation of the Project, conducting the business and affairs of the Mutual, to promote the recreation, health, safety, welfare, benefit, and interests of the Owners and Residents in the Project, and for the improvement and maintenance of the Common Area and, to the extent provided for in the Governing Documents or by law, of the Units situated within the Project or which, in the opinion of the Board, shall be deemed to be necessary or proper for the management of the Project or of the affairs of the Mutual, or the benefit of the Condominium Owners, or for the enforcement of the Governing Documents.
- 6.4 Authority of the Board. The Board shall have the power and the duty to levy Annual and Special Assessments sufficient to meet the Mutual's obligations under the Governing Documents and applicable law. The Board shall have the power and duty to collect the Unit's share of charges that the Mutual or the Owner is required to pay to the Foundation, and pay amounts so collected to the Foundation.
- 6.5 Annual Assessments.
- 6.5.1 Calculation of Estimated Requirement. Not later than forty-five (45) days prior to the beginning of each fiscal year, the Board shall complete and distribute to all Owners an estimate of the net funds required by the Mutual for such fiscal year, including a reasonable amount allocated to contingencies and to a reserve fund for restoration, repair, and/or replacement of those components for which the Mutual is responsible and which must be repaired or replaced on a periodic basis;

to manage, administer, operate, and maintain the Project; to conduct the affairs of the Mutual; and to perform all of the Mutual's duties in accordance with this Declaration.

6.5.2 Allocation of Annual Assessment. The Board shall allocate and assess the amount of estimated required funds equally among the Condominiums by dividing the amount by the number of Condominiums within the Project. Unless the Board shall designate otherwise, Annual Assessments shall be levied on an annual basis and shall be paid in twelve (12) equal monthly installments during the fiscal year, and each installment shall be due and payable on the first day of each month.

6.5.3 Increases in Annual Assessment. Except as otherwise provided by law, the Board shall not increase the Annual Assessment for any fiscal year above the amount of the Annual Assessment for the preceding fiscal year by more than the maximum amount permitted by law, except upon the affirmative vote or written consent of a majority of Members voting on any such increase in the Annual 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 Mutual, notwithstanding any lower Quorum requirement which may be set forth in the Bylaws.

6.6 Special Assessments.

6.6.1 Purpose of Special Assessments. If at any time during any fiscal year the Annual Assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof or the unexpected repair, replacement, or reconstruction of improvements located in the Project, or if funds are otherwise required for any authorized activity of the Mutual, the Board may levy a Special Assessment in the amount of such actual or estimated inadequacy or cost.

6.6.2 Allocation of Special Assessments. Special Assessments shall be allocated and assessed among the Condominiums in the same manner as Annual Assessments.

6.6.3 Approval of Special Assessments. Except in the case of an emergency situation as defined in *Civil Code*

section 1366, in any fiscal year the Board may not levy Special Assessments which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Mutual for that fiscal year, except upon the affirmative vote or written consent 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 Mutual, notwithstanding any lower Quorum requirement which may be set forth in the Bylaws.

- 6.7 Reimbursement Assessments. The Mutual shall levy a Reimbursement Assessment against any Owner and his or her Condominium if a failure by such Owner, or any person or pet for whom the Owner is responsible, to comply with any provision of the Governing Documents has necessitated or resulted in an expenditure of funds by the Mutual to deal with such lack of compliance or to bring such Owner or his Condominium into compliance. A Reimbursement Assessment shall include any costs, including attorneys' fees, incurred by the Mutual, and also include costs of collecting from an Owner any amount which the Owner is obligated to pay to the Mutual. A Reimbursement Assessment shall be due and payable to the Mutual when levied.
- 6.8 Enforcement Assessments. The Board may levy an Enforcement Assessment (and any fine imposed by the Board in accordance with the provisions of the Governing Documents shall be deemed to be such an Enforcement Assessment), for violation of any of the provisions of the Governing Documents. Any Enforcement Assessment shall be due and payable to the Mutual when levied. While Enforcement Assessments constitute Assessments, they may not be collected or enforced through non-judicial foreclosure proceedings (pursuant to *Civil Code* sections 2924, 2924(b), 2924(c) and any successor statutes) unless specifically permitted by law. Enforcement Assessments may be collected by bringing an action at law against the Owner.
- 6.9 Failure to Fix Assessments. The failure or omission by the Board to fix or levy any Annual Assessment provided for by the terms of this Declaration before the expiration of any fiscal year, for that fiscal year or the next fiscal year, shall not be deemed either a waiver or a modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay Assessments or any installment thereof for that or any

subsequent year, but the amount of the Annual Assessment fixed for the preceding fiscal year shall be the amount of the Annual Assessment for the ensuing fiscal year until a new Annual Assessment is levied.

- 6.10 Offsets. All Assessments levied by the Board shall be payable in the full amount specified, including any Additional Charges imposed as provided by the terms of this Declaration, and no offsets against any such amounts shall be permitted for any reason whatsoever, including without limitation a claim that the Mutual has failed to properly exercise its duties of maintenance or enforcement.
- 6.11 Delinquent Assessments. Any installment or other portion of an Assessment not received within fifteen (15) days after its due date shall be delinquent and shall be subject to interest and late charges not to exceed the maximum rate permitted by law, as well as all other Additional Charges. The Board, on behalf of the Mutual, may enforce the payment of any delinquent Assessment plus Additional Charges by bringing an action at law against any Owner personally obligated to pay the same, or by foreclosing the lien against the Owner's Condominium by judicial or non-judicial foreclosure, except as prohibited by law. Prior to recording a Notice of Delinquent Assessment, the Mutual shall provide notice to the Owner as required by *Civil Code* section 1367(b) or other applicable statute. The Notice of Delinquent Assessment shall be mailed in the manner set forth in *Civil Code* section 2924b to all record owners of the Unit no later than ten (10) days after recordation as required by *Civil Code* section 1367(b). No procedures shall be initiated to foreclose the lien securing any Assessment levied under this Article 6 until after the expiration of thirty (30) days following the recording of a lien pursuant to *Civil Code* section 1367(b) or other applicable statute. Except as prohibited by law, upon the recording of the Notice of Delinquent Assessment referred to above, the Mutual may, at its option, declare the entire balance of all sums then due or to become due from the Owner, immediately due and payable, which total sum may then be included in any suit, action, or other procedure initiated to collect said sums, including all Additional Charges.
- 6.12 Power of Sale. Each Owner does hereby appoint the Mutual as trustee to enforce and to foreclose any lien which is established pursuant to the terms of this Declaration, by private power of sale, as provided in Division III, Part 4, Title 14, Chapter 2, Article 1, of the *Civil Code* of the State of California, and does further

