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**AMENDED & RESTATED DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS
 WALNUT CREEK MUTUAL NO. 70
 (Formerly Walnut Creek Mutual No. Forty-Seven)**

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**AMENDED & RESTATED DECLARATION OF
COVENANTS, CONDITIONS & RESTRICTIONS OF
WALNUT CREEK MUTUAL NO. 70
(FORMERLY WALNUT CREEK MUTUAL NO. FORTY-SEVEN)**

RECITALS

R1. Whereas, Walnut Creek Mutual No. 70, formerly known as Walnut Creek Mutual No. Forty-Seven, is the successor to Terra California, which as Declarant, executed a Declaration of Covenants, Conditions and Restrictions, dated June 21, 1977, and recorded on September 14, 1977, in Book 8502, at Pages 923, *et seq.*, as Instrument No. 128004, in the Official Records of the County of Contra Costa, State of California (hereafter, "Original Declaration"); and

R2. Whereas, the following amendments to the Declaration of Covenants, Conditions and Restrictions were adopted and recorded as follows: Certificate of Correction recorded August 24, 1978 in Book 8981 at page 57 as Instrument No. 116563 in the Official Records of the County of Contra Costa, State of California; Certificate of Amendment of Declaration of Covenants, Conditions and Restrictions, dated June 15, 2000, and recorded on June 16, 2000, as Instrument No. 2000-0125511-00, in the Official Records of the County of Contra Costa, State of California; and Third Amendment to the Declaration of Covenants, Conditions and Restrictions for Third Walnut Creek Mutual -Project No. Forty-Seven recorded on August 13, 2001 as Instrument No. 20010238458 in the Official Records of the County of Contra Costa, State of California; and

R3. Whereas, the above-referenced Declaration of Covenants, Conditions and Restrictions established a plan of common interest ownership with 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 consisting of one hundred seventy-two (172) Units and various common areas located in the City of Walnut Creek, County of Contra Costa, State of California, and more particularly described as follows:

Lots 1,2, 3 and 4, subdivision 5001, as shown on the map of "subdivision 5001 (Mutual 47), City of Walnut Creek, Contra Costa County, California," filed August 23, 1977, in Book 201 of Maps, Pages 26 to 29, inclusive, in the office of the County Recorder of Contra Costa County;

and

R4. Whereas, the Members of Walnut Creek Mutual No. 70 desire to amend, modify and change and otherwise restate the limitations, easements, covenants, restrictions, conditions, liens and charges that run with and are binding upon all parties having or acquiring any right, title or interest in the above described parcel of real property;

R5. Therefore, the Members of Walnut Creek Mutual No. 70, constituting at least seventy-five percent (75%) of the total voting power of Walnut Creek Mutual No. 70, do hereby declare that the above-referenced limitations, easements, covenants, restrictions, conditions, liens and charges set forth in the Original Declaration, and all amendments and supplements thereto (whether identified above or not) be and are hereby AMENDED AND RESTATED in their entirety, as set forth in this Amended and Restated Declaration of Covenants, Conditions & Restrictions of Walnut Creek Mutual No. 70; and

R6. It is further hereby declared that all of the real property described herein constitutes a "Condominium Project" within the meaning of Section 4125 of the California Civil Code; and

R7. 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, assigned, rented, hypothecated, encumbered, leased, used, occupied and improved subject to the following Declaration of Covenants, Conditions & 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, use and sale of the said real property and any part thereof; and

R8. 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 5975 of the California Civil Code and shall constitute covenants that shall run with the real property and shall be binding upon and inure to the benefit of each Owner of any portion of the real property or of any interest therein, each party having or acquiring any right, title or interest in and to the real property or any part thereof and their heirs, successors and assigns.

R9. It is further hereby declared that each Owner, by acceptance of a deed to a Unit, shall be deemed to have agreed, for any and all purposes, for Owner and for the members of Owner's Family, Owner's contract purchasers, tenants or lessees, guests, invitees and/or licensees to abide by, and to be bound by, each and every provision of this Declaration that subjects such Owner or other person to a contractual, fiduciary or other duty, obligation or agreement for the benefit of other Owners or occupants of the Project (either individually or as a class), Walnut Creek Mutual No. 70 or the public generally, regardless of whether the deed refers specifically to this Declaration or to any such duty, obligation or agreement.

ARTICLE I: DEFINITIONS.

Section 1.1. "Articles" means the Articles of Incorporation of Walnut Creek Mutual No. 70, which are filed in the Office of the Secretary of State of the State of California, as such Articles may be amended from time to time.

Section 1.2. "Assessment" means any Regular, Special or Special Individual Assessment made or assessed by the Mutual against an Owner and his or her Condominium in accordance with the provisions of Article V of this Declaration.

Section 1.3. "Balcony" means those portions of the Exclusive Use Common Area separately designated on the Plan and herein as individual spaces identified on the Plan as "Balcony" or by the letter "B." The boundaries of each Balcony are approximately as shown on the Plan. Each Balcony shall extend to, but not include, the finished interior surfaces of the Balcony floor and ceiling, walls and/or railings (if any). The Balcony shall also include the air space encompassed by said finished interior surfaces.

Section 1.4. "Board of Directors" or "Board" means the Board of Directors or the governing body of the Mutual.

Section 1.5. "Building" means a structure located on the Project that contains Units.

Section 1.6. "Bylaws" means the Bylaws of the Mutual, as such Bylaws may be amended from time to time.

Section 1.7. "Carport" means those portions of the Exclusive Use Common Area separately designated on the Plan and herein as individual spaces identified as "Carport" or by the letter "C." The boundaries of each Carport are approximately as shown on the Plan. Each Carport shall extend to, but not include, the finished interior surfaces of the Carport floor, ceiling and walls, if any. The Carport shall also include the air space encompassed by said finished interior surfaces.

Section 1.8. "Common Area" means all of the Project not within a Unit shown on the Plan, together with all improvements thereto. There are two (2) types of common area: General Common Area (*See* Section 1.21) and Exclusive Use Common Area (*See* Section 1.15).

Section 1.9. "Common Expense" means the actual, estimated, or expected costs, charges, or other financial liabilities of the Mutual, including, without limitation: (a) all costs or charges incurred by or on behalf of the Mutual for the management, maintenance, administration, operation, repairs, additions, alterations or reconstruction of Common Area, Common Facilities, or any portion of the Units for which the Mutual has maintenance or repair obligations; (b) all costs or charges reasonably incurred to procure insurance for the protection of the Mutual and its Board; (c) any amounts reasonably necessary for reserves to maintain, repair or replace the Common Area or Common Facilities, any portion of the Units for which the Mutual has maintenance or repair responsibility or to cover unpaid (delinquent) assessments; (d) dues and charges payable to the Foundation; and (e) any other costs or charges necessary for the Board to perform its functions and fulfill its responsibilities under the Governing Documents.

Section 1.10. "Common Facilities" means all improvements located within, under, above or upon the Common Area except utility, plumbing, drainage lines, wires and/or cables belonging to a public utility or other party having a valid private easement or license for installation and maintenance of such equipment.

Section 1.11. "Condominium" means an estate in real property as defined in Sections 783 and 4125(b) of the California Civil Code and which consists of an undivided interest in common in a portion of real property coupled with a separate interest in space called a Unit together with any easements or other interests in the Project or any portion thereof as described in this Declaration and/or in the Owner's deed.

Section 1.12. "Declaration" means this Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. 70, recorded in the Office of the County Recorder of Contra Costa County, California as it may be amended from time to time.

Section 1.13. "Director" means a member of the Mutual's board of directors.

Section 1.14. "Eligible First Mortgagee" means a First Mortgagee who has sent a written request for notice to the Mutual, stating its name and address and the Unit number or address of the Unit on which it has the Mortgage. Starting as of the recording date of this Declaration, the Mutual shall maintain such information in a book entitled "Mortgagees of Condominiums."

Section 1.15. "Exclusive Use Common Area" means those portions of the Common Area reserved for the exclusive use of the Owner of a particular Unit. Exclusive Use Common Area includes Patios, Balconies, Carports and Garages.

Section 1.16. "Family" means two or more persons who live together and maintain a common household in a Unit whether or not they are all related to each other by birth, marriage or legal adoption.

Section 1.17. "First Mortgage" means a Mortgage having priority over all other Mortgages.

Section 1.18. "First Mortgagee" means any person or entity, including, but not limited to, banks, savings and loan associations, insurance companies and other financial institutions, holding a recorded mortgage that constitutes an encumbrance upon one or more Condominiums first in priority of lien over all other encumbrances upon said Condominium(s) securing payment of money other than this Declaration and liens for real estate taxes and assessments.

Section 1.19. "Foundation" means the Golden Rain Foundation of Walnut Creek, a California non-

profit corporation.

Section 1.20. "Garage" means those portions of the Exclusive Use Common Area separately designated on the Plan and herein as individual numbered spaces preceded by the letters "G." The boundaries of each Garage are approximately as shown on the Plan. Each Garage shall extend to, but not include, the finished interior surfaces of the Garage floor, ceiling and walls, if any. The Garage shall also include the air space encompassed by said finished interior surfaces.

Section 1.21. "General Common Area" means all of the Common Area except for Exclusive Use Common Area.

Section 1.22. "Governing Documents" is a collective term that means and refers to this Declaration and to the Mutual's Articles, Bylaws, Policies and Procedures and resolutions adopted by the Board and distributed to the Members. The Governing Documents also include the Trust Agreement with Golden Rain Foundation recorded on April 17, 1964 in the office of the Contra Costa County Recorder in Book 4598 at Page 396 as Document No. 33971 and all properly adopted amendments and supplements thereto, Agreement Establishing Covenants, Conditions & Restrictions (Project 47) recorded September 14, 1977 in the office of the Contra Costa County Recorder in Book 8502 at Page 908, the Bylaws of Golden Rain Foundation and the policies, procedures and rules of Golden Rain Foundation.

Section 1.23. "Improvement" means an addition to or alteration of the real property comprising the Project or any portion thereof and includes, but is not restricted to, any Building, outbuilding, structure, shed, driveway, parking area, paving, walk, fence, wall, stair, arbor, deck, balcony, patio, pole, sign, tank, ditch, landscaping (including trees, hedges, plantings, lawns, shrubs), landscape structures, berms, fencing, pond, solar heating equipment, antennas, utilities, utility lines, gates, statues, markers, pipes, lines, lighting fixtures, and anything deemed to be a "work of improvement" as defined in Section 3106 of California Civil Code or any structure of any kind.

Section 1.24. "Lien" means any lien, whether voluntary or involuntary.

Section 1.25. "Map" means the Subdivision Map entitled "Subdivision 5001 (Mutual 47), City of Walnut Creek, Contra Costa County, California", filed on August 23, 1977, in Book 201 of Maps, pages 26 to 29 inclusive, in the office of the County Recorder of Contra Costa County, California.

Section 1.26. "Member" means each person (or entity) who is named as an Owner on the recorded grant deed (or other valid title document) for any Unit within the Project. However persons (or entities) who hold an interest in a Unit merely as security for the performance of an obligation (e.g., banks and other types of mortgage lenders) are not Owners or Members. When more than one person is an Owner of a Unit, all such persons shall be Members. Although in no event shall more than one vote be cast with respect to any Unit.

Section 1.27. "Member in Good Standing" means 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.

Section 1.28. "Mortgage" means any security device encumbering all or any portion of the Project, including any deed of trust. The terms mortgage and deed of trust may be used interchangeably.

Section 1.29. "Mortgagee" shall refer to a beneficiary under a deed of trust as well as to a mortgagee in the conventional sense.

Section 1.30. "Mortgage Lien" means the lien or charge or equivalent security interest of any mortgage or deed of trust.

Section 1.31. "Mortgagor" shall refer to the trustor under a deed of trust, as well as a mortgage.

Section 1.32. "Mutual" means Walnut Creek Mutual No. Seventy, a California non-profit mutual benefit corporation, or any successor or assign, whether by way of consolidation, merger, transfer or otherwise.

Section 1.33. "Mutual Manager" means the person or entity employed by the Mutual to manage its affairs, as authorized in the Bylaws.

Section 1.34. "Owner" means any person, firm, corporation or other entity that owns a fee simple interest in any Condominium. However the term Owner shall not include persons (or entities) who hold an interest in a Condominium merely as security for the performance of an obligation (e.g., banks and other types of mortgage lenders).

Section 1.35. "Owner of Record" includes an Owner and means any person, firm, corporation or other entity in which title to a Condominium is vested as shown by the official records of the Office of the Contra Costa County Recorder. If a Condominium is transferred or conveyed to a trust, the Owner is the trustee or co-trustees of such trust.

Section 1.36. "Patio" means those portions of the Exclusive Use Common Area separately designated in the Plan as individual parcels identified as "Patio" or designated by the letter "P" appurtenant to its assigned Unit. The boundaries of each Patio are approximately as shown on the Map. Each Patio shall extend to, but not include the finished interior surfaces of the Patio floor (and ceiling, walls and/or railings, if any). The Patio shall also include the air space encompassed by said finished interior surfaces.

Section 1.37. "Plan" means the document entitled "Condominium Plans Mutual 47 Subdivision 5001" recorded on October 6, 1978 in Book 9043 at pages 496 to 533 inclusive of the Official Records of Contra Costa County, California..

Section 1.38. "Policies and Procedures" means the rules, regulations and policies adopted by the Board of Directors of the Mutual (or in the case of Architectural rules and policies by the Alterations Committee) pursuant to this Declaration, as the same may be in effect from time to time.

Section 1.39. "Project" means all real property and the improvements located thereon that comprise Walnut Creek Mutual No. 70 common interest development and are intended to create a condominium project as described in California Civil Code Section 4125.

Section 1.40. "Regular Assessment" means an Assessment levied on an Owner and his or her Condominium in accordance with Section 5.2 hereof.

Section 1.41. "Special Assessment" means an Assessment levied on an Owner and his or her Condominium in accordance with Section 5.3 hereof.

Section 1.42. "Special Individual Assessment" means an Assessment made against an Owner and/or his or her Condominium in accordance with Section 5.4 hereof.

Section 1.43. "Unit" means those elements of a Condominium which are not owned in common with other Owners, and which are designated as a Unit in the Plan. The boundaries of a Unit are the unfinished

interior surfaces of the perimeter walls, floors, ceilings and windows, the portions of the Building lying within said boundaries and the airspace so encompassed, except bearing walls located within said boundaries, which are Common Area, and provided that all doors and windows of a Unit and all fixtures and utility installations located within a Unit including without limitation hot water heaters, space heaters and kitchen, bathroom and lighting fixtures, and all air conditioning equipment serving a Unit, but outside of such Unit, shall be a part of each Unit (including vents, ducts, plumbing lines, conduits and wiring associated with such equipment), provided further that soffits and furred down ceilings shall not be a part of such Unit. In addition, any fireplace (including the firebox and flues, but excluding spark arrestors and flue caps) shall constitute a part of the Unit.

ARTICLE II: OWNERS' PROPERTY RIGHTS & OBLIGATIONS.

Section 2.1. Elements of Condominium. Ownership of each Condominium within the Project includes:

- (a) **Unit.** A separate Unit, as defined and described herein.
- (b) **Common Area.** A 1/172 undivided interest in and to the Common Area as a tenant-in-common.
- (c) **Nonexclusive Easements.** Nonexclusive easements appurtenant to the Unit for the use and enjoyment of the Common Area and as more particularly described in Section 2.2.
- (d) **Exclusive Easements.** Exclusive easements appurtenant to the Unit for the use and enjoyment of Exclusive Use Common Area as more particularly described in Section 2.3.