grant to the Board of Directors, on behalf of the Mutual, the authority and power to sell the Condominium of such Owner in the event of any default in payment of any Assessments or Additional Charges levied against such Condominium, for lawful money of the United States, to the highest bidder, to satisfy said lien. The Mutual, as trustee for the remaining Owners, or any other Owner, may purchase the Condominium at said sale. The Board may commence any procedure for the collection of delinquent Assessments upon its own decision.

- 6.13 Remedies Cumulative. The remedies provided in this Declaration for collection of delinquent Assessments shall be cumulative and not exclusive.
- 6.14 Certificate of Satisfaction and Release of Lien. Upon payment in full of a delinquent Assessment, including any Additional Charges, or the satisfaction thereof, the Board shall cause to be recorded, in the same manner as the Notice of Delinquent Assessment, a further certificate stating the satisfaction thereof and the release of the lien.
- 6.15 Priority. Except as otherwise expressly provided by law, the lien securing each of the Assessments provided for under this Article 6 shall have priority as of the date of recording of the original Declaration applicable to the Project over all other liens and encumbrances applicable to the Condominiums; provided, however, that such Assessment lien shall be subordinate to the lien of any first Mortgage recorded against the Condominium; and provided, further, that such subordination shall apply only to the Assessments which have become due and payable prior to the sale of such property pursuant to a decree of foreclosure of any such Mortgage, or pursuant to a power of sale contained in any such Mortgage. Such foreclosure sale shall not relieve such property from liability for any Assessments and Additional Charges thereafter becoming due, nor from the lien of any subsequent Assessment.
- 6.16 Mutual Funds. Unless otherwise determined by the Board, the Mutual shall maintain at least two separate accounts in one or more banks or other depositories selected by the Board, which accounts shall be clearly designated WALNUT CREEK MUTUAL NO. THIRTY OPERATING ACCOUNT and WALNUT CREEK MUTUAL NO. THIRTY RESERVE ACCOUNT. The Assessments and other sums collected by the Mutual shall be properly deposited into such accounts or paid over to the Foundation, as

the case may be. The Assessments collected by and for the Mutual shall be held in trust by the Mutual for and on behalf of each Owner and shall be used for the purposes set forth in Section 6.3. Upon sale or transfer of any Condominium by any Owner, the Owner's interest in the funds held in trust by the Mutual shall terminate and shall be deemed automatically transferred to the successor-transferee of such Owner.

6.17 Waiver of Exemptions. Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Article 6, the benefit of any homestead or exemption laws of the State of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed pursuant to the terms of this Article 6.

6.18 Property Exempt From Assessments. The following property subject to this Declaration shall be exempt from the Assessments, Additional Charges, and liens created herein:

- (a) All property dedicated to and accepted by the City or County or other local public authority and devoted to public use; and
- (b) Any Condominium which is owned by the Mutual as a result of the Mutual having acquired such Condominium through foreclosure; provided, however, that such exemption shall be applicable only during the period in which the Mutual is record owner of such Condominium; and
- (c) All Common Area.

**ARTICLE 7 DAMAGE OR DESTRUCTION OF BUILDINGS;
 CONDEMNATION**

7.1 Damage to a Unit or Units. Each Owner of a Unit in the Project is responsible for insuring the contents of their Unit. They may elect to obtain a property insurance policy or policies from an insurance carrier or "self-insure" their contents. Regardless of how an Owner insures their Unit, 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 Unit Owner.

If damage occurs to property within the Unit that is insured by the Mutual that is not Common Area (e.g., built-in cabinets), the insurance proceeds shall be paid to the Mutual, and the Mutual shall use same to rebuild or repair such property. The affected Unit Owner(s) condominium owner's contents policy shall be considered as the primary insurance policy. In the event the insurance proceeds, from all insurance coverages (Unit Owner and Mutual) are insufficient to cover the complete cost of repair of such property, all of the affected Unit Owner(s) shall pay and advance such additional sums to the Mutual as may be necessary to complete such rebuilding and repair.

- 7.2 Damage to Common Area. If the Common Area is damaged by fire or other casualty, the Board shall (i) prepare or cause to be prepared an estimate of loss which includes a scope of work, (ii) obtain bids from responsible contractors to restore the damaged Common Area to its condition immediately prior to such damage or destruction (including current building code and ordinance upgrades), and (iii) obtain a determination of the amount of available insurance proceeds that will be recovered from the Mutual's insurance carrier(s).

Then and in that event:

- 7.2.1 Procedure Where Insurance Proceeds Cover at Least 85% of Cost or Repair. If the amount of available insurance proceeds is sufficient to cover the cost of repairing or rebuilding the damaged property to its original design and specifications including any modifications approved by the Mutual, and further in accordance with current building code and ordinance requirements, the insurance proceeds shall be paid to the Mutual, and the Board shall thereupon contract to repair or rebuild the portions of the Common Area so damaged.

If the amount of available insurance proceeds is less than one hundred percent (100%) but is equal to at least eighty-five percent (85%) of the cost of repairing or rebuilding the damaged portions of the Common Area, the insurance proceeds shall be paid to the Mutual, and the Board shall levy a Special Assessment, in an amount equivalent to any shortfall between the insurance proceeds actually received and that amount necessary to complete the repair and rebuilding of the damaged portions of the Common Area, against all of the Unit

Owners pursuant to Section 6.6 of this Declaration. Upon receipt of the insurance proceeds and the Special Assessment(s), the Board shall thereupon contract to repair or rebuild the damaged portions of the Common Area.