All of the above interests in real property shall be subject to all of the covenants, conditions, restrictions, easements, limitations, reservations, liens, and charges contained elsewhere in this Declaration, the Articles, the Bylaws, and the Mutual Policies and Procedures.

Section 2.2. Owners' Right to Use and Enjoy Common Area. Subject to the provisions of this Declaration, the Common Area shall be held and maintained for the use and enjoyment of the Members of the Mutual, their families, tenants, lessees, resident contract purchasers and/or guests as provided in the Governing Documents.

(a) **Nonexclusive Easements.** Every Owner (and Owner's Family, resident contract purchasers, lessees, tenants, and/or guests) shall have a nonexclusive right and easement of enjoyment in and to the Common Area, including ingress and egress to and from the Owner's Unit, which shall be appurtenant to and shall pass with the title to every Unit, subject to the rights and restrictions set forth in this Section.

(b) **Limitations on Nonexclusive Easements.** The Owners' nonexclusive easements for use and enjoyment of the Common Area as described above are subject to the following limitations and restrictions:

(1) The right of the Mutual to adopt Mutual Policies and Procedures as provided in Section 4.6(a)(2)(v) hereof, regulating the use and enjoyment of the Project for the benefit and well-being of the Owners in common, and, in the event of the breach of such Policies and Procedures or any provision of the Governing Documents by any Owner or Tenant, to temporarily suspend the voting rights and/or right to use the Common Facilities, by any Owner and/or the Owner's Tenants and guests, subject to compliance with the due process requirements of Section 12.6 hereof.

(2) The right of the Mutual, in accordance with this Declaration, and/or the Mutual's Articles and Bylaws, to borrow money for the purpose of improving, restoring or maintaining the Common Area and Common Facilities and/or the interests of the Owners and/or for the benefit of the Mutual, and in aid thereof,

to mortgage said property; provided, however, that the rights of any such Mortgagee in said property shall be subordinate to the rights of the Owners hereunder; and further provided that any such indebtedness shall be considered an expense of the Mutual for purposes of the Special Assessment provisions of Section 5.3 hereof.

(3) The right of the Mutual to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Owners; provided, however, that no such dedication or transfer shall be effective unless an instrument, approved by at least two-thirds of the voting power of the Members, consenting to such dedication or transfer has been recorded. Furthermore, no dedication shall be permitted that impairs the ingress and egress to any Unit. Said instrument may be executed in counterparts so long as each counterpart is in recordable form. The Mutual shall, without a vote of the Members, have the right to grant licenses and or right of entry to the Common Area and/or easements through the Common Area for purposes consistent with the purposes of the Mutual that do not interfere with the use and enjoyment of the Common Area by the Members.

(4) The non-exclusive easements granted herein shall be subordinate to and shall not interfere with exclusive easements, if any.

(5) The right of any Owner to the full use and enjoyment of any mechanical or electrical service connections as may serve the Owner's Unit in conjunction with other Units within the Project. The Owner of each Unit served by a sanitary sewer, water, gas, electric, telephone, television line or connection, heating or air conditioning conduit, duct, flue, or system, or similar utility/service connection shall be entitled to the full use and enjoyment of such portions of said connections as service Owners' Unit.

(6) The right of the Mutual to charge reasonable admission, use and/or other fees for the use of the Common Area or any portion thereof.

(c) **Waiver of Right to Sever.** No Owner, or other person, may by conveyance, transfer or any other action, including an action at law for partition, sever any Unit or Units from the Common Area or from the Mutual. Each Owner, by acceptance of a deed to a Unit hereby expressly waives all rights to do so.

Section 2.3. Exclusive Use Common Area. The areas designated on the Plan as a Balcony, Patio, Garage or Carport are Exclusive Use Common Areas. Subject to the Policies and Procedures of the Mutual, the Balconies and Patios adjacent to Units are reserved for the exclusive use of the Owners of such Units and they may not be added to, modified or altered without the approval of the Mutual and except for normal housekeeping, shall be repaired and maintained by the Mutual provided, however, that balcony walking surfaces which have been replaced since the original sale of the Unit shall be the Unit Owner's responsibility to repair, maintain and replace. Exclusive Use Common Areas designated on the Plan as Garages or Carports are reserved and shall be used for parking of non-commercial vehicles. Owners or occupants shall have the exclusive use of those certain garages and carports as specified in Exhibit A to this Declaration, subject to the right of the Mutual to enter for purposes of maintenance and repair.

Section 2.4. Persons Subject to Governing Documents. All present and future Owners, tenants, lessees, contract purchasers and/or occupants of Units within the Project (on behalf of themselves, their Family, guests, tenants, invitees, agents, servants, employees, licensees and/or any other persons that might use the facilities of the Project in any manner, etc.) shall be subject to, and shall comply with, each and every provision of the Governing Documents, as the same or any of them shall be amended from time to time, unless a particular provision is specifically restricted in its application to one or more of such classes of persons (*i.e.*, Owners, tenants and invitees).

Section 2.5. Merger of Units. The Mutual shall have the right, but not the obligation, to grant to the Owner of two (2) or more adjacent Units those easements necessary or appropriate to permit such Owner to effect internal access from one Unit to another through the walls or other portions of the Common Area that

separate and divide the individual Units (such Units shall, for all purposes of the Governing Documents, remain and be treated as two (2) separate Units). The Mutual shall also have the right, but not the obligation, to grant the Owner of two (2) or more adjacent Units those easements necessary or appropriate to permit such Owner to separate and divide Units previously joined hereunder.

All of such work shall be done at the expense of the Owner, and any such Owner shall indemnify the other Owners and the Mutual against and hold them harmless from, any cost, loss, liability, damage, or injury to property or persons arising from, or caused by, such work. As a condition to the grant of any such easement, the Mutual may impose such reasonable terms and conditions with respect thereto as the Board deems necessary or appropriate including, without limitation, a requirement that the Owner obtain lien and completion bonds to assure lien-free completion of the work.

Section 2.6. Obligations of Owners.

(a) Notice of sale or lease. The Unit Owner shall, within ten (10) days of any sale, transfer or lease of the Unit notify the Mutual in writing of the name, mailing address and telephone number of the buyers, transferees or lessees of Owner's Unit, the name and address of any escrow holder for any sale or transfer, the escrow number of any escrow, and the date when the buyer, transferee or lessee will take possession of the Unit. Each new owner shall within ten days of taking title to a Unit within the Project notify the Mutual in writing of the address to which all notices shall be sent, the names of the Persons who will be occupying the Residence and a phone number for emergencies. Until such time as the Mutual receives the notification required in this section, a transferee or lessee shall be deemed to have received any and all notices or other communications required or permitted to be given by the Mutual hereunder that are duly provided to the transferor or lessor

(b) Notification Regarding Governing Documents. Each owner shall provide copies of the Mutual's current Governing Documents to his or her lessees, who shall be subject to all restrictions set forth in the documents. Copies of the Governing Documents shall also be provided in a timely manner to all prospective purchasers.

(c) Payment of Assessments and Compliance With Mutual Policies and Procedures. Each Owner shall pay when due each Regular, Special and Special Individual Assessment levied against the Owner and his or her Condominium and shall observe, comply with and abide by any and all Mutual Policies and Procedures set forth in, or promulgated by the Board pursuant to, any Governing Document for the purpose of protecting the interests of all Owners or protecting the Common Area and Common Facilities.

(d) Responsibility for Conduct of Others. Each Owner shall be fully responsible for informing members of Owner's Family, contract purchasers, lessees, tenants, servants, employees, guests, invitees and/or licensees of the provisions of the Governing Documents and shall be fully responsible for any violation of the provisions of the Governing Documents by members of Owner's Family, contract purchasers, lessees, tenants, servants, employees, guests, invitees and/or licensees and for any damage to Common Area caused by such persons. Each Owner shall further be fully responsible for the conduct and activities of Owner's pets and the pets of Owner's Family, contract purchasers, lessees, tenants, servants, employees, guests, invitees and/or licensees.

(e) Discharge of Assessment Liens. Each Owner shall promptly discharge any Assessment lien that may hereafter become a charge against his or her Condominium.

(f) Joint Ownership of Condominiums. In the event of joint ownership of any Condominium, the obligations and liabilities of the multiple Owners under the Governing Documents shall be joint and several. Without limiting the foregoing, this Subsection (i) shall apply to all obligations, duties and

responsibilities of Owners as set forth in this Declaration, including, without limitation, the payment of all Assessments.

(g) Prohibition on Avoidance of Obligations. No Owner, by non-use of the Common Area or Common Facilities, renunciation or abandonment of the Owner's Condominium, any other act of renunciation or abandonment or otherwise, may avoid the burdens and obligations imposed on such Owner (by virtue of being an Owner or Mutual Member) by the Governing Documents, including, without limitation, the payment of Assessments levied against the Owner and his or her Condominium pursuant to this Declaration. Nor may any Owner divest itself of any such burden or obligation by attempting to assign responsibility therefore to a tenant, manager or any third person.

(h) Obligation To Permit Entry by Mutual and/or Adjacent Owners. Each Owner shall be obligated to permit the Owners of adjacent Units or the representatives of such adjacent Owners to enter the Owner's Unit for purposes of performing installations, alterations or repairs to mechanical or electrical services that are reasonably necessary for the use and enjoyment of his or her Unit, provided that the adjacent Owner furnishes the Owner whose Unit is being entered upon with at least twenty-four (24) hours written notice of his or her intent to enter the Unit, specifying the purpose and scheduled time of such entry and shall make every reasonable effort to perform his or her use and schedule his or her entry in a manner that respects the privacy of the persons residing within the Unit and the convenience of the Owner of the Unit. Each Owner shall also honor the right of the Mutual and its agents to enter the Owner's Unit as provided in Section 4.5(b) of this Declaration.

Section 2.7. Partition and Severability of Component Interests.

(a) Partition Prohibited. The Common Areas shall remain undivided as set forth in this Declaration. Except as provided by California Civil Code Section 4610 or comparable superseding statute, or authorized under Article X or Article XI of this Declaration, no Owner shall bring any action for partition of the Common Area, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Project. Judicial partition by sale of a single Condominium owned by two (2) or more persons and division of the sale proceeds is not prohibited by this paragraph, but partition of title to a single Condominium is prohibited.

(b) Severance Prohibited. An Owner shall not be entitled to sever his or her Unit from his or her membership in the Mutual. Nor shall an Owner be entitled to sever his or her Unit or his or her membership from the Owner's undivided interest in the Common Area for any purpose. None of the component interests in a Condominium can be severally sold, conveyed, encumbered or hypothecated. Any violation or attempted violation of this provision shall be void. Similarly, no Owner can sever any exclusive easement appurtenant to his or her Unit over the Common Area from the Owner's Condominium. Any attempt to do so shall be void.

(c) Limitation on Interests Conveyed. Unless otherwise expressly stated, any conveyance of a Unit or any portion of it by an Owner shall be presumed to convey the entire Condominium. However, nothing contained in this section shall preclude the Owner of any Condominium estate from creating an estate for life or an estate for years or from creating a cotenancy or joint tenancy in the ownership of the Condominium with any other person or persons.

Section 2.8. Transfer or Conveyance of Condominium Terminates Obligations. Upon the conveyance, sale, assignment or other transfer of a Condominium to a new Owner, the transferring Owner shall not be liable for any Assessments levied with respect to such Condominium after the date of recording of the deed evidencing said transfer. No person, after the termination of said person's status as an Owner and prior to said person again becoming an Owner, shall incur any of the obligations or enjoy any of the benefits

of an Owner under this Declaration. The voluntary conveyance of a Condominium to a new Owner, however, will not extinguish any obligations of the transferring Owner for unpaid Assessments and other charges that were levied against said Condominium and transferring Owner prior to the subject transfer.

ARTICLE III: RESTRICTIONS & USE OF PROPERTY.

Section 3.1. Occupancy Restrictions.

(a) Occupancy. No more than two (2) persons may occupy a one bedroom Unit nor shall more than three (3) persons occupy a two bedroom Unit without the written approval of the Foundation and the Mutual.

(b) Restriction on Businesses. Each Unit shall be used exclusively for residential purposes except as provided in this Section. No business of any kind shall be established, maintained, operated, permitted or conducted within the Project except home offices and/or such professional or administrative businesses as may be permitted by applicable statutes and/or ordinances provided, however, that there shall be no external evidence of such business/home office (*i.e.*, no increased pedestrian and/or vehicular traffic, no signs, and no activities that are apparent or detectable by sight, sound or smell from outside of the Unit) and such activities do not increase Mutual's insurance obligations and/or premiums, and/or such activities are not inconsistent with residential nature of the Project.

(c) Age Restriction for Residents. The Units shall be occupied by persons 55 years of age or older except as otherwise provided by the Senior Housing Residency Restrictions, which are part of the Policies and Procedures of the Mutual. The Senior Housing Residency Restrictions may contain other restrictions or qualifications for occupancy of a Unit, which shall comply with the federal and state laws governing age restricted communities.

Section 3.2. Rental of Units. As used in this Article III, the terms "lease" or "rental" shall mean any and all agreements, including, but not limited to leases, subleases and/or rental agreements, for the occupancy of any Unit. Any Owner who wishes to lease the Owner's Unit must comply with all of the provisions of this Section 3.2 and any Policies and Procedures adopted pursuant to this Section 3.2. This Section covers the rental of residential Units and not the separate rental by an owner of his or her Garage or Carport. The procedures and restrictions relating to rental of Garages and Carports shall be set forth in the Policies and Procedures of the Mutual.

(a) All Leases to be in Writing. All leases for a Unit within the Project shall be in writing.

(b) No Short-Term Leases/Subleases/Rentals and No Hotel Services. No Owner, contract purchaser, tenant or lessee shall be permitted to lease or sublease a Unit for transient or hotel purposes (*i.e.*, a rental for any period less than thirty (30) days and/or a rental that includes providing the occupants with customary hotel service such as room service for food and beverage, maid service, laundry and linen service, or bellboy service). Subleasing of a portion of a Unit is not permitted.

(c) All Lessees and Tenants Subject to Governing Documents. Any lease or rental of any Unit within the Project shall be subject to all provisions of the Governing Documents, all of which shall be deemed incorporated by reference in the lease or rental agreement. Each Owner-lessor shall provide any tenant or lessee with a current copy of all Governing Documents and all subsequent Amendments. Each Owner shall be responsible for compliance by such Owner's tenant(s) or lessee(s) with all of the provisions of the Governing Documents during the tenant's or lessee's occupancy and use of the Unit. The failure of any tenant or lessee to comply with the terms of the Governing Documents shall be a default under the

lease/rental agreement and a failure to perform a condition and covenant of the lease/rental agreement.

(d) Owner's Duty of Notification. Owners of Units shall disclose to potential buyers the existence of the rental restriction provisions set forth in this section. Each Owner shall notify the Secretary of the Mutual or the Mutual Manager, if any, of the names of any tenant or lessee of the Owner's Unit pursuant to Section 2.6(a).

(e) Discipline of Lessors. An Owner who leases his or her Condominium to any person or entity shall be responsible for assuring compliance by the lessee and any other occupants with the provisions of the Governing Documents, including but not limited to, all Mutual Policies and Procedures, easements, reservations, restrictions, assessments, liens and charges created in accordance with this Declaration, all as amended and supplemented from time to time during the tenant's or lessee's occupancy and use of the Unit. Subject to the notice and hearing requirements set forth in Article XII of this Declaration, in the event that any tenant or lessee fails to honor the provisions of any Governing Document, the Mutual shall be entitled to take such corrective action as it deems necessary or appropriate under the circumstances, which may include the imposition of fines and penalties against the Owner and/or a legal action against the Owner, the tenant or both. If the Mutual prevails in any legal action to remedy a tenant's violation of the Governing Documents, the Owner shall be responsible for paying the Mutual's costs for any such litigation, including reasonable attorney's fees. Any fine or penalty levied pursuant to this Section shall be considered a Special Individual Assessment as defined in Section 5.4, below. If a Special Individual Assessment is imposed as a result of the conduct of a renter or lessee, any renter or lessee charged with a violation of the Governing Documents is entitled to the same notice and hearing rights to which the Owner is entitled under Article XII of this Declaration.

(f) Discipline of Lessees. The Mutual may, after the notice and hearing required in Article XII of this Declaration, deprive any lessee who is in violation of the Governing Documents of the right to use the Common Area including the Common Facilities. Furthermore, whether or not such right is stated in any rental agreement, every Owner who rents his or her Unit automatically grants to the Mutual the right to determine a tenant's default under the Governing Documents and of terminating the tenancy and evicting the tenant for such default. If the Board brings such eviction action, either in its own name or in the Owner's name, the Owner shall be responsible for all costs thereof, including reasonable attorney's fees, and shall reimburse the Mutual upon demand for the entire amount of such costs. If the Owner refuses to make such reimbursement, the sums shall constitute a Special Individual Assessment for which a lien may be imposed against the Owner's Condominium. The Mutual's right to maintain an eviction action hereunder shall only arise if the tenant's or lessee's conduct involves repeated or continuing damage to or destruction of Common Areas or Common Facilities, or constitutes a continuing nuisance or unreasonable interference with safety and/or the quiet enjoyment of other residents.

(g) Restriction on Non-Owner Occupancy. Whereas, Walnut Creek Mutual No. 70 wants to ensure that Units within the Mutual continue to qualify for conventional mortgage financing and that current and future Mutual members can continue to obtain said financing, and to provide its members with the additional benefits of a community consisting primarily of owner occupied residences, Walnut Creek Mutual No. 70 seeks to maximize the number of Units within the Mutual that are Owner occupied.

(1) Limit on Leases. In order to accomplish the above goal, Walnut Creek Mutual No. 70 imposes the following restriction: leases are limited to a period of occupancy of one (1) year or less, unless the Board in its discretion approves a longer occupancy period.

(2) Request to Board. Every proposed lease, lease extension or lease renewal requires approval in writing by the Board. The Policies and Procedures of the Mutual may specify the process for applying for such approval and criteria to be considered by the Board in approving or rejecting such requests.

(3) Repetitive Short-Term Leases. The Board may approve repetitive short-term leases such as vacation rentals of furnished units, alternating with periods of owner occupancy and totaling not more than six months in any twelve month period.

(4) Units Owned by Mutual. A Unit owned by the Mutual shall not be subject to the rental restriction set forth in this subsection and may be leased or rented without regard for the provisions of this subsection (g).

(5) Mutual Policies and Procedures. The Board may adopt Policies and Procedures to clarify or supplement the provisions of this subsection so long as such rules do not conflict with such provisions or any other provisions of this Declaration.

(h) Owners' Duty of Notification. Owners of Units shall disclose to potential buyers the existence of the rental restriction provisions set forth in this Section 3.2. Further, Owners of all leased Units shall disclose to potential buyers that upon the sale or transfer of ownership of any leased Unit, said Unit ceases to be eligible for leasing unless and until the Owner of the Unit applies for and receives the Board of Directors' approval to lease said Unit under the terms of this Section 3.2. Each Owner shall notify the Secretary of the Mutual or the Mutual Manager, if any, of the names and telephone numbers of any tenant or lessee of the Owner's Unit pursuant to Section 2.6(a).

Section 3.3. Offensive Conduct, Nuisance, Obstructions, Hazards or Drilling. The following activities are prohibited and shall not be performed on, upon or within the Project:

(a) Activities that are nuisances, or that cause unreasonable embarrassment, disturbance or annoyance to any residents of the Project, Owners, Board Members and/or Mutual agents, service providers and/or employees or that shall, in any way, interfere with residents' use and enjoyment of their Units, Exclusive Use Common Area and/or the Common Area and facilities thereon, provided, however, that the Board may decline to involve itself or the Mutual in disputes concerning adjacent Unit Owners if such dispute does not involve the Common Area or any other Owner or resident of the Project and if the Board determines that in view of the possible expenditure of time, effort and costs involved in attempting to resolve the dispute, it would not be in the best interests of the Mutual to become involved;

(b) Activities that are in violation of any governmental statute, ordinance, rule and/or regulation, including specifically the brandishing and/or discharging of firearms within the Project;

(c) Drilling, refining, quarrying or mining operations of any kind;

(d) Use of machinery or equipment of any kind, except such machinery or equipment as is usual or customary in connection with the use, maintenance or repair of a private residence or appurtenant structures within the Project.

(e) Activities that will obstruct the common corridors, entranceways, stairways, pedestrian walkways, or vehicular driveways located in or upon the Project or interfere with the free use thereof, except such obstruction as may reasonably be required in connection with repairs;

(f) Activities that impede, alter or otherwise interfere with the drainage patterns or facilities in, over, under, across and through the Project, including the drainage patterns and facilities from or through any Exclusive Use Common Area, without the prior written consent of the Board and all public authorities with jurisdiction;

(g) Activities or conditions that would induce, breed, or harbor infectious plant diseases, noxious

insects, rodents and/or vermin;

(h) Any excavation, improvement or work that in any way alters any Common Area or common facility from its existing state on the date such Common Area or Common Facility was originally constructed shall not be made or done except by the Mutual and, then, only in strict compliance with the provisions of the Governing Documents;

(j) The emission of unreasonable levels of exhaust fumes and/or noise and/or the parking or storage of dilapidated, unlicensed, non-operational and/or disabled vehicles; and

(k) Harassment, or physical or verbal abuse of the Mutual's contractors, employees, agents, or Mutual Manager, or any obstruction or interference with such persons while they are performing duties for the Mutual.

Without limiting any of the foregoing, no Owner or other resident shall permit noise, sound(s) or sight(s) that would unreasonably disturb another's enjoyment of his or her Unit and/or the Common Area.

Section 3.4. Signs. No signs or advertisement of any type shall be placed upon the General Common Area without the prior written consent of the Board. No commercial signs except "For Sale" or "For Lease" signs not over five (5) square feet; no noncommercial signs and posters greater than nine (9) square feet and no noncommercial flags or banners that are more than fifteen (15) square feet are permitted within the Project, unless such signs, posters or flags are not visible from outside the Unit or Exclusive Use Common Area.

Section 3.5. Antennas and Satellite Dishes. No owner shall construct, install and/or use and operate any radio and/or television antenna, satellite dish, other signal reception or transmission devices or related equipment within the Common Area except with the express written permission of the Board. No satellite dish or antenna greater than one meter (39.4 inches) in diameter shall be installed within any Unit or Exclusive Use Common Area so as to be visible at ground level from any adjacent Unit or Common Area. Unit Owners shall notify the Board of the installation of any other antenna, satellite dish or signal reception or transmission device (except those installed within the interior of the Residence) and shall comply with all Mutual Policies and Procedures regarding installation, safety and maintenance of such equipment. All such Mutual Policies and Procedures shall conform to the requirements of state and federal law.

Section 3.6. Use of Common Area. Subject to the provisions of this Declaration, use of the Common Area shall be in accordance with and subject to Policies and Procedures adopted by the Mutual. There shall be no obstruction of the General Common Area and nothing shall be stored therein without the consent of the Board. No landscaping shall be planted, maintained or removed from Common Area (other than Exclusive Use Common Area) except by the Mutual or with the written consent of the Mutual. No excavation, alteration or improvement on or to the Common Area shall be made except by the Mutual or with the written consent of the Mutual. No waste shall be committed in any portion of the Common Areas.

Section 3.7. Activities Affecting Insurance: Illegal Activities. Nothing shall be done or kept in any Unit or in any Common Area which will increase the rate of insurance on any Common Area without the approval of the Mutual. No Owner shall permit anything to be done or kept in his Unit or in any Common Area which will result in the cancellation of insurance on any Common Area or which would be in violation of any law. If by reason of the occupancy or use of a Unit by an Owner or his or her tenants, the rate of insurance for the Project shall be increased, the Owner shall become personally liable for the additional insurance premium.

Section 3.8. Animals. No animals of any kind shall be raised, bred, or kept in any Unit, or in any

Common Area, except that at least one dog, cat or other customary household pet may be kept in a Unit subject to the Policies and Procedures of the Mutual. No animal shall be kept, bred, or maintained for any commercial purpose. The Policies and Procedures may limit the number of pets which may be kept within a Unit and the size or breed of dogs which may be kept. The Board may require Dogs or other pets which exhibit unusually vicious or aggressive behavior to be permanently removed from the Development.

Section 3.9. Alterations and Improvements. There shall be no structural alteration, construction or removal of any building, fence or other structure in the Development (other than repairs or rebuilding pursuant to Article X hereof) without the approval of the Alterations Committee as set forth in Article VIII hereof. No building, fence or other structure shall be constructed upon any portion of any Common Area other than by the Mutual pursuant to this Declaration. Each Owner hereby waives any and all right to allow, approve, reject, or permit structural changes to any Common Area located within a Unit or a Common Area party wall located between two contiguous Units, each of which is owned by the same owner, and hereby delegates such right to the Alterations Committee referred to in Article VIII hereof. No other change or alteration to the interior of a unit which affects the waterproofing, structural soundness or noise transmission characteristics of any portion of the Common Area may be made by any Owner without the consent of the Alterations Committee pursuant to Article VIII of this Declaration. Such approval is also required for any change or modification to any Carport, including the construction or installation of free-standing storage cabinets.

Section 3.10. Vehicles. Except as permitted by the Policies and Procedures, no vehicles other than golf carts, passenger automobiles and station wagons/sports utility vehicles shall be parked or stored in any Common Area. No vehicle shall be repaired or rebuilt in any Common Area. Commercial vehicles (*i.e.* those with commercial plates and used primarily for business purposes) may not be parked within the Project except for repairs or deliveries to Units or move in/move out of Unit occupants. The Policies and Procedures may provide for towing of unauthorized or improperly parked vehicles from the Project at the owner's expense, so long as there is compliance with the California Vehicle Code.

Section 3.11. Termination of Mechanics' Lien Rights and Indemnification. No labor performed or materials furnished to and incorporated in a Unit with the consent or at the request of the Owner thereof, Owner's Family, lessees, tenants, or contract purchasers, or any of their agents, contractors, or subcontractors, shall be the basis for filing a lien against the Unit of any other Owner if said Owner has not expressly consented to or requested the same, or against the Common Area.

Each Owner shall indemnify and hold harmless each of the other Owners and the Mutual from and against all liability arising from the claim of any lien against the Unit of any other Owner or against the Common Area for construction performed, or for labor, materials, services, equipment, or other products incorporated into the Owner's Unit, at such Owner's request or with its consent.

The provisions of this section shall not apply to any labor performed or materials furnished at the request of the management agent or the Board. At the written request of any Owner, the Mutual shall enforce such indemnity by collecting from the Owner of the Unit on which the labor was performed or to which materials were furnished, through Special Individual Assessments against said Unit, the amount necessary to discharge any such lien, including all costs incident thereto.

Section 3.12. Variances. Upon application by any Owner, the Board of Directors shall be authorized and empowered to grant reasonable variances from the property use restrictions set forth in this Article III, if specific application of the restriction will, in the sole discretion of the Board, either cause an undue hardship to the affected Owner or fail to further or preserve the common plan and scheme of development contemplated by this Declaration. In considering and acting upon any request for a variance, the Board shall follow the procedures set forth in Article VIII for the granting of architectural variances.

Section 3.13. Enforcement of Property Use Restrictions.

(a) **Attempt to Obtain Voluntary Compliance.** The objective of this Declaration shall be to promote and seek voluntary compliance by Owners and other residents with the environmental standards and property use restrictions contained herein. Accordingly, in the event that the Mutual becomes aware of an architectural or property use infraction that does not necessitate immediate corrective action under Section 12.6 hereof, the Owner or Tenant responsible for the violation shall receive written notice thereof and shall be given a reasonable opportunity to comply voluntarily with the pertinent Governing Document provision(s). Such notice shall describe the noncomplying condition, request that the Owner or tenant correct the condition within a reasonable time specified in the notice, and advise the Owner or tenant of his or her appeal rights.

(b) **Board's Discretion Concerning Enforcement.** The Board shall have the discretion to decide the type of enforcement action which is appropriate for any violation of the restrictions contained in this Article III, taking into consideration the potential benefits to the Mutual (and/or its members) resulting from any such enforcement action as compared with the anticipated financial costs.

ARTICLE IV: THE MUTUAL.

Section 4.1. Management and Operation. The Mutual shall manage and operate the Project in accordance with applicable provisions of the Governing Documents and California Law, including law applicable to non-profit mutual benefit corporations and common interest developments.

Section 4.2. Membership in Mutual. Every record Owner of a Unit shall be a Member of the Mutual. The Owner(s) of a Unit shall hold jointly one membership in the Mutual for each Condominium owned. The membership shall be appurtenant to each Unit and may not be separated from ownership of the Unit to which it relates. The qualifications, rights and obligations of Members shall be as set forth in this Declaration and in the Bylaws.

Section 4.3. Membership in Golden Rain Foundation. Each natural person who is a Owner of a Unit or has been designated by the Owner to occupy the Unit, and for whom a membership fee in the Foundation has been paid shall be a member of the Foundation and shall comply with the Bylaws of the Foundation and the rules and regulations of the Foundation as they now exist or are from time-to-time adopted. No owner shall transfer any membership or interest in the Foundation except upon the transfer of the right to occupy the Unit to which it is appurtenant.

Section 4.4. Voting. Only Members shall be entitled to vote, and votes shall be cast for each Unit owned by said Member, as more particularly set forth in the Bylaws. Voting rights may be temporarily suspended as provided in Section 12.6, below and in the Bylaws.

Section 4.5. One Class of Membership. The Mutual shall have one class of membership and the rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents.

Section 4.6. Powers and Authority of the Mutual.

(a) **Powers Generally.** The Mutual shall have the responsibility of managing and maintaining the Common Areas and Common Facilities and shall discharge all duties and responsibilities imposed on the Mutual by the Governing Documents and applicable California law. In the discharge of such responsibilities and duties, the Mutual and its Board shall have all of the powers of a nonprofit mutual benefit corporation organized under the laws of the State of California, subject only to such limitations upon the exercise of such

powers as are expressly set forth in the Governing Documents.

The Mutual and its Board of Directors shall have the power to do any and all lawful things that may be authorized, required or permitted to be done under and by virtue of the Governing Documents, and to do and perform any and all acts that may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Mutual for the peace, health, comfort, safety or general welfare of the Owners. The specific powers of the Mutual and the limitations thereon shall be as set forth in this Declaration and Section 5.1 of the Bylaws.

(b) Mutual's Limited Right of Entry.

(1) Scope of Right. In the Board's discretion, the Mutual, and/or its agents/representative shall have the right, when necessary, to enter any Unit, including Exclusive Use Common Area(s), to perform the Mutual's obligations under this Declaration, including (i) exterior maintenance or repair obligations; (ii) obligations to enforce the architectural and land use restrictions of Article III and Article VIII hereof; (iii) any obligations with respect to construction, maintenance and repair of adjacent Common Areas, Common Facilities, utilities and/or other services; or (iv) to make necessary repairs that an Owner has failed to perform that, if left undone, will pose a threat to, or cause an unreasonable interference with, Mutual property or the Owners in common.