- 7.2.2 Procedure Where Insurance Proceeds Are Less Than 85% of Cost of Repair. In the event that the amount available from the insurance proceeds is less than eighty-five percent (85%) of the cost of repairing or rebuilding the damaged property to its original design and specifications including any modifications approved by the Mutual, and further in accordance with current building code and ordinance requirements, the Mutual shall, as soon as possible, call a special meeting of the Mutual Members to consider and vote to accept one of the bids received pursuant to Section 7.2(ii) above. A bid may be accepted by a favorable vote of not less than sixty percent (60%) of the Members attending such meeting provided a Quorum of at least a majority of the Total Voting Power is represented. As an alternative, a two-thirds (2/3) majority favorable vote of the Total Voting Power of the Mutual may elect to sell the entire Project.

In the event a bid is accepted, the Board shall levy a Special Assessment against all of the Unit Owners pursuant to Section 6.6 of this Declaration to make up the deficiency, if any, between the total insurance proceeds and the contract price for such repair or rebuilding. All insurance proceeds, including any subject to liens of Mortgagees, shall be used for such repair or rebuilding.

Once the bid is accepted, the Board shall have the authority to enter into a written contract with the contractor for the repair or rebuilding of the damaged property and the insurance proceeds held by the insurance trustee described in Section 7.2.3 below shall be disbursed to said contractor according to the terms of the contract. If any bid shall be accepted to repair or rebuild, the contractor shall provide a completion bond naming the Mutual and each Owner of a Unit within the affected building(s) as beneficiaries. It shall be the obligation of the Board to take all steps necessary to

assure the commencement and completion of authorized repair or rebuilding at the earliest possible date.

In the event all bids are rejected but a two-thirds (2/3) majority of the Total Voting Power has not voted to sell the Project, the Board shall recommend such alternative reconstruction of the damaged or destroyed property at a lesser cost as it deems reasonable or adequate, which alternatives shall be placed to bid and the bids presented for a vote of the Members in the manner described above.

In the event that no alternative for repair or rebuilding is accepted by the Owners, or if repair or rebuilding has not actually commenced within one (1) year from the date of damage or destruction, the Board is hereby empowered, as the agent and attorney-in-fact for all Owners, to sell the entire Project in accordance with the provisions of Section 7.3 below, including all Units and the Common Area in their then present condition, on terms satisfactory to the Board.

7.2.3 Receipt of Insurance Proceeds. Insurance proceeds, which are less than eighty-five percent (85%) of the cost of restoration or reconstruction and payable to or on account of the Mutual, shall be paid to a bank, savings and loan association, or trust company designated by the Board. Said funds shall be held for the benefit of all Unit Owners, as their respective interests shall appear, pursuant to an insurance trust agreement consistent with the provisions of this Declaration, approved and executed by the Board.

7.3 Sale of Entire Project. In the event of the sale of all Units and the Common Area, proceeds from such sale and any insurance proceeds received by the Mutual on account of the damage or destruction shall be distributed by the Mutual among the Owners according to their respective fair market value which shall be based upon the ratio of the fair market value of each individual Unit to the fair market value of all of the Units in the entire Project immediately prior to when the damage or destruction occurred, as determined by an independent appraisal in accordance with Section 7.5 below. The members of the Board are hereby authorized to execute and deliver, on behalf of all of the Owners, any instruments necessary or required to effect such a sale or

sales and each Owner shall be obligated to execute and deliver such instruments and to perform such acts as may be necessary to effect such sale or sales.

- 7.4 Condemnation of Common Area. If at any time all or any portion of any Common Area, or any interest therein, shall be taken for any public or quasi-public use, under any statute, by right of eminent domain, or by private purchase in lieu of eminent domain, the entire compensation or award in condemnation, to the extent such award is not apportioned among the Owners by court judgment or by agreement between the condemning authority and each of the affected Owners in the Project, shall be paid to the Mutual and shall be used in the manner determined by the Board, provided that such use shall not be inconsistent with the purposes of the Mutual. The Mutual shall represent the interests of all Owners in any proceedings relating to such condemnation to the extent such Owners have any interest in the Common Area.
- 7.5 Appraisals. Where the provisions of this Article 7 require an independent appraisal of property, said appraisal shall be made by a qualified real estate appraiser with an M.A.I. certificate or the equivalent, which appraiser shall be selected by the Board. Such appraisal shall be final and binding on all Unit Owners.

ARTICLE 8 MAINTENANCE OF PROPERTY

8.1 Mutual Responsibility.

- 8.1.1 Mutual Responsibility for Common Area. The Mutual shall provide Maintenance, Repair, and Replacement of the Common Area and all facilities, improvements, and landscaping thereon, including private streets and/or entries, private driveways, sidewalks, trash enclosures, utility facilities (except for those utility facilities which are maintained by public or private utility companies or agencies), and all other real and/or personal property that may be acquired by the Mutual, keeping such property in good condition and good Repair; provided, however, that the Mutual shall not be responsible for Maintenance, Repair, or Replacement of Exclusive Use Common Area and other portions of the Common Area to the extent the responsibility therefor is expressly assigned to one or more Owners, as set forth in this Article 8. The Mutual shall further be responsible for providing lighting,

landscaping, gardening, and janitorial services for the Common Area, as needed, and shall cause any and all other acts to be done which may be necessary to assure the maintenance of the Common Area in good condition and Repair, including painting of the exterior surfaces of the building(s) and such other portions of the Common Area as the Board, in its discretion, determines to be necessary.

8.1.2 Mutual Responsibility for Units. The Mutual shall provide Maintenance, Repair and Replacement for each Unit which is subject to Assessment hereunder as set forth in the Maintenance Policies adopted and amended by the Board from time to time.

8.1.3 Mutual Responsibility for Exclusive Use Common Area. The Mutual shall provide Maintenance, Repair and Replacement for Exclusive Use Common Area as set forth in the Maintenance Policies adopted and amended by the Board from time to time.

8.2 Authority for Entry of Unit or Exclusive Use Common Area. The Mutual or its agents may enter any Unit or any portion of Exclusive Use Common Area which has been designated or assigned for the exclusive use of the Residents of a particular Unit, whenever such entry is necessary, in the Board's sole discretion, in connection with the performance of any Maintenance, Repair, construction, or Replacement for which the Board is responsible or which it is authorized to perform. Such entry shall be made with as little inconvenience to the Residents as practicable and only upon reasonable advance notice of not less than twenty-four (24) hours, except in emergency situations.

8.3 Mutual Liability. Except as specifically provided in Sections 8.1.2 and 8.1.3, the Mutual shall not be responsible or liable for any Maintenance, Repair, or Replacement of a Unit or Exclusive Use Common Area or any improvement thereon, except to the extent that the need for such Maintenance, Repair, or Replacement results from the negligence or fault of the Mutual, its employees, contractors, or agents.

8.4 Owner Responsibility.

8.4.1 Owner Responsibility for Units. Each Owner shall be responsible for providing Maintenance, Repair, and Replacement of his or her Unit and any portion thereof as set forth in the Maintenance Policies adopted and amended by the Board from time to time. The provisions of this Section 8.4.1 shall not be construed to permit any interference with or damage to the structural integrity of any building.

8.4.2 Owner Responsibility for Exclusive Use Common Area. Each Owner shall be responsible for providing Maintenance, Repair, and Replacement of his or her Exclusive Use Common Area and any portion thereof as set forth in the Maintenance Policies adopted and amended by the Board from time to time.

8.5 Interior Decorations. Each Owner shall have complete discretion as to furniture, furnishings, and interior decorating of the interior of his or her Unit and shall have the exclusive right to paint, plaster, panel, tile, wax, paper, or otherwise refinish and decorate the interior surfaces of the walls, ceilings, floors, and doors bounding his or her Unit, and to substitute new finished surfaces for the finished surfaces existing on said walls, ceilings, floors, and doors, including, without limiting the generality of the foregoing, substitution of paint for paper or paper for paint, substitution of any type of panel for plaster or plaster for paneling, substitution of tile for paneling or paneling for tile, or substitution of wood for linoleum or tile or of linoleum or tile for wood; subject, however, to Section 4.25 of this Declaration entitled "Floor Coverings," the Maintenance Policies and the Architectural Rules adopted by the Board from time to time. Replacement of carpeting and substitution of carpeting in place of other flooring material shall not require Mutual approval. In no instance shall the Owner do anything in or about his or her Unit or Exclusive Use Common Area that will affect the structural integrity of the building in which such Unit and Exclusive Use Common Area are located.

8.6 Board Discretion. The Board shall have the absolute discretion to determine whether any Maintenance, Repair, or Replacement, which is the responsibility of an Owner, is necessary to preserve the appearance and value of the property within the Project or any portion thereof and may notify an Owner of the work the

Board deems necessary. In the event an Owner fails to perform such work within sixty (60) days after notification by the Board to the Owner, the Board may, after written notice to the Owner and the right of a hearing before the Board in accordance with the Bylaws, cause such work to be done and charge the cost thereof to the Owner as a Reimbursement Assessment.

- 8.7 Owner Liability. In the event the need for any Maintenance, Repair, or Replacement is caused by the willful or negligent act or omission of an Owner or an Owner's family, tenant, Resident, Contract Purchaser, guest, invitee, or household pet, the cost of such Maintenance, Repair, or Replacement, including the cost of materials, labor, supplies, and services shall be charged to, and paid by, such Owner in the form of a Reimbursement Assessment.

ARTICLE 9 ARCHITECTURAL AND LANDSCAPE CONTROL

- 9.1 Submission of Plans and Specifications. Except for improvements made or constructed by or on behalf of the Mutual, no landscaping and no building, fence, wall, obstruction, patio, deck, balcony, screen, patio cover, tent, awning, carport cover, improvement or other structure of any kind shall be installed, commenced, erected, painted, or maintained within the Project, nor shall any exterior addition to or change or alteration therein be made, until the plans and specifications showing the nature, kind, shape, color, height, size, materials, and location of the same shall have been submitted to and approved in writing by the Mutual and the Foundation's Architectural Control Committee.
- 9.2 Enforcement. If it comes to the attention of the Foundation's Architectural Control Committee or the Mutual that a work of improvement is proceeding without proper approval or is not in compliance, the Foundation's Architectural Control Committee or the Mutual shall be entitled to exercise any or all enforcement remedies available, including those specified in Article 10 below, including, without limitation, ordering an immediate cessation and abatement of all aspects of the work of improvement until such time as proper review and approval is obtained.

ARTICLE 10 ENFORCEMENT

- 10.1 Violations as Nuisance. Every act or omission constituting or resulting in a violation of any of the provisions of the Governing Documents shall be deemed to constitute a nuisance and, in addition to any other remedies which may be available, such nuisance may be abated or enjoined by the Mutual or its officers or Board of Directors or by any Owner; provided, however, that the Board shall not be obligated to take action to abate or enjoin a particular violation if, in the exercise of its discretion, the Board determines that acting to abate or enjoin such violation is not likely to foster or protect the interests of the Mutual and its Members as a whole.
- 10.2 Violation of Law. Any violation of a state, municipal or local law, ordinance or regulation pertaining to the ownership, occupancy, or use of any property within the Project is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth herein.
- 10.3 Owners' Responsibility for Conduct of Others and Damages. Each Owner shall be fully responsible for informing Residents, members of his or her family, his or her tenants, Contract Purchasers, and guests of the provisions of the Governing Documents, and shall be fully responsible for the conduct, activities, any Governing Document violation of any of them, and for any damage to the Project or the Mutual resulting from the negligent or intentional conduct of any of them or any household pets. If a Condominium is owned jointly by two (2) or more persons, the liability of each Owner in connection with the obligations imposed by the Governing Documents shall be joint and several.
- 10.4 No Avoidance. No Owner may avoid the burdens or obligations imposed by the Governing Documents through non-use of any Common Area facilities or by abandonment of his or her Unit.
- 10.5 Rights and Remedies of the Mutual.
- 10.5.1 Cumulative. The Mutual, its Directors, Officers, or agents, and any Owner shall have the right to enforce any and all provisions of the Governing Documents by any proceeding at law or in equity, or through the use of such other remedies as are available and deemed

appropriate by the Board. Each remedy provided is cumulative and not exclusive.