(2) Notice Requirement. The Mutual's rights of entry under this Subsection (b) shall be immediate in case of an emergency originating in or threatening the Unit where entry is required, or any adjoining Units or Common Area, and the Mutual's work may be performed under such circumstances whether or not the Owner or Owner's lessee is present. In all non-emergency situations, the Mutual or its agents shall furnish the Owner or Owner's lessee with at least twenty-four (24) hours written notice of the Mutual's intent to enter the Unit, specifying the purpose and scheduled time of such entry and shall make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the persons residing within the Unit.

(3) Transfer of Right. The Mutual's rights of entry under this Subsection (b) shall expressly include the right to transfer said rights of entry to others (including, but not limited to employees, contractors and/or service providers retained by the Mutual) by permit, license, easement, or otherwise, for the benefit of the Mutual and the Owners of Condominiums within the Project.

(c) Mutual as Attorney-in-Fact for Owners. Without limiting the generality of the foregoing, the Mutual is hereby irrevocably appointed as the attorney-in-fact for the Owners of each and every Unit to (i) manage, control and deal with the interest of such Owners in the Common Area so as to permit the Mutual to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder; (ii) deal with the Project upon its destruction or obsolescence as hereinafter provided; and (iii) deal with and handle insurance and insurance proceeds, as provided in Articles IX and X hereof, and condemnation and condemnation awards, as provided in Article XI hereof. The acceptance by any person or entity of any interest in any Unit shall constitute an appointment of the Mutual as the Owner's attorney-in-fact as provided above.

Section 4.7. Board of Directors. The affairs of the Mutual shall be managed by or under the direction of the Board. The number and qualifications of the Directors shall be as established in the Bylaws.

(a) Powers of the Board. The Board shall have all of the powers and duties set forth in the Governing Documents:

(1) Exclusive Power. Except as expressly otherwise provided herein, the powers and duties

of the Mutual that the Governing Documents do not reserve to Members shall be exclusively exercised and performed by the Board (or such Committees or officers as the Board may establish, elect or appoint pursuant to the provisions of the Bylaws). Any power to be exercised or duty to be performed by the Mutual shall not be exercised or performed by any Owner individually without the written consent of the Board.

(2) General Powers of the Board. Without limiting any powers of the Board conferred elsewhere in the Governing Documents, the Board shall have the following powers:

(i) To call meetings of the Members.

(ii) To appoint and remove at pleasure all officers, committees (including the Nominating and Alterations Committees), agents and employees of the Mutual, prescribe their duties, fix their compensation (subject to Section 4.7(c)), and require of them such security or fidelity bonds as it may deem expedient. Nothing contained in this Declaration shall be construed to prohibit the employment by the Mutual of any Member, Director or officer of the Mutual in any capacity whatsoever.

(iii) To establish, fix, levy, assess and collect assessments against the Owners of Condominiums within the Project and to enforce payment of such Assessments in accordance with Article V of this Declaration. Any Assessments levied by the Mutual on its Members shall be levied in accordance with and pursuant to the provisions of the Governing Documents.

(iv) To authorize and cause the Mutual, subject to Section 4.7, to: (1) enter into management contracts and contracts for the day-to-day operation of the Mutual and the discharge of its responsibilities and obligations; or (2) enter into lease, license or other agreements for the use of property or facilities not a part of the Common Area. No contract for professional management shall have a term of more than three (3) years and each such contract shall be subject to all the other provisions hereof and shall be terminable by either party without cause or payment of a termination fee on sixty (60) days written notice.

Any reference to the "term" of a contract as used in this subsection shall not include any option or automatic renewal or extension period so long as the term of the contract may not be renewed or extended if notice is given by the Mutual pursuant to provisions contained within the contract.

(v) To adopt, amend, and repeal Mutual Policies and Procedures, consistent with this Declaration and the requirements of California law, relating to use of the Common Area including Exclusive Use Common Area and the Units, the conduct of Owners, and their families, tenants, guests and invitees within the Project and such other matters as authorized by the Governing Documents. The Mutual Policies and Procedures shall be considered as part of the Governing Documents of the Mutual and may be enforced in the same manner as any other Governing Document. However, no Mutual Policy or Procedure shall restrict any rights of Owners or residents established by the other Governing Documents, and in the event of any conflict between a Mutual Policy or Procedure and any other Governing Document, the provisions of the other Governing Document shall control.

(vi) To delegate its powers to committees, officers, or employees of the Mutual.

(vii) To incur debt for the purpose of maintaining and improving the Common Area, and to encumber property and/or member assessments of the Mutual as security for the repayment of such debt.

(viii) To grant easements on, over, under, across, and through the Project for public utility and other purposes consistent with the provisions of this Declaration and the intended use of the Project as a condominium project.

(ix) Except as expressly otherwise provided herein, the Board shall have the exclusive right and obligation to manage and administer the Common Area and to contract for all goods, services, and insurance, payment for which is to be made from the assessments hereinafter provided.

(x) Open bank accounts on behalf of the Mutual and designate the signatories to such bank accounts.

(xi) Bring and defend actions on behalf of two or more Members or the Mutual to protect the interests of the Members or the Mutual, as such, as long as the action is pertinent to the operations of the Mutual, and to assess the Members for the cost of such litigation. However, the Board shall have the discretion to decide whether or not it is in the Mutual's best interest to pursue any such enforcement action, including taking into consideration the potential benefits to the Mutual (and/or its members) resulting from any such enforcement action as compared with the anticipated financial costs. Where the Board, in its discretion, determines that it is not in the Mutual's best interest to file an enforcement action, the Board shall notify, in writing, any Member(s) who have requested enforcement by the Mutual. Prior to filing litigation regarding any disciplinary action against a Member, the Board shall comply with the requirements set forth in Section 12.6.

(xii) Construct Capital Improvements within the Common Area, so long as such improvements do not exceed 5% of the gross operating expenses of the Mutual for the current year (including the reserve contribution). Capital Improvements exceeding 5% of the gross operating expenses must be approved by Members representing a majority of a quorum of the Members. Any special assessment to fund such Capital Improvement must be approved in accordance with Sections 5.3(b) and 5.7 of this Declaration. For purpose of this Section, "Capital Improvement" shall refer to any Improvement not existing at the time this Declaration is recorded or any modification to an existing Improvement which results in a significant change in appearance, design or function. A change to or addition of landscaping plants or material within the Common Area shall not be considered a Capital Improvement.

(3) No Active Business. Nothing contained in this Declaration, however, shall be construed to give the Board authority to conduct an active business for profit on behalf of the Mutual, all of the Owners, or any of them. The Board shall have no such power or authority. However, this Subsection (iii) shall not prohibit the Mutual and/or its Board from acquiring, owning, leasing and/or selling any Unit within the Project.

(b) Duties of the Board. The Board shall:

(1) Mutual Duties. Cause all duties imposed on the Mutual by Governing Documents to be properly performed.

(2) Records. Cause a complete record of all its acts and corporate affairs to be kept, and to prepare budgets and financial statements for the Mutual.

(3) Supervise. Supervise all officers, agents and employees of the Mutual and to see that their duties are properly performed.

(4) Assessments. Fix, levy and collect assessments pursuant to the provisions of this Declaration and California law.

(5) Insurance. Contract for casualty, liability and other insurance, sureties and/or bonds (including indemnity bonds) on behalf of the Mutual with such coverages and in such amounts as required by this Declaration and as deemed necessary by the Board.

(6) Vacancies. Fill a vacancy or vacancies on the Board except for a vacancy created by the removal of a Board Member by a Member recall.

(7) Discharge of Liens. Pay any amount necessary to Bond or discharge any claim that may be or become a lien or encumbrance levied against the Project as a whole or any part thereof that constitutes a lien against the Common Area, rather than merely against the interest therein of particular Owners; provided, however, that where one or more Owners are responsible for the existence of such lien, they shall jointly and severally be liable for the cost of discharging it, and any costs incurred by the Mutual by reason of said lien or liens shall be assessed against each such Owner and its Condominium as provided in Section 5.4. No decision resulting in such liability or assessment shall be reached before providing the Owner or Owners with notice and hearing satisfying the requirements of Section 12.6 of this Declaration.

(8) Enforcement. Commence and maintain, in the name of the Mutual and on its behalf, or in the name and on behalf of any Owner who consents thereto, actions for damages arising from, or to restrain and enjoin, or to take any reasonable action necessary to prevent, any actual or threatened violation of the provisions of the Governing Documents, or to enforce, by mandatory injunction or otherwise, the provisions of the foregoing. However, the Board shall have the discretion to decide whether or not it is in the Mutual's best interest to pursue any such enforcement action, including taking into consideration the potential benefits to the Mutual (and/or its members) resulting from any such enforcement action as compared with the anticipated financial costs. Where the Board, in its discretion, determines that it is not in the Mutual's best interest to file an enforcement action, the Board shall notify, in writing, any Member(s) who have requested enforcement by the Mutual. In addition, the Board may instead of, or in addition to, a legal action described herein impose any additional remedy for violation of the Governing Documents described in Section 12.6 of this Declaration.

Notwithstanding anything to the contrary herein contained, neither the Board nor the Mutual shall have the power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of its Unit, including access thereto over and across the Common Area, except when such loss or forfeiture is the result of (A) a judgment of a court, (B) a decision arising out of arbitration, (C) on account of a foreclosure (judicial or under the power of sale herein granted) for failure of the Owner to pay the assessments levied pursuant to the provisions hereof.

(9) Operating Requirements. Obtain any other material, supplies, furniture, property, labor, services, maintenance, repairs, construction, reconstruction, structural alterations, insurance, taxes, or assessments that the Mutual is required to secure or pay by law, local requirement, or pursuant to the terms of this Declaration, or as is necessary for the operation of the Project, or for the enforcement of this Declaration; provided, however, that if any such materials, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments are provided for particular Units, the costs thereof shall, as is reasonable, be assessed to such Units and the Owners thereof as provided in Section 6.3 or as provided in the Bylaws.

Section 4.8. Limitations on Powers of The Mutual. Neither the Board nor the Mutual shall have the power to take, and both are hereby expressly prohibited from taking, any of the following actions without the vote or written assent of a majority of the voting power of the Mutual's Members:

(a) Contracts With Third Parties. Entering into a contract with a third person to furnish goods or services for the Common Area, the Units or the Mutual for a term longer than one (1) year with the following exceptions:

(1) A management contract as long as such contract contains provisions that allow the Mutual to terminate the management services under the contract upon a notice period that does not exceed sixty (60)

days.

(2) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission (and contracts with utility districts, sanitary services providers, energy providers, telephone service providers and/or cable or satellite dish or comparable service provider); provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate.

(3) Prepaid casualty and/or liability insurance policies not to exceed three (3) years duration provided that the policy permits for short-rate cancellation by the insured.

(4) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services not to exceed five (5) years duration.

For purposes of this Subsection (a) of Section 4.7 the one (1) year maximum "term" of a contract does not include any option period(s), renewal period(s) and/or extension(s) of time to the contract term so long as the contract contains provisions allowing the Mutual to non-renew and/or cancel the contract upon the expiration of said term.

(b) **Sale of Mutual Property.** Selling, during any fiscal year, property of the Mutual having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Mutual for that fiscal year.

(c) **Compensation to Officers or Directors.** Paying compensation to Directors or officers of the Mutual for services performed, except that the Board may authorize reimbursement to a Director or officer for expenses incurred in carrying on the business of the Mutual.

(d) **Vacancies on the Board.** Filling a vacancy on the Board caused by the removal of a Director by the Members.

Section 4.9. Nonliability of Officials. To the fullest extent permitted by law, neither a current nor a past Director, officer, Committee of the Mutual or Member of a Committee of the Mutual, nor the Board (collectively and individually referred to as the "Released Party"), shall be liable to any Member, Owner, the Mutual or any other party for any damage, loss, claim, liability or prejudice suffered or claimed on account of any decision, approval, disapproval, course of action, act, inaction, omission, error, negligence or the like made in good faith and within which such person or entity reasonably believed to be the scope of its duties.

(a) **Claims Regarding Breach of Duty.** No Released Party shall be personally liable to any of the Mutual's Members, or to any other person, for any error or omission in the discharge of their duties and responsibilities or for their failure to provide any service required hereunder or under the Bylaws, provided that such Released Party has, upon the basis of such information as may be possessed by the Released Party, acted in good faith, in a manner that such person believes to be in the best interests of the Mutual and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Without limiting the generality of the foregoing, this standard of care and limitation of liability shall extend to such matters as the establishment of the Mutual's annual financial budget, the funding of Mutual capital replacement and reserve accounts, repair and maintenance of Common Areas and Common Facilities and enforcement of the Governing Documents.

(b) **Other Claims Involving Tortious Acts and Property Damage.** No person who suffers

bodily injury (including, without limitation, emotional distress or wrongful death) as a result of the tortious act or omission of a volunteer Member of the Board or volunteer officer of the Mutual shall recover damages from such Board Member or officer if all of the following conditions are satisfied:

- (1) The Board Member or officer is an Owner of no more than two Units;
- (2) The act or omission was performed within the scope of the volunteer Board member's or officer's Mutual duties;
- (3) The act or omission was performed in good faith;
- (4) The act or omission was not willful, wanton, or grossly negligent;
- (5) The Mutual maintained and had in effect at the time the act or omission occurred and at the time a claim was made one or more policies of insurance that include coverage for general liability of the Mutual and individual liability of the officers and directors of the Mutual for negligent acts or omissions in their official capacities, with minimum coverage for both types of insurance equal to the amounts specified in Civil Code Section 5800 or comparable superseding statute.

The payment of actual expenses incurred by a Board Member or officer in the execution of that person's Mutual duties shall not affect that person's status as a volunteer Board Member or officer for the purposes of this section. However, any director or officer who receives direct or indirect compensation from a financial institution that acquired a Unit within the Properties as the result of a judicial or nonjudicial foreclosure proceeding is not a volunteer.

The provisions of this Subsection (b) are intended to reflect the protections accorded to volunteer directors and officers of community Mutuels under Civil Code Section 5800. In the event that Civil Code section is amended or superseded by another, similar provision of the California statutes, this Subsection (b) shall be deemed amended, without the necessity of further Member approval, to correspond to the amended or successor code provision.

(c) Indemnification of Directors, Officers, Employees and/or Agents. The indemnification rights (including the right to advancement of expenses) of Directors, Officers, employees and/or agents shall be governed by the provisions of Corporation Code Section 7237 or comparable superseding statute.

As set forth in Article IX hereof, the Mutual has the right to purchase and maintain insurance on behalf of its Directors, Officers, employees and/or agents against liability asserted against or incurred by any Director, Officer, employee and/or agent in its capacity or status as such.

ARTICLE V: ASSESSMENTS.

Section 5.1. Assessments Generally.

(a) Covenant to Pay Assessments. Each Owner of one (1) or more Units, by acceptance of a deed or other conveyance of such Unit (whether or not it shall be so expressed in such deed or conveyance), covenants and agrees to pay to the Mutual (i) Regular Assessments, (ii) Special Assessments, and (iii) Special Individual Assessments levied by the Mutual as hereinafter provided, 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 charges and for the enforcement of the liens hereinafter provided for. Each such Assessment shall be

established and collected as hereinafter provided.

(b) Extent of Owner's Personal Obligation for Assessments.