10.5.2 Member Not In Good Standing. Upon a determination by the Board of Directors, after prior notice to the affected Member and an opportunity for a hearing, that said Member has violated any provision of the Governing Documents including a failure to pay any Assessment when due, the Board may give notice in writing to such Member that he or she is deemed not to be a Member in Good Standing. Such Member shall be deemed to remain in that status until such time as the Board shall determine in writing that the violation which resulted in the Board's determination has been cured or remedied or, on some other basis as in the judgment of the Board is just and proper, that such Member shall again be deemed to be a Member in Good Standing of the Mutual.

10.5.3 Imposition of Sanctions. In the event of a breach or infraction of any provision of the Governing Documents by an Owner, members of an Owner's family, or his or her tenants, Contract Purchasers, or guests, the Board shall have the power to impose a sanction against the Owner who is responsible as provided in Section 10.3 for such breach or infraction. A sanction may include, but shall not necessarily be limited to, the imposition of a monetary penalty and/or the suspension of an Owner's rights as a Member of the Mutual, including an Owner's voting rights or an Owner's right to use the recreational or community facilities on the Common Area. Imposition of a sanction shall be effective only after notice and an opportunity for hearing as provided in the Bylaws. Any monetary penalty imposed pursuant to this Section 10.5.3 shall not exceed the maximum amount for each violation, as set forth in the Bylaws. The payment of any such monetary penalty may be enforced as an Enforcement Assessment as provided in Article 6 as well as in any manner permitted by law. Further, each Owner shall be obligated to pay Reimbursement Assessments levied by the Board for reimbursement of any costs incurred by the Mutual relating to violation of any provisions of the Governing Documents by such Owner's family, tenants, Contract Purchasers, guests, pets, or Residents or other invitees.

10.5.4 Inadequacy of Legal Remedy. Except for the non-payment of any Assessment levied pursuant to the provisions of Article 6 of this Declaration, it is hereby declared that a remedy at law to recover damages for a default in the performance of any of the terms and provisions of any of the Governing Documents or for the breach or violation of any such provisions is inadequate and that the failure of any Owner or a member of the family of any Owner or an Owner's tenants, guests, or household pets or any other occupant or user of any of the property within the Project to comply with any provision of the Governing Documents may be enjoined in any judicial proceedings initiated by the Mutual, its Officers or Board of Directors, or by any Owner or by their respective successors in interest.

10.5.5 Limitation on Disciplinary Rights. The Mutual shall not have the power and authority to cause a forfeiture or abridgment of a Member's right to the full use and occupancy of his or her Unit as the result of the failure by such Owner, members of such Owner's family, or his or her tenants, Residents, guests, invites or household pets to comply with any provision of the Governing Documents, except where such forfeiture or abridgment is the result of the judgment of a court of competent jurisdiction, a decision arising out of an arbitration proceeding, or a foreclosure or sale under private power of sale for failure of such Owner to pay Assessments levied by the Mutual pursuant to Article 6 of this Declaration. The provisions of this Section 10.5.5 shall not affect the Mutual's right to impose fines or monetary penalties or to suspend an Owner's membership rights, as provided in the Governing Documents.

10.6 Disciplinary Rules. The Board or a committee appointed by the Board for that purpose may adopt rules and regulations that further elaborate upon and refine procedures for conducting disciplinary proceedings and otherwise imposing sanctions upon Members of the Mutual for violation of provisions of the Governing Documents. Such rules, when approved and adopted by the Board, shall be deemed to be a part of the Mutual Rules provided for in and constituting a part of the Governing Documents.

10.7 **Emergency Situations.** The following shall constitute emergency situations: (i) an immediate and unreasonable infringement of or threat to the safety or peaceful enjoyment of Residents of the Project, (ii) a traffic or fire hazard, (iii) a threat of material damage to or destruction of the Project or any portion thereof, or (iv) a violation of any provision of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether the violation has occurred (such as parking violations). To the fullest extent permitted by law and notwithstanding any other provisions of the Governing Documents, under circumstances involving conduct that constitutes an emergency, the Board or its duly authorized agents may undertake immediate corrective or disciplinary action and, upon request of the Owner as to whom such corrective or disciplinary action has been taken, or on its own initiative, conduct a hearing as soon thereafter as reasonably possible. If the Mutual acts on its own initiative to schedule a hearing, notice of the date, time and location of the hearing shall accompany the notice of the disciplinary action which is transmitted to the Owner. If the Board has not scheduled a hearing and the Owner desires a hearing, the Owner's written request therefor shall be delivered to the Mutual no later than five (5) days following the date when the notice of the Board's disciplinary action is transmitted to the Owner. The hearing shall be held not later than fifteen (15) days following the date of the Board's notice of the disciplinary action or fifteen (15) days following the receipt of the Owner's request for a hearing, whichever is later. If a hearing is scheduled or requested, any sanctions imposed or other disciplinary action taken by the Board shall be held in abeyance and shall become effective only if affirmed at the hearing.

10.8 **Alternative Dispute Resolution.** As to any dispute between the Mutual and any Member or between two or more Members of the Mutual which is subject to California *Civil Code* section 1354(b), the parties shall abide by the alternative dispute resolution procedures as provided in *Civil Code* section 1354, or successor statute.

ARTICLE 11 AMENDMENT

11.1 **Amendment by the Members.** This Declaration may be amended by the affirmative vote or written consent of Members representing at least an Absolute Majority of the Members, that is, a majority of the Total Voting Power. Notwithstanding the

foregoing, the percentage of Members necessary to amend a specific clause or provision of, or Exhibit to this Declaration shall be at least the percentage of affirmative votes prescribed in said clause, provision or Exhibit.

- 11.2 Further Approvals. If the consent or approval of any governmental authority, Mortgagee or other entity is required under this Declaration to amend, modify or revoke any provision of this Declaration, no such amendment, modification or revocation shall become effective unless such consent or approval is obtained.
- 11.3 Execution and Recording. Any amendment of the Declaration shall be signed and acknowledged by the duly authorized officer(s) of the Mutual and recorded in the Office of the Contra Costa County Recorder.

ARTICLE 12 GENERAL PROVISIONS

- 12.1 Headings. The headings used in this Declaration are for convenience only and are not to be used in interpreting the meaning of any of the provisions of this Declaration, or otherwise.
- 12.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision hereof shall not invalidate any other provisions hereof.
- 12.3 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of fostering a plan of community ownership and occupancy and of management of the Project for the benefit of the community.
- 12.4 Number; Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine, and neuter shall each include the masculine, feminine, or neuter, as the context requires.
- 12.5 Easements Reserved and Granted. Any and all easements referred to herein shall be deemed reserved or granted, or both reserved and granted, as appropriate, by reference to this Declaration in a deed to any Condominium.

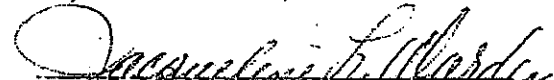
- 12.6 Power of Attorney. To the extent permitted by law and as necessary to carry out and enforce the provisions of this Declaration, an irrevocable power of attorney coupled with an interest is granted to the Mutual by the Owners and each of the Owners.
- 12.7 Term. The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges, and equitable servitudes contained in this Declaration shall run with and shall benefit and burden all of the real property subject to this Declaration, including without limitation the Units and Common Area, and shall inure to the benefit of and be binding upon the Owners, the Mutual, its Board of Directors and officers, and their respective agents and successors in interest, for a term of thirty (30) years from the date of recordation of this Declaration. Thereafter the term shall be automatically extended for successive periods of ten (10) years each, unless within the six (6) months prior to the expiration of the initial 30-year term or any 10-year extension period a written instrument, approved by Owners entitled to vote and holding at least a majority of the Total Voting Power of the Mutual, terminating the effectiveness of this Declaration shall be recorded in the Office of the County Recorder of Contra Costa County, California.

IN WITNESS WHEREOF, we, the Members of Walnut Creek Mutual No. Thirty, constituting the record owners of at least three-fourths (3/4) of the Units in the Project, hereby affirm, approve, and adopt the foregoing Amended Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. Thirty, in accordance with Article XV, Section 1 of the 1972 Declaration, by means of the signatures of the President and Secretary of Walnut Creek Mutual No. Thirty, duly authorized by written consent of the record owners of at least three-fourths (3/4) of the Units in the Project, which Amended Declaration of Covenants, Conditions and Restrictions shall be recorded in the Office of the County Recorder of Contra Costa County, California.

DATED: May 19, 2003

WALNUT CREEK MUTUAL NO. THIRTY


Myra B. Adams, President


Jacqueline L. Warden, Secretary

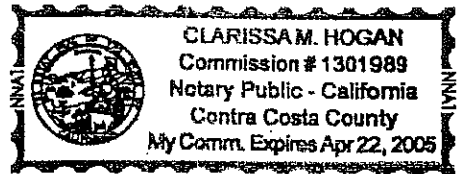
CERTIFICATE OF ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF CONTRA COSTA)

On 5-19-03, before me, Clarissa M. Hogan, personally appeared Myrna B. Adams, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/~~are~~ subscribed to the within Amended Declaration of Covenants, Conditions and Restrictions and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity(~~ies~~), and that by ~~his~~/her/~~their~~ signature(~~s~~) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Clarissa M. Hogan (Seal)



CERTIFICATE OF ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF CONTRA COSTA

On 5-19-03, before me, Clarissa M. Hogan personally appeared Jacqueline J. Warden, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/~~are~~ subscribed to the within Amended Declaration of Covenants, Conditions and Restrictions and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Clarissa M. Hogan (Seal)



**RECORDED AT THE REQUEST OF AND
WHEN RECORDED RETURN TO:**

WALNUT CREEK MUTUAL NO. THIRTY
c/o Hughes Gill Cochrane, P.C.
Attn: Stephanie J. Hayes, Esq.
1600 South Main Street, Suite 215
Walnut Creek, CA 94596

06/18/2012, 20120143882

**FIRST AMENDMENT TO AMENDED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
WALNUT CREEK MUTUAL NO. THIRTY**

This First Amendment to the Amended Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. Thirty (the "First Amendment") is made on the date hereinafter set forth by WALNUT CREEK MUTUAL NO. THIRTY, a California nonprofit mutual benefit corporation (the "Mutual").

RECITALS

A. WHEREAS, an instrument entitled "Amended Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. Thirty" was recorded on May 23, 2003 as Document No. 2003-0243523 in the Official Records of Contra Costa County, California (the "Declaration"),

B. WHEREAS, the Declaration establishes certain limitations, easements, covenants, restrictions, conditions, liens and charges which run with and are binding upon all parties having or acquiring any right, title or interest in those certain parcels of real property located in the City of Walnut Creek, Contra Costa County, State of California and described as follows:

Lot 1, as shown upon the "Map of Subdivision 4297, City of Walnut Creek, Contra Costa County, California," filed July 6, 1972, in Book of Maps, Pages 7, 8 and 9, Contra Costa County Records.

C. WHEREAS, all of the real property described herein, including all improvements thereon, constitute a "condominium project" within the meaning of California Civil Code section 1351(f).

D. WHEREAS, the Mutual desires to amend the Declaration as set forth below.

E. WHEREAS, pursuant to Article 11.1 of the Declaration, the Declaration may be amended with the approval of Members representing at least an Absolute Majority of the Members, that is, a majority of the Total Voting Power of the Mutual.

F. WHEREAS, all approvals required to amend the Declaration have been obtained.

NOW, THEREFORE, the Mutual amends the Declaration as set forth in this First Amendment.