(1) Obligation Runs With the Land. The obligation to pay Assessments and 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 Unit within the Project shall, in turn, become liable to pay all Assessments and charges assessed during the time he or she is record Owner of such Unit.

(2) Personal Debt of Owner. All Assessments permitted or required herein, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a separate, distinct and personal debt and a personal obligation of the Person who was the Owner of the Unit at the time the Assessment was levied. For purposes of this subsection, for Special Assessments payable in installments, the date the assessment is levied shall be deemed to be each date the installment payment is due.

(3) Liability of Subsequent Owner. Any Grantee and/or Owner who acquires title to a Unit (whether at judicial sale, trustee's sale or otherwise) shall be personally liable only for Assessments attributable to the Unit so purchased that become due and payable after the date of such sale, and shall not be personally liable for delinquent Assessments of prior Owners unless the new Owner expressly assumes the personal liability.

(4) Liability of Prior Owner. After a record Owner transfers, of record, any Unit he or she owns, he or she shall not be liable for any Assessments levied after the transfer with respect to that Unit. Any unpaid Assessment of a previous Owner shall remain the debt of such previous Owner against whom assessed and the previous Owner shall remain personally liable. A contract seller of any Unit shall continue to be liable for all Assessments and charges until a conveyance by deed of such Unit is recorded in the Office of the County Recorder of Contra Costa County.

(c) Authority of Board to Levy Assessments. The Board shall have the power, duty and authority to levy Regular and Special Assessments sufficient to meet the Mutual's obligations under the Governing Documents and applicable law. The Board shall not levy or collect an Assessment or fee that exceeds the amount necessary to defray the costs for which it is levied. The Board shall also have the power and authority to levy Special Individual Assessments against particular Owners and their Unit(s).

(d) Authority of Board to Record Assessment Lien. The Board shall have authority to prepare and record a lien against any Unit for which assessments are delinquent, and to foreclose upon such lien pursuant to Section 5.9 of this Declaration.

(e) No Avoidance of Assessment Obligations. No Owner may exempt himself or herself from personal liability for Assessments duly levied by the Mutual, nor release the Unit or other property owned by him or her from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area or any facilities thereon or by abandonment or non-use of his or her Unit or any other portion of the Project.

(f) Offsets. All Assessments levied by the Board shall be payable in the full amount specified, including any additional charges imposed as provided for by the Governing Documents. No offsets against any such Assessment shall be permitted for any reason, including, without limitation, a claim that the Mutual is not properly exercising its duties and powers as provided in the Governing Documents.

Section 5.2. Regular Assessments.

(a) Purpose of Regular Assessments. All Regular Assessments levied by the Mutual shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Project and, in particular, for the maintenance, operation and improvement of the Units, Common Area, and any real or personal property in which the Mutual holds an interest.

(b) Annual Budget; Regular Assessments & Board Authority. In accord with the timing provisions of Civil Code Section 5300 (or comparable superseding statute), if any, the Board shall estimate the total amount required to fund the Mutual's anticipated Common Expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions to the Common Facilities), prepare and then distribute to all Mutual Members a budget satisfying the requirements of the Bylaws. If the Board fails to distribute the budget for any fiscal year within the time period provided for in this Section, the Board shall not be permitted to increase Regular Assessments for that fiscal year unless the Board first obtains the approval of Owners.

(c) Board or Membership Approval Requirements. The total annual expenses estimated in the Mutual's budget (less projected income from sources other than assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year, provided that, except as provided in Subsections (d) and (f) below, the Board of Directors may not impose a total aggregate Regular Assessment that is more than twenty percent (20%) greater than the total aggregate Regular Assessment for the Mutual's immediately preceding fiscal year without the approval of the Members (*See* Section 5.7, below). For purposes of this Subsection (c), the phrase "total aggregate Regular Assessment" means the amount of Regular Assessment assessed to and due from all Units for that particular year.

(d) Assessments to Address Emergency Situations. The requirement of a membership vote to approve Regular Assessment increases in excess of twenty percent (20%) of the previous year's Regular Assessment shall not apply to Assessment increases necessary to address emergency situations. For purposes of this Subsection (d), an emergency situation is any of the following:

- (1) An extraordinary expense required by an order of a court.
- (2) An extraordinary expense necessary to repair or maintain the Common Areas, Common Facilities or any portion of the separate interests that the Mutual is obligated to maintain where a threat to personal safety is discovered.
- (3) An extraordinary expense necessary to repair or maintain the Common Areas, Common Facilities or any portion of the separate interests that the Mutual is obligated to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to Subsection (a), above, provided that, prior to the imposition or collection of an assessment under this Subsection (d)(iii), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The Board's resolution shall be distributed to the Members together with the notice of assessment.

(e) Allocation of Regular Assessment. The total estimated Common Expenses, determined in accordance with Subsection (b), above, shall be equally divided and then allocated among, assessed against, and charged to each Unit .

(f) Failure to Make Estimate. If, for any reason, the Board of Directors fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to Section 5.3 for that year, shall be automatically

assessed against each Owner and his or her Condominium on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic Assessment shall be payable on the regular payment dates established by the Mutual.

The failure of the Board to fix Regular Assessments hereunder before the expiration of any year, for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration or a release of the Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year. Failure to provide a copy of the budget to any Owner shall not affect the validity of assessments based thereon so long as that Owner receives reasonable notice before the Mutual commences any action or proceeding to enforce collection thereof.

(g) Assessment Due Date, Installment Payments & Delinquency. The Regular Assessment levied against each Owner and his or her Unit for the current fiscal year shall be divided into twelve (12) equal monthly installments so long as the respective Owner is not in default (*i.e.*, is current on all assessments). Each monthly installment is due and payable on the first day of each month or in such other manner and/or on such other date or dates as may be established from time to time by the Mutual's Board of Directors.

Installments of Regular Assessments shall be delinquent if not actually received by the Mutual or its designated agent by the fifteenth (15th) day of the month in which the Assessment is due (if on the weekend or holiday, then on the next business day). In the event of a default in the payment of any installment, the Mutual may pursue the remedies set forth in Section 5.9, below, as to said delinquency.

(h) Mailing Notice of Increased Assessment. The Board of Directors shall mail to each Owner at the street address of the Owner's Condominium, or at such other address as the Owner may designate in writing to the Mutual, a notice of any increase in the amount of the Regular Assessment for the next succeeding fiscal year no less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due.

Section 5.3. Special Assessments.

(a) Purpose of Special Assessments. Subject to the membership approval requirements set forth in Subsection (b), below, the Board of Directors shall have the authority to levy Special Assessments against the Owners and their Condominiums for the following purposes:

(1) Insufficient Regular Assessment. If, at any time, the Regular Assessment for any fiscal year is insufficient due to extraordinary expenses not contemplated in the budget prepared for that fiscal year, then the Board of Directors shall levy and collect a Special Assessment for the purpose of defraying, in whole or in part, any deficit that the Mutual may incur in the performance of its duties and the discharge of its obligations under the Governing Documents. However, the Board's assessment authority pursuant to this subsection shall be subject to the membership approval requirement set forth in Section 5.3(b) below.

(2) Capital Improvements. Pursuant to Section 6.5, the Board may also levy Special Assessments for additional capital improvements within the Common Area (*i.e.*, improvements not in existence on the date of this Declaration that are unrelated to repairs for damage to, or destruction of, the existing Common Facilities). The Special Assessment power conferred hereunder is not intended to diminish the Board's obligation to plan and budget for normal maintenance, replacement, and repair of the Common Area or existing Common Facilities through Regular Assessments (including the funding of reasonable reserves) and to maintain adequate insurance on the Common Area and existing Common Facilities in accordance with Article IX of this Declaration.

(3) Reimbursement of Reserve Account(s). A Special Assessment may be levied to reimburse any Reserve Account for funds borrowed from it to meet current operating expenses or to deal with emergencies.

(4) Repair of Defects or Damage. A Special Assessment may be levied to repair damage or defects discovered in the Common Area or Common Facilities or within those portions of a Unit that are the responsibility of the Mutual to maintain and repair, where the reserve funds are inadequate to pay for such repairs, or where the affected component is not a component included in the reserve funding program.

(b) Membership Approval. No Special Assessments described in Section 5.3(a) hereof that in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Mutual for the fiscal year in which the Special Assessment(s) is levied, or that are subject to the restriction of the last sentence of Section 5.2(b) above shall be made without the vote or written approval of the Owners pursuant to Section 5.7 below. This Owner approval requirement shall not apply to any Special Assessment levied to address "emergency situations" as defined in Section 5.2(d).

(c) Allocation and Payment of Special Assessments. When levied by the Board or approved by the Members as provided above, the Special Assessment shall be divided among, assessed against and charged to each Owner and his or her Condominium in the same manner prescribed for the allocation of Regular Assessments pursuant to Section 5.2(e), above. Notice of the Special Assessment so levied shall be mailed to each Owner.

(d) Due Date for Special Assessments. Unless the time for payment is extended by the Board, payment of all Special Assessments shall be due thirty (30) days after the Board gives the Owners written notice thereof or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to the Special Assessment.

(e) Installment Payments of Special Assessments. The Board may, in its discretion, prorate the amount of any permitted Special Assessment over a period of months. The monthly prorated amount of any Special Assessment shall be due and payable at the same time as the Regular Assessment monthly installments. Installments of Special Assessments shall be delinquent if not actually received by the Mutual or its designated agent by the fifteenth (15th) day of the month in which the Special Assessment installment is due (if on a weekend or holiday, then on the next business day). In the event of a default in the payment of any Special Assessment installment, the Mutual may pursue the remedies set forth in Section 5.9, below, as to said delinquency and the Board in its discretion may declare the entire amount of the Special Assessment immediately due and payable.

Section 5.4. Special Individual Assessments.

(a) Circumstances Giving Rise to Special Individual Assessments. In addition to the Special Assessments levied against all Owners in accordance with Section 5.3, above, the Board of Directors may impose Special Individual Assessments against an Owner in any of the circumstances described in Subsections (1) through (5), below or as otherwise provided in this Declaration or the Governing Documents, provided that no Special Individual Assessments may be imposed against an Owner pursuant to this Section 5.4 until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Section 12.6 hereof, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Mutual's Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Special Individual Assessments include the following:

(1) Damage to Common Area or Common Facilities. In the event that any damage to, or destruction of, any portion of the Common Area or the Common Facilities, including any portion of a Unit

that the Mutual is obligated to repair and maintain is caused by the willful misconduct and/or negligent act or omission of any Owner, any Member of Owner's Family, or any of Owner's tenants, lessees, guests, contract purchasers, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses, including but not limited to any costs or expenses incurred in deterring, apprehending and/or identifying those persons causing damage, incurred in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(2) Expenses Incurred in Gaining Member Compliance. In the event that the Mutual incurs any costs or expenses, to accomplish (A) the payment of delinquent Assessments, (B) any repair, maintenance or replacement to any portion of the Project that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion, or (C) to otherwise bring the Owner and/or his or her Condominium into compliance with any provision of the Governing Documents, the amount incurred by the Mutual (including reasonable fines and penalties duly imposed hereunder, title company fees, accounting fees, court costs and reasonable attorneys' fees) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

As long as Civil Code Section 5725 (or comparable superseding statutes) places restrictions upon the Mutual's foreclosure powers, any lien that is based upon one or more Special Individual Assessment imposed by the Board as a disciplinary measure (*i.e.*, fines or penalties imposed under Article XII) can only be enforceable by the sale of said Condominium pursuant to judicial foreclosure. All other liens for assessments under this Section 5.4 may be enforceable by the sale of said Condominium under nonjudicial foreclosure by power of sale pursuant to Civil Code Sections 2924, 2924b and/or 2924c or comparable superseding statute(s), subject to the conditions and procedural requirements of Section 5.9 below.

(3) Required Maintenance on Condominiums. As more particularly provided in Section 4.5(b) and 6.3(b) (and without limiting the generality of those subsections), if the Board, in its discretion, determines that any Condominium is maintained so as to become a nuisance, fire or safety hazard for any reason, including without limitation, the accumulation of trash, junk, or improper weed or vegetation control, the Mutual shall have the right to enter said Condominium, correct the offensive or hazardous condition and recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner.

(4) Diminution in Insurance Proceeds. As more particularly provided in Section 9.5, the Mutual shall levy a Special Individual Assessment for the amount of the loss in insurance proceeds against any Owner who, in violation of this Declaration or other Governing Documents, caused any diminution in the insurance proceeds otherwise payable to the Mutual due to the Owner's individual casualty insurance.

(5) Increase in Insurance Burden. The Mutual shall have the authority to levy a Special Individual Assessment for the amount of the increased insurance premium against any Owner who, in violation of the Governing Documents, caused any increase in the rate of insurance paid by the Mutual to reimburse the Mutual for any such increase in the rate of insurance.

(b) Levy of Special Individual Assessment and Payment. Once a Special Individual Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed, in Section 5.4(a), notice thereof shall be mailed to the affected Owner and the Special Individual Assessment shall thereafter be due as a separate debt of the Owner payable in full to the Mutual within thirty (30) days after the mailing of notice of the Assessment.

Installments of Special Individual Assessments shall be delinquent if not actually received by the Mutual or its designated agent by the forty-fifth (45th) day after mailing of notice of the Assessment. In the

event of a default in the payment of any Special Individual Assessment, the Mutual may declare that Owner's Special Individual Assessment to be in default and pursue the remedies set forth in Section 5.9, below, as to said delinquency.

Section 5.5. Reasonableness of Assessments. Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment, and to constitute a separate, distinct and personal obligation (with respect to which a separate lien may be created hereby) of the Owner of the Condominium against which the Assessment is imposed that shall be binding on the Owner's heirs, successors and assigns, provided that the personal obligation of each Owner for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 5.6. Exemption of Certain Parts of the Project From Assessments. The following real property subject to this Declaration shall be exempt from the Assessments and the lien thereof provided herein:

- (a) Any portion of the Project dedicated and accepted by a local public authority;
- (b) The Common Area and Common Facilities; and
- (c) Any Condominium owned by the Mutual.

Section 5.7. Notice and Procedure for Member Approval. In the event that Member approval is required in connection with any increase or imposition of Assessments pursuant to Sections 5.2 and/or 5.3, approval of the requisite percentage of the Members shall be obtained by the written ballot election procedure specified in Section 3.4 of the Bylaws and the Mutual Policies and Procedures. The approval of a majority of a quorum of the Members shall be required for approval of any Regular Assessment increase or Special Assessment requiring Member approval. The quorum required for such membership action shall be the percentage required by the Bylaws.

Section 5.8. Maintenance of Assessment Funds.

(a) **Bank Accounts.** All sums received or collected by the Mutual from Assessments, together with any interest or other charges thereon, shall be promptly deposited in two (2) or more insured checking, savings or money market accounts in a bank, savings and loan Mutual or other financial institution selected by the Board of Directors that has offices located within the United States of America, which accounts shall be clearly designated as either an "operating" or "reserve" account.

There shall be established and maintained a cash deposit account into which shall be deposited the operating portion of all Assessments. Disbursements from such account shall be for the general operation of the Mutual including, but not limited to, wages, repairs, betterments, maintenance, and other operating expenses of the Project. The Board shall maintain any other accounts it shall deem necessary to carry out its purposes, including (at minimum) a reserve account for replacement of capital improvements as set forth in this Article V.

In addition, the Board shall be entitled to make prudent investment of reserve funds in insured certificates of deposit, money market funds or similar investments consistent with the investment standards normally observed by trustees.