1. Section 7.1 of the Declaration (entitled "Damage to a Unit or Units") shall be deleted in its entirety and the following inserted in its place:

7.1 Damage to a Unit or Units. As set forth in Section 13.6 of this Declaration, each Unit Owner is responsible for insuring the contents of his or her Unit. Regardless of the insurance carried by the Unit Owner, 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 Unit Owner. If damage occurs to property within the Unit that is insured by the Mutual pursuant to Section 13.2.1(ii) of this Declaration, the insurance proceeds shall be paid to the Mutual, and the Mutual shall use same to rebuild or repair such property. In the event the insurance proceeds and available Mutual funds are insufficient to cover the complete cost of repair of such property, the Board shall levy a Special Assessment against all Owners in the amount necessary to complete the repairs to the damaged property.

2. New ARTICLE 13 (entitled "INSURANCE") shall be added to the Declaration as follows:

13.1 Liability and Fidelity Insurance. The Mutual shall obtain and maintain the following liability policies:

13.1.1 Commercial General Liability Policy: A Commercial General Liability policy insuring the Mutual, any manager, the Mutual's directors and officers, and the Owners against liability arising from any bodily injury or property damage as a result of an accident or occurrence within the Common Area. Subject to the terms and conditions of the policy, the policy also shall cover bodily injury or property damage from an accident or occurrence within any Unit related to any maintenance or repair work required to be performed by the Mutual pursuant to the Declaration and/or the Mutual's Maintenance Policies, including, but not limited to, work performed in the Common Area. The policy shall include, if obtainable, cross liability or severability of interest coverage. The limits of such insurance (including the commercial general liability and any excess liability coverage) shall not be less than the general liability insurance requirements set forth in Civil Code section 1365.9 or any successor statute thereto covering all claims for bodily injury and property damage arising out of a single occurrence. The coverage may be a combination of primary and excess policies.

The insurance shall be provided with coverage terms provided by Insurance Services Offices (ISO) form CG 0001, or equivalent or better coverage. Such insurance shall include coverage against liability for owned, non-owned and hired automobiles and other liability or risk customarily covered with respect to projects similar in construction, location and use. The policy shall be primary and noncontributing with any other liability policy covering the same liability.

13.1.2 Directors and Officers Liability Policy: A Directors and Officers Liability policy containing such terms and conditions as are normally and customarily carried for directors and officers of a common interest development and in sufficient amounts to satisfy the insurance requirements of Civil Code section 1365.7 or any successor statute thereto.

13.1.3 Crime Insurance: A blanket Commercial Crime Insurance Policy covering the Mutual, any organization or person who either handles or administers or is responsible for Mutual funds, whether or not any person receives compensation for services. The policy amounts shall satisfy the Federal National Mortgage Association ("FNMA") and Federal Housing Administration ("FHA") requirements and in no event shall be less than the sum of three months of Annual and Special Assessments on all Units subject to Assessments.

13.2 Mutual Property Insurance. The Mutual shall obtain and maintain a master property insurance policy that satisfies each of the following conditions:

13.2.1 Property Covered. The Mutual's policy shall cover the following real and personal property:

(i) *Common Area*. All Common Area *improvements*, including buildings and any additions or extensions thereto; all fixtures, machinery and equipment permanently affixed to the building; windows; fences; monuments; lighting fixtures situated outside the Units; exterior signs; and personal property owned or maintained by the Mutual; but excluding land; excavations; and other items typically excluded from property insurance coverage.

(ii) *Units*. Permanently affixed improvements situated within the Unit, including interior walls and doors; ceiling, floor and wall surface materials (e.g., paint, wallpaper, carpets and hardwood floors); utility fixtures (including gas, electrical and plumbing); cabinets; built-in appliances; heating and air-conditioning systems; water heaters and any replacements thereto; but excluding any personal property located in the Unit. If the Unit Owner renovates, upgrades or replaces any permanently affixed improvement within the Unit or adds new improvements to the Unit (collectively, the "Alterations") and the replacement cost of the Alterations exceeds the cost of the improvements prior to the Alterations, the Unit Owner shall be responsible for procuring

and maintaining insurance to cover the excess unless the Owner has obtained written approval from the Mutual to make the Alterations and, to the extent required, approval from governmental authorities.

(iii) *Landscaping.* Lawn, trees, shrubs and plants located in the Common Area.

13.2.2 Covered Cause of Loss. The Mutual's policy shall provide coverage against losses caused by fire and risks of direct physical loss, as insured under the ISO "Causes of Loss - Special Form (CP 1030)" or its equivalent or better coverage. Such policy shall include coverage for loss resulting from the enforcement of any ordinance or law regulating the construction, use or repair of any property, or requiring the tearing down of any property, if caused by a peril insured by such policy. Equipment Breakdown Insurance shall also be maintained covering boilers and related equipment, heating, air-conditioning, electrical and mechanical equipment that is used in the generation, transmission or utilization of energy.

13.2.3 Dollar Limit. The dollar limit of the Mutual's policy shall not be less than the full insurable replacement value of the covered property described in Section 13.2.1 above based on insurance industry standards for determination of replacement values, provided that there may be lower dollar limits for specified items as is customarily provided in property insurance policies.

13.2.4 Primary. The Mutual's policy shall be primary and noncontributing with any other insurance policy covering the same loss provided, however, that where an Owner's individual insurance policy (discussed in Section 13.6 below) provides overlapping coverage, the Owner's individual insurance policy shall be the primary coverage and the Mutual's policy shall be excess/supplemental/secondary coverage as the case may be.

13.2.5 Endorsements. The Mutual's policy may contain such endorsements as the Board may select after consultation with a qualified insurance consultant.

13.2.6 Waiver of Subrogation. The Mutual waives all subrogation rights against any Owner or occupant and their family members and invitees. The policy shall include an acknowledgment of the Mutual's right to waive all subrogation rights against the Owner.

13.2.7 Deductible. Except as otherwise provided by separate agreement, when a claim is made on the Mutual's property insurance policy, the Owner is responsible for payment of the deductible on the Mutual's policy in circumstances: (i) where damage to Common Area and/or Unit improvements is caused by the fault of the Owner, tenants,

Contract Purchasers, Residents of the Unit, and agents, invitees, family members, guests and pets of any of the foregoing; or (ii) where damage to Common Area and/or Unit improvements is caused by the failure of some portion of the Unit or Common Area which the Owner is responsible for maintaining. In cases where fault cannot be determined, the Mutual shall pay the deductible.

The Mutual may enter into a deductible sharing agreement with other Rossmoor mutuals. In this event, to the extent there is any conflict between the payment of deductibles as set forth in this Section 13.2.7 and the agreement, the agreement shall control.

13.3 FNMA, FHLMC and FHA Requirements. Notwithstanding anything herein to the contrary, the Mutual shall maintain such policies, containing such terms, amount of coverage, endorsements, deductible amounts, named insureds, loss payees, standard mortgage clauses, notice of changes or cancellation, and an appropriate insurance company rating that shall satisfy the minimum requirements imposed by the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC") and the Federal Housing Administration ("FHA") or any successor thereto. If the FNMA, FHLMC or FHA requirements conflict, the more stringent requirements shall be met.

13.4 Insurance Rating and Cancellation. The insurance company providing the Mutual's insurance under Sections 13.1 and 13.2 shall have an A.M. Best rating of not less than A:VII if licensed to do business in the State of California and a rating of not less than A:X if approved but not licensed to do business in the State of California, provided that if the Board determines that insurance from insurance companies with the required ratings is not available at commercially reasonable rates, the Board may reduce the rating requirements after consultation with a qualified insurance consultant. If the A.M. Best ratings are no longer available, the insurance ratings shall be based on equivalent ratings issued by an independent insurance rating company used by financial institutions for insurance rating purposes.

13.5 Board's Insurance Authority. The Board has the authority on behalf of the Mutual and each of its Owners to participate with the Golden Rain Foundation of Walnut Creek or any successor or assign thereto (the "Foundation") and other Rossmoor mutuals in a group policy or policies procured and maintained by the Foundation as long as the group policy or policies provide equivalent or better coverage than the applicable requirements described in Sections 13.1 and 13.2 subject to the Board's right to deviate from the requirement as described herein.

The Board shall have the power and right to deviate from the insurance requirements contained in this Article 13 in any manner that the Board, in its discretion, considers to be in the best interests of the Mutual, provided that the Board shall maintain

the minimum insurance requirements set forth in Civil Code sections 1365.7 and 1365.9 or in any successor statute thereto and as required in Section 13.3. If the Board elects to materially reduce the coverage from the coverage required in this Article 13, the Board shall, as soon as reasonably practicable, notify the Members, in writing, of the reduction in coverage.

The Board is authorized to negotiate and agree on the value and extent of any loss under any policy carried by the Mutual, including, but not limited to, the right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

Each Owner irrevocably appoints the Mutual, as that Owner'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 Owner had personally taken the action.

13.6 Owners' Individual Insurance Requirements. Each Owner shall procure and maintain property insurance against losses to personal property located within the Owner's Unit and personal liability coverage. The Mutual's insurance policies will not provide coverage for: (i) losses to the Owner's personal property; (ii) losses to any Alterations to the extent not covered under Section 13.2.1(ii); (iii) liability from accidents or occurrences within the Owner's Unit or portions of the Common Area set aside for the exclusive use or possession of the residents of the Unit (that is, Exclusive Use Common Area); or (iv) liability from accidents or occurrences within Rossmoor for which the Owner may be held responsible and which may not be covered under the Mutual's Commercial General Liability policy. Each Owner should seek the advice of a qualified insurance consultant regarding the Owner's property and liability insurance obligations under this Section 13.6 and other applicable coverage available to Owners of Units.

Nothing herein imposes any duty on the Mutual, its directors, officers or agents (including the Mutual's managing agent) to confirm or otherwise verify that the Owners are carrying the insurance required in this Section 13.6.

No Owner shall separately insure any property covered by the Mutual's property insurance policy described in Section 13.2 above unless the Owner's individual insurance policy permits the application of any overlapping coverage under Owner's policy as primary without a reduction in benefits from the coverage under the Mutual's policy. If any Owner violates this provision and, as a result, there is a diminution in insurance proceeds otherwise payable to the Mutual, the Owner will be liable to the Mutual to the

extent of the diminution. The Mutual may, subject to Mutual's compliance with the notice and hearing requirements set forth in the Governing Documents, levy a Reimbursement Assessment against the Owner and the Owner's Unit to collect the amount of the diminution.

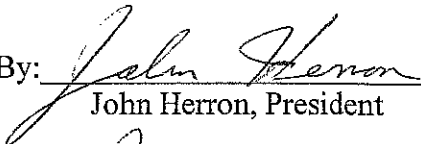
3. Unless otherwise expressly provided herein to the contrary, capitalized terms not defined in this First Amendment shall have the meanings ascribed to them in the Declaration, unless the context clearly requires otherwise.

4. In all other respects the provisions of the Declaration are deemed to remain in full force and effect except as herein modified.

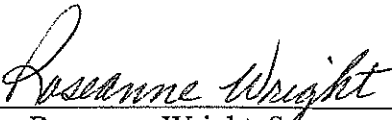
IN WITNESS WHEREOF, the undersigned duly authorized officers of WALNUT CREEK MUTUAL NO. THIRTY hereby certify that this First Amendment has been approved, in accordance with Section 11.1 of the Declaration, by Members representing at least an Absolute Majority of the Members, that is, a majority of the Total Voting Power of the Mutual.

WALNUT CREEK MUTUAL NO.
THIRTY

Dated: JUNE 7, 2012

By: 
John Herron, President

Dated: June 7, 2012

By: 
Roseanne Wright, Secretary

ACKNOWLEDGMENT

STATE OF CALIFORNIA
COUNTY OF Contra Costa

On 6-7-12, before me, Sharon Lea Keane, Notary Public, personally appeared, John Neuron, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Sharon Lea Keane (Seal)



ACKNOWLEDGMENT

STATE OF CALIFORNIA
COUNTY OF Contra Costa

On 6-7-12, before me, Sharon Lea Keane, Notary Public, personally appeared, Roseanne Wright, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Sharon Lea Keane

(Seal)