The Board, and such officers or agents of the Mutual as the Board shall designate, shall have exclusive control of said account(s) and investments and shall be responsible to the Owners for the maintenance at all times of accurate records thereof.

To preclude a multiplicity of bank accounts, the proceeds of all Assessments may be commingled in one or more accounts and need not be deposited in separate accounts so long as the separate accounting records described herein are maintained. Any interest received on such deposits shall be credited proportionately to the balances of the various Assessment fund accounts maintained on the books of the Mutual as provided in Subsection (b), below.

(b) Separate Accounts & Commingling of Funds. Except as provided below, the proceeds of each Assessment shall be used only for the purpose for which such Assessment was made, and such funds shall be received and held in trust by the Mutual for such purpose. Notwithstanding the foregoing, the Board, in its discretion, may make appropriate adjustments among the various line items in the Board's approved general operating budget if the Board determines that it is prudent and in the best interest of the Mutual and its Members to make such adjustments. If the proceeds of any Special Assessment exceed the amount required to accomplish the purpose for which such Assessment was levied, such surplus may, in the Board's discretion, be returned proportionately to the contributors thereof, reallocated among the Mutual's reserve accounts if any such account is, in the Board's opinion, underfunded or credited proportionately on account of the Owners' future Regular Assessment obligations.

For purposes of accounting, but without requiring any physical segregation of assets, the Mutual shall maintain a separate accounting of all funds received by it in payment of each Assessment and of all disbursements made therefrom, provided that receipts and disbursements of Special Assessments made pursuant to Section 5.3 shall be accounted for together with the receipts and disbursements of Regular Assessments.

Unless the Mutual is exempt from federal or state taxes, all sums allocated to capital replacement funds shall be accounted for as contributions to the capital of the Mutual and as trust funds segregated from the regular income of the Mutual or in any other manner authorized by law or regulations of the Internal Revenue Service and the California Franchise Tax Board that will prevent such funds from being taxed as income of the Mutual.

(c) Checks. All checks (or other demands for payments of Mutual money) and/or notes of the Mutual shall be signed by the President or by such other Directors and/or Officers or such other person or persons as the Board of Directors may from time to time designate. Notwithstanding the foregoing, any withdrawal of funds from Mutual reserve accounts shall require the minimum signature requirements of Civil Code Section 5510 (*i.e.*, two Directors or an Officer (who is not a Director) and a Director).

Section 5.9. Collection of Assessments; Enforcement of Liens.

(a) Delinquent Assessments. If any payment of a Regular or Special Assessment (installment or lump sum) or any payment of a Special Individual Assessment assessed to any Owner is not actually received by the Mutual or its designated agent within fifteen (15) days after the same becomes due, such payment shall be delinquent and the amount thereof may, at the Board's election, bear interest at the maximum rate allowed by law beginning thirty (30) days after the due date until the same is paid. In addition to the accrual of interest, the Board of Directors is authorized and empowered to impose a late fee of \$10 or 10% of the delinquent assessment, whichever is greater, on any delinquent assessments.

(b) Effect of Nonpayment of Assessments.

(1) Creation and Imposition of Liens for Delinquent Assessments. The amount of any delinquent Regular, Special or Special Individual Assessment together with any late charges, interest, costs and/or reasonable attorneys' fees attributable thereto or incurred in the collection thereof, shall become a lien upon the Unit of the Owner so assessed from and after the time the Mutual causes to be recorded with the

Contra Costa County Recorder a Notice of Delinquent Assessment in conformance with Civil Code Section 5675 or comparable superseding statute. Each default shall constitute a separate basis for a lien. Upon the Mutual's receipt of payment of the sums specified in the Notice of Delinquent Assessment, the Mutual shall cause to be recorded in the Office of the County Recorder of the County of Contra Costa, State of California, a Notice of Satisfaction and Release of Lien.

(2) Partial Payment of Assessments. Subject to the limitations imposed by Civil Code Section 5655 or comparable superseding statute, if any, any partial payments the Mutual receives will be applied as specified in the Mutual's Delinquent Assessment Collection Policy and/or other Mutual Policies and Procedures.

(3) Remedies Available to the Mutual to Collect Assessments. In the event of default in payment of any assessment, the Mutual may commence any procedure for collection upon its own decision. In addition to any other remedies herein or by law provided, the Mutual may enforce each such obligation as follows: The Mutual may initiate a legal action against the Owner personally obligated to pay the delinquent Assessment, foreclose its lien against the Owner's Unit or accept a deed in lieu of foreclosure. Foreclosure by the Mutual of its lien may be by judicial foreclosure or by nonjudicial foreclosure.

However, so long as the provisions of Civil Code Section 5720(b) or a comparable superseding statute limiting the Mutual's foreclosure rights are in effect, judicial or nonjudicial foreclosure shall only be available to collect delinquent assessments in excess of \$1,800 exclusive of any accelerated assessments, late charges, fees and costs of collection, attorneys' fees or interest (or such other minimum amount as may be specified by statute) or if the assessments are more than 12 months delinquent. The Mutual shall, in collecting any delinquent assessment, comply with the requirements for internal dispute resolution and alternative dispute resolution set forth in the Governing Documents or California law. If the statutes imposing these restrictions on the foreclosure rights of the Mutual are amended or repealed, these restrictions shall be deemed to be amended or repealed in the same manner, without a vote of the Members.

(4) Nonjudicial Foreclosure. Nonjudicial foreclosure shall be commenced by the Mutual in compliance with California law. (*See* Civil Code Section 2924c, or comparable superseding statute). Each of the Owners, by mere acceptance of a deed to a Unit, gives the Mutual the power to appoint a trustee and attorney-in-fact by special power of attorney to enforce and to foreclose such lien by private power of sale as provided in Division Third, Part 4, Title 14, Chapter 1, Article 1, Sections 2920 et seq. of the Civil Code of the State of California and further grants to the Mutual the authority and power to sell the Unit of such defaulting Owner, or any part thereof to satisfy said lien, for lawful money of the United States to the highest bidder. The Mutual shall have the rights conferred by California Civil Code Section 2934a to assign its rights and obligations as trustee in any nonjudicial foreclosure proceedings to the same extent as a trustee designated under a deed of trust and for purposes of said Section 2934a, the Mutual shall be deemed to be the sole beneficiary of the delinquent Assessment obligation. Furthermore, in lieu of an assignment of trusteeship, the Mutual shall be entitled to employ the services of a title insurance company or other responsible company authorized to serve as a trustee in nonjudicial foreclosure proceedings to act as an agent on behalf of the Mutual in commencing and prosecuting any nonjudicial foreclosure hereunder.

(5) Judicial Foreclosure. In the event foreclosure is by an action in Superior Court to obtain a court order authorizing foreclosure, reasonable costs, including attorneys' fees, shall be allowed.

(6) Actions for Money Judgment. In the event of a default in payment of any Assessment, the Mutual, in its name but acting for and on behalf of all other Owners, may initiate legal action, in addition to any other remedy provided herein or by law, to recover a money judgment or judgments for unpaid Assessments, costs and attorneys' fees without foreclosure or waiver of the lien securing same.

(c) **Payment Plans.** The Board may, but is not required to adopt rules or policies (which shall become part of the Mutual Policies and Procedures) permitting an owner to make installment payments on any delinquent assessments, accelerated assessments, late charges, fees and costs of collection, attorney's fees and/or interest, subject to reasonable terms and conditions, including payment of additional administrative costs for administering such a payment plan.

Section 5.10. Transfer of Unit by Sale or Foreclosure. The following shall govern the Mutual's rights to enforce its Assessment collection remedies following the sale or foreclosure of a Unit.

(a) **Assessment Liens Recorded Prior to Transfer.** Except as provided in Subsection (b), below, the sale or transfer of any Unit shall not affect any Assessment lien duly recorded with respect to that Unit before the sale or transfer, and the Mutual can continue to foreclose its lien in spite of the change in ownership.

(b) **Foreclosure by Holder of Prior Encumbrance.** The Mutual's assessment lien shall be extinguished as to all delinquent sums, late charges, interest, and costs of collection incurred before the sale or transfer of a Unit under a foreclosure or exercise of a power of sale by the holder of a prior encumbrance (but not under a deed-in-lieu of foreclosure). A "prior encumbrance" means any First Mortgage or other mortgage or lien recorded before the Mutual's Notice of Delinquent Assessment is recorded.

(c) **Liability of New Owner for Future Assessments.** No sale or transfer of a Unit as the result of foreclosure, exercise of a power of sale, or otherwise, shall relieve the new Owner of that Unit (whether it be the former beneficiary of the First Mortgage or other prior encumbrance, or a third party acquiring an interest in the Unit) from liability for any assessments thereafter becoming due or from the lien thereof.

(d) **Personal Liability of Prior Owner for Assessments.** No sale or transfer of a Unit as the result of foreclosure, exercise of a power of sale, or otherwise, shall affect the Mutual's right to maintain an action against the foreclosed previous Owner of the Unit personally to collect the delinquent assessments, late charges, interest, and associated costs of collection incurred by that prior Owner prior to the sale or transfer.

Section 5.11. Priorities. Except as otherwise provided by law, the Lien securing each of the Assessments provided for under this Article V shall have priority, as of the date of recording of the Notice of Delinquent Assessment, over all other liens and encumbrances applicable to the Unit, except (a) all taxes, bonds, Assessments and other levies that, by law, would be superior thereto; (b) any lien or encumbrance recorded prior to the recording of the Notice of Delinquent Assessment; or (c) the lien or charge of any First Mortgage of record made in good faith and for value, provided that such subordination shall apply only to the Assessments that have become due and payable prior to the transfer of such property pursuant to the exercise of a power of sale or a judicial foreclosure involving a default under such First Mortgage.

Section 5.12. Estoppel Certificate. A certificate executed by any two (2) members of the Board setting forth the amount of any due and unpaid assessments with respect to a Unit (or the fact that all assessments due are paid, if such is the case) shall be conclusive against the Board, the Mutual, and/or the Owners in favor of any and all persons who rely thereon in good faith. Any Owner shall be entitled to such a certificate within ten (10) days after demand therefor and upon payment of a reasonable fee not to exceed the greatest amount charged for a loan statement of condition by a major bank with headquarters in San Francisco, California.

Section 5.13. Unallocated Taxes. In the event that any taxes are assessed against the Common Area, or the personal property of the Mutual, rather than being assessed to the Units, such taxes shall be included in the Regular Assessments imposed pursuant to Section 5.2 and, if necessary, a Special Assessment may be

levied against the Units in an amount equal to such taxes to be paid in two installments, thirty (30) days prior to the due date of each tax installment.

Section 5.14. Assignment of Rents. Each Owner does hereby presently assign to the Mutual, absolutely and regardless of possession of the property, all rents and other monies now due or hereafter to become due under any lease or agreement or otherwise for the use or occupation of any or all parts of any Unit owned by the Owner, now existing or hereafter made for the purpose of collecting all Assessments due the Mutual pursuant to this Declaration that are in default. The Mutual hereby confers on each Owner the authority to collect and retain the rents and other monies derived from any such lease or agreement as they become due and payable. Upon Owner's default, the right to collect and retain rents shall be deemed revoked, and the Mutual, after providing written notice to the defaulting Owner may, in its discretion, pursue one or more of the remedies provided in Civil Code §2938(c) or comparable superseding statute for enforcement of an assignment of rents provision.

Section 5.15. Waiver of Exemptions. Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Article V, the benefit of any homestead or exemption law of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed against the Owner's Unit.

Section 5.16. Secondary Address. Any Member may provide the Mutual with a secondary address. Any notice of a secondary address shall be in writing and shall be mailed to the Mutual in a manner that shall indicate the Mutual has received it. If a secondary address is provided in accordance with this section, the Mutual shall send any and all correspondence and legal notices regarding assessments and foreclosures required by this Article V or by California law to both the primary and the secondary address.

ARTICLE VI: MAINTENANCE RESPONSIBILITIES.

Section 6.1. Owner Maintenance Responsibilities.

(a) Duty to Maintain. Each Owner of a Condominium shall be responsible, at the Owner's sole cost and expense, for maintaining his or her Unit as follows:

(1) Appliances and Furnishings. Maintain, repair, replace and restore all appliances, furnishings and equipment located in Owner's Unit.

(2) Doors and Windows. Repair, replace and maintain front and rear entry doors and all windows for the Unit, including the door/window, weatherstripping, frame, glass and hardware, provided, however, that the Mutual shall be responsible for painting the exterior of the front entry door of the Unit. Any alterations to doors or windows must be approved pursuant to Article VIII of this Declaration.

(3) Fireplaces and Chimneys. Owners must periodically clean and maintain their fireboxes, flues and chimneys. Minimum standards for such required maintenance may be set forth in the Policies and Procedures. The Mutual shall be responsible for maintenance, repair and replacement of spark arrestors and flue caps.

(4) Glass and Screens. Clean all exterior windows and glass doors. Maintain, repair and replace all screen doors and window screens.

(5) Skylights. Maintain, repair and replace any skylights in the ceiling of the Unit (including frames, glass and flashing) which were not part of the original construction of the Building.

(6) Interior Surfaces. Maintain, repair, replace and restore all portions of Owner's Unit, including, without limitation, the interior walls, ceilings, floors and doors in a clean, sanitary and attractive condition, including painted surfaces and/or flooring materials.

(7) Garage Door Openers. Maintain, repair and/or replace automatic garage door openers and the mechanical and/or electrical equipment and/or hardware installed in a Garage and used for opening and closing Garage doors, if any.

(8) Balcony Walking Surface. Maintain, repair and/or replace any walking surface installed on a Balcony by Owner or any prior owner of Owner's Unit (i.e. any walking surface not originally installed on the Balcony.) Also, repair or replace any walking surface of a Balcony damaged by planters or other furnishings placed on the Balcony by the Owner or Owner's tenant or by any act or omission of the Owner or his or her family member, tenant, guest or invitee.

(9) Property Damage. Repair or replace damaged portions of the Project that is due to or caused by the willful or negligent act/omission of an Owner, or Owner's Family, contract purchasers, lessees, or tenants, or their licensees, guests, or invitees, unless such repairs and replacements are covered by insurance carried by the Mutual, and then the Mutual is only responsible to the extent of such insurance coverage minus the deductible, if any.

Each Owner shall repair, replace or restore property in that Owner's Unit, including floor coverings and paint or other covering on any wall or ceiling, counter tops, cabinets, light fixtures and any personal property of any occupant, resident or Owner of any Unit, that is damaged or destroyed due to and/or resulting from water infiltration and/or water leaks from any pipes, drains, conduits, appliances and/or equipment; and/or from outside any Unit or any part of a building; and/or any other place or cause, unless caused by the gross negligence of the Mutual, its Board, Officers, manager and/or employee. Individuals bound by this Declaration agree to bear the risk of any such loss and that the Mutual shall not be liable to reimburse them for property damage that is not covered by the Mutual's insurance and/or for any applicable insurance deductible.

(10) Utilities. Maintain, repair, replace and restore utilities, fixtures and other services that provide service to the Owner's Unit and that are located within the finished surfaces of the Unit's walls, floors or ceiling, including (but not limited to) the plumbing, plumbing fixtures, the shower valve, electrical plugs and/or fixtures, telephone lines, television cables (if any), other utilities, lights, heating and air conditioning systems.

(11) Heating and Air Conditioning. Maintain, repair, replace and restore any and all parts of any heating and/or air conditioning system servicing the Owner's Unit wherever located, including the condenser/compressor situated adjacent to the Owner's Unit and any pipe, duct or electrical conduit or wiring for such equipment passing through the Common Area.

(b) Right to Decorate and Furnish. Subject to the restrictions contained in the Governing Documents, each Owner has complete discretion as to the choice of furniture, furnishings, and interior decorating, with the following exceptions: (1) window coverings and (2) furnishings and improvements to Exclusive Use Common Areas must comply with the specifications set forth in the Mutual Policies and Procedures.

Owner, at Owner's sole cost and expense, may paint, paper, panel, plaster, tile or otherwise finish the interior surfaces of the ceilings, floors, perimeter walls, window frames, door frames, trim and the surfaces of walls located within the Unit. Owner's right, however, refers only to interior surfaces and to the airspace within Owner's Unit and specifically does not include the exterior surfaces of doors, fire escapes,

light wells, or other portions of the Common Area. This subsection does not authorize any alteration to load bearing walls located within a Unit or to any components located within such walls without the written consent of the Alterations Committee.

This Subsection 6.1(b) shall not entitle any Owner to impair the structural integrity of any Building; increase the noise-carrying capacity of common floors, walls and/or ceilings; interfere with the use and enjoyment of the Common Area or of the other Units; and/or violate any other provision of the Governing Documents.

(c) Obligation to Keep Exclusive Use Common Areas Clean. Each Owner shall be responsible for keeping in a clean, sanitary and attractive condition those portions of the Exclusive Use Common Areas to which the Owner has an easement as set forth in Section 2.3. Said obligation shall specifically include the duty to promptly repair and/or replace all damaged furnishings, improvements and/or landscaping or plantings installed or placed thereon or therein by the Owner or resident of such Unit; to sweep; and to keep the Exclusive Use Common Areas free from rubbish, litter and/or weeds.

(d) Duty to make Timely Repairs. Every Owner must perform promptly all maintenance and repair work within his own Unit that, if omitted, would affect the Common Area or another Unit, and shall be expressly responsible for any and all damages and liabilities that his failure to do so may engender.

(e) Vacant Units. The owner of any unoccupied Unit shall make periodic inspections of the Unit at least once each month to identify and repair any problems such as water leaks that may cause damage to adjacent Units or the Common Area if not corrected. The Owner shall either immediately repair any such conditions or, if such condition is the responsibility of the Mutual, report it to a Director or the Mutual Manager.

Section 6.2. Mutual's Responsibilities.

(a) Duty to Maintain Common Area. Except to the extent that maintenance, repair, replacement, painting and/or restoration is expressly and clearly made the responsibility of the Owners in Section 6.1, above, the Mutual shall be responsible for any and all maintenance, repair, replacement, painting and/or restoration of the Mutual's Common Area. Without limiting the generality of the foregoing, said Common Area shall include, but is not limited to, exterior surfaces of Buildings, including siding, roofs, gutters and downspouts; balconies including originally installed walking surfaces, railings and framing; skylights installed by the original developer; Improvements; landscaping; private streets, driveways and/or walks; utility facilities, excluding those utility facilities maintained by utility companies or agencies; Carports, including interiors, exteriors and doors, if any; Garages, excluding interiors but including doors; exterior lighting fixtures; walkways, stairways; fences; and/or retaining walls.

However, if maintenance, repairs, replacement, painting and/or restoration of any part of the Project, including but not limited to Exclusive Use Common Area Decks, Balconies and/or Patios, is due to negligence and/or willful conduct, the Mutual has a right to recover its costs and expenses from the responsible Owner.

(b) Modifications and Changes to Common Area. No person other than the Mutual (or its duly authorized agents and/or employees) shall construct; reconstruct; refinish; alter (or maintain) any Improvement upon the Common Area; create any excavation; fill (or change) the natural or existing drainage of any portion of the Common Area; and/or change (modify or otherwise disturb) the Common Area without express written approval of the Mutual. In addition, no person other than the Mutual (or its duly authorized agents and/or employees) shall remove or trim any tree, shrub or other vegetation from, or plant any tree, shrub, or other vegetation upon the Common Area without express written approval of the Mutual.

(c) **Right of Entry.** Pursuant to Subsection 4.6(b) above, the Mutual, and/or its agents/representative shall have the right, when necessary, to enter any Unit, including Exclusive Use Common Area(s), to perform the Mutual's obligations under this Declaration, including making necessary repairs that an Owner has failed to perform and/or perform work because any Unit or any part thereof has become a nuisance, fire or safety hazard and then recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner.

(d) **Excluded Maintenance.** Notwithstanding the preceding, the maintenance obligation of the Mutual shall not include:

(1) the duty to maintain, repair, or replace Unit interiors, Unit furnishings, Unit and/or utility installations, appliances and/or fixtures that service a single Unit.

(2) the duty to pay the utility cost for Units and/or for operation of any heaters or air conditioners, except to the extent that said heaters or air conditioners service Common Areas.

(3) the duty to repair or replace any portion of the Project whose damage was due to or caused by the willful or negligent act/omission of an Owner, or Owner's Family, contract purchasers, lessees, or tenants, or their licensees, guests, or invitees.

(4) the duty to repair, replace or restore personal property in the Project, including personal property of any occupant, resident or Owner of any Unit, that is due to and/or results from water infiltration and/or water leaks from any pipes, drains, conduits, appliances and/or equipment; and/or from outside any Unit or any part of a Building; and/or any other place or cause, unless caused by the gross negligence of the Mutual, its Board, Officers, manager and/or employee. Individuals bound by this Declaration agree to bear the risk of any such loss and that the Mutual shall not be liable to reimburse them for property damage that is not covered by the Mutual's insurance and/or any applicable insurance deductible; or

(5) the duty to repair, replace, or restore public or quasi-public utility installations that are owned or operated by utility districts, sanitary service providers, energy providers, telephone service providers, cable and/or satellite service providers, their successors and assigns, or any other public or quasi-public utility or similar entity that customarily repairs, replaces, or restores such installations.

The maintenance, repair, and replacement described in (i) through (iv) above shall be the responsibility of the Owner of the affected Unit and/or the Owner to whom the willful or negligent act is attributed.

Section 6.3. Recovery of Costs of Certain Repairs and Maintenance.

(a) **Willful or Negligent Acts.** In the event that the need for maintenance or repair that would otherwise be the Mutual's responsibility hereunder is caused through the willful or negligent acts of an Owner, Owner's Family, guests, tenants, or invitees, and is not covered or paid for by Mutual insurance policies or any liability insurance maintained by the responsible Owner, the cost of such maintenance or repairs shall be subject to recovery by the Mutual through the imposition of a Special Individual Assessment against the offending Owner in accordance with Section 5.4 and the procedural requirements of Section 12.6.

(b) **Owner's Failure to Perform Required Maintenance.** In the event that an Owner fails to perform maintenance functions for which Owner is responsible, the Mutual may give written notice to the offending Owner with a request to correct the failure within ten (10) days after receipt thereof, or within such longer time as the Board may deem appropriate. If the Owner refuses or fails to perform any necessary repair or maintenance within the allotted time, the Mutual may exercise its rights under Subsections 4.6(b) to enter the Owner's Unit and perform the repair or maintenance so long as the Owner has been given notice and the

opportunity for a hearing in accordance with Section 12.6, hereof. A Special Individual Assessment pursuant to Section 5.4 of this Declaration may be levied against the Owner to recover the costs incurred by the Mutual in performing such repairs or maintenance. In the event of an emergency threatening immediate injury to persons or property, the Mutual need not provide a notice and hearing before entering the Unit and performing the necessary maintenance or repairs; however a notice and hearing will still be required before any Special Individual Assessment for the work may be levied against the Owner.

Section 6.4. Cooperative Maintenance Obligations. To the extent necessary or desirable to accomplish the maintenance obligations hereunder, individual Owners and the Mutual shall cooperate in the performance of maintenance work.

Section 6.5. Maintenance Matrix. The Board may adopt, as part of the Policies and Procedures of the Mutual, a maintenance matrix summarizing the Mutual vs Owner maintenance obligations set forth above and assigning maintenance responsibility for components not identified above.

Section 6.6. Wood Destroying Pests and Organisms. The Mutual shall be responsible for treating any Building for wood destroying pests and organisms and for repairing any damage caused by such pests and organisms. The Mutual may require the removal and relocation of all residents of a Unit for the purpose of eradicating such pests and organisms so long as the requirements of California law are met. The Owner of a Unit shall be solely responsible for any costs associated with the removal and relocation of the occupants of a Unit for such a purpose.

ARTICLE VII: EASEMENTS & RESERVATIONS.

Section 7.1. Encroachment Easements. If any portion of the Common Area encroaches on any Unit or if any portion of a Unit encroaches on the Common Area, regardless of the cause, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and all Units and the Common Area are made subject to such easements. If the dimensions or location of a Unit or other Improvement differs from that shown and depicted on the approved plans, the actual dimensions and location shall prevail over that shown and depicted on the plans for any and all purposes. If any structure containing a Unit is partially or totally destroyed and then rebuilt and any encroachment on the Common Area results, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and all Units and the Common Area are made subject to such easements. However, in no event shall a valid easement for encroachment be created in favor of an Owner or Owners, if said encroachment occurred due to the willful conduct of said Owner or Owners.

Section 7.2. Blanket Utility Easement. There is hereby created a blanket easement in favor of the Mutual, its contractors and the individual Owners upon, across, over and under all of the Project for ingress, egress, installation, replacing, repairing, operating and maintaining all utilities, including but not limited to water, sewers, storm water drains and pipes, water systems, sprinkling systems, heating and gas lines or pipes, gas, telephones, drainage and electricity and the master television antenna or cable television system if any, and similar public or quasi-public improvements or facilities.

By virtue of this easement, it shall be expressly permissible for the providing utility company and/or service provider to erect and maintain the necessary equipment and underground facilities on the Common Area. Notwithstanding the foregoing, no sewer, electrical lines, water lines, or other utilities may be installed or relocated on said Project except as initially designed and approved by the Board. The easements provided for in this Section 7.2 shall in no way affect any other recorded easement on the Project.

Section 7.3. Maintenance Easements. An easement is hereby granted to the Mutual, its officers,

agents, employees, and to any management company or contractor selected by the Mutual to enter in or to cross over the Common Area, including Exclusive Use Common Area, and any Unit to perform the duties of maintenance and repair of the Units, Common Area and/or Common Facilities provided that any entry by any Member, the Mutual or its agents into any Unit shall only be undertaken in strict compliance with Section 4.6(b).

Section 7.4. Other Easements. Each Unit and its Owner, and the Mutual as to the Common Area, are hereby declared to be subject to all the easements, dedications and rights-of-way granted or reserved in, on, over and under the Project and each Unit and Common Area as shown on the Map.

ARTICLE VIII: ALTERATIONS.

Section 8.1. No Improvements Without Approval. No "Improvement" (as defined in this Declaration) of any kind shall be commenced, erected or maintained within the Project, nor shall anything be done in, on, or to any part of the Project that would: (a) impair the structural integrity, (b) structurally change any Improvement, (c) affect the common utility services or installations, or (d) increase noise transmission through common floors, walls, or ceilings until plans and specifications have been submitted to and approved in writing by the Mutual pursuant to this Article VIII.

Section 8.2. Appointment of Alterations Committee. If created, the Alterations Committee (referred to in this Article as "Committee") shall consist of a chairman and no less than two (2) additional members. If no Committee is appointed, the Board shall exercise the functions of said Committee, and in such case, references to the Committee in this Article shall mean the Board.

Section 8.3. Design Review Duties of Committee. It shall be the duty of the Committee to consider and act upon the proposals and plans submitted to it and to carry out all other duties imposed upon it pursuant to the Governing Documents. The vote or written consent of a majority of the Committee shall constitute the action of the Committee. The Committee shall keep and maintain (or cause to be kept and maintained) a written record of all actions taken.

Section 8.4. Architectural Policies and Procedures. The Board may from time to time adopt, amend and repeal Mutual Policies and Procedures governing the procedure for submitting applications for physical changes under this Article, documentation to accompany any such application, standards for design and materials relating to such changes, the fee to be charged for an estoppel certificate and similar matters which do not conflict with the provisions of this Article or other provisions of the governing documents.

Section 8.5. Submission of Plans; Action by Committee. Plans, specifications and such information and documentation as the Committee may require for all proposed changes shall be submitted to the Mutual Manager or to such person as may be designated in the Mutual Policies and Procedures. A reasonable application fee may be charged for processing and reviewing an application for approval of any alteration or Improvement. If additional documentation relating to the change is requested by the Committee, the time periods set forth in this Section shall not begin to run until such additional documentation is received by the Committee. All approvals and rejections of requests shall be in writing. Approval of the Committee may contain conditions or requests for modification of particular aspects of the Owner's plan and specifications. In the event the Committee fails to approve or disapprove the proposed work within forty-five (45) days after said plans and specifications have been submitted to it, the written request may be resubmitted. If the Committee fails to approve or disapprove such resubmitted application within thirty (30) days of its resubmittal, the request shall be deemed approved.

Section 8.6. Basis for Approval of Improvements. The Committee shall grant the requested approval

only if the Committee, in its sole discretion, finds that all of the following provisions have been satisfied:

(a) The Owner has complied with those provisions this Article and the Mutual Policies and Procedures pertaining to the content, and procedures for submittal of plans and specifications;

(b) The Owner's plans and specifications (i) conform to this Declaration and to the Mutual Policies and Procedures in effect at the time such plans are submitted to the Committee; and (ii) will not interfere with the reasonable enjoyment of any other Owner of his or her property; and

(c) The proposed Improvement(s), if approved, will otherwise be consistent with the architectural and aesthetic standards prevailing within the Project, in harmony with the external structures and/or landscaping within the Project and are consistent with the overall plan and scheme of Project and the purposes of this Declaration.

The Committee shall be entitled to determine that a proposed Improvement or component thereof is unacceptable when proposed for a particular Condominium, even if the same or a similar improvement or component has previously been approved for use at another location within the Project if factors such as drainage, topography or visibility from roads, Common Areas or other Condominiums or prior adverse experience with the product or components used in construction of the Improvement, design of the Improvement or its use at other locations within the Project militate against erection of the Improvement or use of a particular component thereof on the Condominium involved in the Owner's submittal. The Committee shall be entitled to make subjective judgments and to consider the aesthetics of a proposal when considering an Owner's request as long as the Committee acts reasonably and in good faith.

Section 8.7. Appeal of Decision of Committee to Board. Unless the Board is acting as the Alterations Committee, upon its own initiative or upon the written request of the Committee or any Mutual Member, the Board may review (and affirm or alter) any decision of the Committee, provided that any such request for review shall be presented to the Board within thirty (30) days after the Committee's findings and decision has been mailed or delivered to the Owner who submitted the subject application, or, in the case of Common Area Improvements, to the managing agent of the Mutual. The Board shall review such request and render a decision within sixty (60) days of receipt thereof or at the time of the next regular Board meeting, whichever is later. A written notice of the Board's decision shall be sent to the person or persons who submitted the request for review within fifteen (15) days after the decision is made.

Section 8.8. Non-Waiver; Variances. The approval by the Committee of any plans, drawings or specifications for any work, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval. The Committee shall be entitled to allow reasonable variances in order to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships.

Section 8.9. Compliance with Governmental Requirements. Each Owner bears sole responsibility for obtaining all necessary governmental permits/authorizations and/or complying with all governmental requirements including specifically applicable building codes.

Section 8.10. Commencement and Completion. Commencement of construction by Owner shall occur, in all cases, within ninety (90) days from the date of such approval. The Owner shall complete the construction, reconstruction, refinishing or alteration of any such improvement within one (1) year after commencing construction thereof. If an Owner fails to comply with this Section 8.10, the Committee shall proceed in accordance with the provisions of Section 8.11, below, as though the failure to complete the improvements was a non-compliance with approved plans.

Upon the completion, the Owner shall give written notice thereof to the Committee. Within sixty (60) days thereafter, the Committee, or its duly authorized representative, may inspect such improvement to determine whether it was constructed, reconstructed, altered or refinished to substantial compliance with the approved plans. If noncompliance exists, the Committee can require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board's ruling.

Section 8.11. Enforcement. In the event that it comes to the knowledge and attention of the Mutual that a work of Improvement is proceeding without proper approval and/or is not in compliance with the approved plans and specifications, the Mutual shall be entitled to exercise enforcement remedies specified in Article XII, including, without limitation, ordering an immediate cessation and abatement of all aspects of the work of Improvement until such time as proper Committee review and approval is obtained.

Section 8.12. Liability. Neither the Committee (nor any Member thereof) shall be liable to the Mutual or to any Owner for any damage, loss or prejudice suffered or claimed where the Committee (or such member) has acted in good faith on the basis of such information as may be possessed by it (or him/her). Without in any way limiting the generality of the foregoing, the Committee (or any member thereof) may consult with (or hear the views of) any Owner with respect to any plans, drawings, specifications or any other proposal submitted to the Committee.

ARTICLE IX: INSURANCE.

Section 9.1. Types of Insurance Coverage. The Mutual shall purchase, obtain and maintain, with the premiums therefor being paid out of Common Funds, the following types of insurance with the coverages described below:

(a) Fire & Casualty Insurance.

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

(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 buildings; 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 costs 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.

(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.

(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 9.1(a)(1) above based on insurance industry standards for determination of replacement values, provided that there may be lower dollar limits for specific items as is customarily provided in property insurance policies.

(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 9.5 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.

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

(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.

(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, 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 subsection and such agreement, the agreement shall control.

(b) **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 Sections 5800 and 5805 or any successor statutes 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.

(c) Directors & Officers Insurance. 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 5800 or any successor statute thereto.

(d) 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 assessments on all Units subject to assessments.

(e) Additional Insurance and Bonds. To the extent such insurance is available at a reasonable premium cost, the Mutual may also purchase with Common Funds such additional insurance and bonds as it may, from time to time, determine to be necessary or desirable, including, without limiting the generality of this Section 9.1(e), insurance on the Mutual's personal property, umbrella insurance, demolition insurance, earthquake insurance, flood insurance, and workers' compensation insurance. The amounts of said coverage shall be determined by the Board. The Mutual shall be the owner and beneficiary of any such insurance obtained.

Section 9.2. 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.

Section 9.3. Insurance Rating and Cancellation. The insurance company providing the Mutual's insurance under Section 9.1 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.

Section 9.4. Board's Insurance Authority.

(a) Participation in Group Policies. 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 "GRF") and other Rossmoor mutuals in a group policy or policies procured and maintained by GRF as long as the group policy or policies provide equivalent or better coverage than the applicable requirements described in Section 9.1, subject to the Board's right to deviate from the requirement as described herein.

(b) Board's Discretion. The Board shall have the power and right to deviate from the insurance

requirements contained in this Article in any manner that the Board, in its discretion, considers to be in the best interest of the Mutual, provided that the Board shall maintain the minimum insurance requirements set forth in Civil Code Sections 5800 and 5805 or in any successor statutes thereto and as required in Section 9.2. If the Board elects to materially reduce the coverage from the coverage as required in this Article, the Board shall, as soon as reasonably practicable, notify the Members, in writing, of the reduction in coverage.

(c) Adjustment of Insurance Claims. 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 and enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

(d) Power of Attorney. 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.

Section 9.5. Owners' Individual Insurance Requirements.

(a) Duty to Obtain and Maintain Insurance. 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 Unit to the extent not covered under Section 9.1(a)(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 the Rossmoor community 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 9.5 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 9.5.

(b) Limitation on Individual Fire and Casualty Insurance. No Owner shall separately insure any property covered by the Mutual's property insurance policy described in Section 9.1 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 Special Individual Assessment against the Owner and the Owner's Unit to collect the amount of the diminution.

ARTICLE X: DAMAGE OR DESTRUCTION.

Section 10.1. General Provisions. This Article X shall apply in the event substantial portions of the Common Area or Common Facilities or those portions of the Units that the Mutual is required to maintain, repair and replace are substantially damaged or destroyed as a result of fire, earthquake or other casualty. In such event, the Mutual shall have exclusive authority to negotiate losses/insurance proceeds covering such losses.

(a) **Use of Separate Trust Account.** All insurance proceeds (except insurance procured by Owner(s)), shall be held by the Mutual in a separate trust account in trust for the Mutual, the Owner(s) and their Mortgagees as their respective interests may appear to be in accordance with the terms and provisions of any applicable Mortgage.

(b) **Power to Contract with Insurance Trustee.** Should a controversy arise as to the disbursement of insurance proceeds and the amount in controversy is over one million dollars (\$1,000,000.00), the Board is authorized to enter into an agreement with an Insurance Trustee pursuant to Section 9.4 of this Declaration, relating to Insurance Trustee's powers, duties, and reasonable compensation.

(c) **Determination of Adequate Insurance.** The Board shall, within sixty (60) days of the casualty event, meet with general contractors, architects and/or other construction professionals to make a preliminary determination if the proceeds from available insurance will probably be sufficient to fund the necessary repairs and reconstruction and shall report its determination to the Members and Eligible First Mortgagees in writing. Thereafter the Board shall diligently attempt to reach a final settlement and adjustment of its insurance claims with the insurers. The Mutual shall make good faith efforts to keep interested Owners and Eligible First Mortgagees apprised as to the status of negotiations.

(d) **Insurable Losses to Individual Units.** If one or more residential Units suffers damage covered by the Mutual's property insurance, the Board may, in its discretion, pay the insurance proceeds to the Unit Owner and the Unit Owner shall be responsible for repair of the Unit. All such repairs shall be completed within one year (unless the time for completion is extended by the Board in writing) and shall be in accordance with the requirements of this Declaration, including Article VIII. Other than the routine maintenance and repairs required under Section 6.1 of this Declaration, the Mutual shall not be responsible for repair of damage or destruction to any portion of a Unit not covered by the Mutual's insurance.

Section 10.2. Repair and Reconstruction if Adequate Insurance is Available.

(a) **Board's Authority to Contract for Repairs.** Upon a determination that insurance proceeds will be adequate, the Board shall have the authority, without a vote of the Members, to enter into written contracts with general contractors, design professionals and other construction professionals for the repair and reconstruction of damaged or destroyed property covered by insurance, pursuant to Section 10.5 below.

(b) **Funding of Repair and Reconstruction.** The Board may borrow from the Reserve Account to fund any repair or reconstruction covered by insurance, so as not to delay reconstruction. Any such borrowed funds shall be immediately replaced upon receipt by the Mutual of the insurance proceeds.

Section 10.3. Minor Deficiency in Insurance Proceeds.

(a) **Reconstruction Unless Vetoed by Members.** If the available proceeds from the insurance maintained pursuant to Article IX are sufficient, after payment of any insured losses to individual Units, to cover at least seventy-five percent (75%) of the anticipated costs of repair and reconstruction of the Common Area and the anticipated costs of repair and reconstruction do not exceed available insurance proceeds by more than One Million Dollars (\$1,000,000), the damaged portions of the Common Area shall be rebuilt unless, within ninety (90) days from the date of destruction, sixty-six and two-thirds percent (66-2/3rds %) of the total voting power of the Mutual determine that such repair and reconstruction shall not take place. Reconstruction and repair shall proceed as set forth in Section 10.5 below.

(b) **Special Assessment.** Any sums in excess of available insurance proceeds required to repair or rebuild the Common Area and Common Facilities under this section shall be obtained by Special Assessment levied equally against all Units in the Project. Such Special Assessment shall be allocated among

the Owners in equal shares.

(c) Advancement of Special Assessment. If any Member fails to pay, within thirty (30) days of the levy, the Special Assessment levied against that Member's Unit, the Board may advance (without relieving the Member(s) or the Members' Unit(s) from liability therefor) an amount equal to the unpaid assessments.

Section 10.4. Major Deficiency in Insurance Proceeds. If the deficiency in insurance proceeds exceeds the limits set forth in Section 10.3 above, this Section shall apply. Within ninety (90) days of the casualty or event causing the damage, the Board shall call a Special Meeting of Members or distribute a written ballot (see Section 3.4 of the Bylaws) for the purpose of deciding upon the appropriate course of action. At the meeting or through the written ballot in lieu of a meeting, the Members shall decide whether to proceed with reconstruction of the Common Area and Common Facilities. A vote in excess of sixty-six and two-thirds percent (66-2/3%) of the total voting power of the Mutual shall be required to determine that repair and reconstruction of the Common Area and Common Facilities will not take place. If the Members vote not to repair or rebuild the Common Area and Common Facilities, the Mutual shall be authorized to remove any debris from the Project and to clean up the area of damage to the extent necessary to make it safe, sanitary and presentable.

Section 10.5. Repairs and Reconstruction. This section shall apply if repair and reconstruction is authorized under one of the provisions of this Article.

(a) Board's Authority to Contract. The Board shall have the sole authority to contract for repair and reconstruction of the Common Area and Common Facilities under this Article and to hire appropriate contractors, design professionals and other necessary consultants for the work. The Board shall award the contract(s) for repair and reconstruction to the lowest responsible bidder, or to such bidder as the Board determines is more favorable for the Mutual. The Board shall make every reasonable effort to execute the necessary contracts and complete the work within one year of the casualty event. It shall be the obligation of the Board to take all steps necessary to assure the commencement and the completion of authorized repairs and reconstruction occur at the earliest possible date.

(b) Licensed Contractors. Only contractors duly licensed in the State of California shall be employed by the Mutual for the work.

(c) Scope of Repairs and Reconstruction. The damaged or destroyed improvements shall be rebuilt to the condition existing immediately prior to the event causing the loss, subject to current building codes and ordinances, unless the Board, Owners and Eligible First Mortgagees agree upon a different scope of work.

Section 10.6. Emergency Repairs. Without waiting to obtain insurance settlements or bids, the Board may undertake such emergency repair work after a casualty as the Board may deem necessary or desirable under the circumstances, and the Board may charge the operating fund for the costs thereof where such repairs are done prior to settlement of insurance claims.

ARTICLE XI: CONDEMNATION.

Section 11.1. Authority of Board or Trustee. The Board or a trustee appointed by the Board to act on behalf of the Mutual shall represent all of the Owners in any condemnation proceeding, negotiations, settlements and/or agreements. Each Owner by accepting a deed to a Condominium in the Project hereby grants the Board or its appointed trustee an irrevocable power of attorney to act on behalf of the Mutual and

all Owners in any condemnation or proposed/threatened condemnation, to negotiate with the condemning agency a fair and reasonable amount for just compensation and/or to retain counsel to represent the owners in any litigation or other legal proceeding concerning condemnation or threatened condemnation.

Section 11.2. Distribution of Sale Proceeds or Condemnation Award.

(a) Total Sale or Taking. A total sale or taking of the Project means a sale or taking that (i) renders more than fifty percent (50%) of the Condominiums uninhabitable (such determination to be made by the Board in the case of a sale and by the court in the case of a taking) or (ii) renders the Project as a whole uneconomical as determined by the vote or written consent of fifty-one percent (51%) of those Owners and their respective Eligible First Mortgagees whose Condominiums will remain habitable after the taking.

Any determination that a sale or taking is total must be made before the proceeds from said sale or award are distributed. The proceeds of any such total sale or taking of the Project, after payment of all expenses relating to the sale or taking, shall be paid to all Owners and to their respective Mortgagees, as their respective interests may appear, in the proportion that the fair market value of each Condominium bears to the fair market value of all Condominiums in the Project. The fair market value of each Condominium shall be determined in the condemnation action, if such be instituted, or by an independent licensed real estate appraiser selected by the Mutual, who shall be a member of the Society of Real estate Appraisers or other nationally recognized appraiser organization and shall apply its or such other organization's standards in determining the fair market values of the Condominium.

(b) Partial Sale or Taking. In the event of a partial sale or taking of the Project, meaning a sale or taking that is not a total taking, as determined in Subsection 11.2(a), above, the proceeds from the sale or taking shall be paid or applied in the following order of priority and any judgments of condemnation shall include the following provisions as part of its terms:

(1) To the payment of expenses of the Mutual in effecting the sale or to any prevailing party in any condemnation action to whom such expenses are awarded by the Court to be paid from the amount awarded; then

(2) To Owners and to their respective Mortgagees, as their interests may appear, of Condominiums in the Project whose Condominiums have been sold or taken, an amount up to the fair market value of such Condominium as determined by the court in the condemnation proceeding or by an appraiser (pursuant to section 11.2(a) above), less such Owners' share of expenses paid pursuant to Subsection 11.2(b)(i) (which share shall be in proportion to the ratio that the fair market value of each Owner's Condominium bears to the fair market value of all Condominiums).

After such payment, the recipient shall no longer be deemed an Owner and the Board or individuals authorized by the Board, acting as attorney-in-fact of all Owners shall amend the Subdivision Map, if any, and this Declaration to eliminate from the Project the Units so sold or taken; then

(3) To any remaining Owner(s) and to their Mortgagees, as their interests may appear, whose Condominium has been diminished in value as a result of the sale or taking disproportionate to any diminution in value of all Condominiums, as determined by the Court in the condemnation proceeding or by an appraiser (pursuant to section 11.2(a) above), an amount up to the total diminution in value; then

(4) To all remaining Owners and to their respective Mortgagees, as their interests may appear, the balance of the sale proceeds or award in proportion to the ratio that the fair market value of each remaining Owner's Condominium bears to the fair market value of all remaining Owners' Condominiums as of a date immediately prior to commencement of condemnation proceedings, as determined by the Court in

the condemnation proceeding or by an appraiser (pursuant to section 11.2(a) above).

Section 11.3. Appraiser. The costs of such appraisals shall be paid from the condemnation/sale proceeds as an expense of the Mutual.

ARTICLE XII: BREACH & DEFAULT.

Section 12.1. Remedy at Law Inadequate. The provisions of the Declaration and the Other Governing Documents, as the same may be adopted or amended from time to time, shall constitute enforceable servitudes which shall inure to and bind each Owner, Owner's Family, lessees, tenants, contract purchasers, guests, invitees and/or licensees. Any Owner, the Mutual, its officers or Board of Directors, or by their respective successors in interest may enforce, by any proceeding at law or in equity, said provisions of the Governing Documents against any Owner, Member of Owner's Family, lessee, tenant, contract purchaser, guest, invitee, licensee, occupant or user of any Condominium, or any portion of the Common Area or Common Facilities. Further, the failure of any Owner, Member of Owner's Family, lessee, tenant, contract purchaser, guest, invitee, licensee, occupant or user of any Condominium, or any portion of the Common Area or Common Facilities, to strictly comply with any provision of the Governing Documents shall be grounds for (1) an action to recover sums due for damages and/or (2) an action to enjoin by appropriate legal proceedings instituted by any Owner, the Mutual, its officers or Board of Directors, or by their respective successors in interest.

Except for the nonpayment of any Assessment, it is hereby expressly declared and agreed that the remedy at law to recover damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration and the Mutual's other Governing Documents is inadequate, and injunctive or declaratory relief, or other forms of equitable relief shall be available in addition to monetary damages as a remedy for such breach, default or violation.

Section 12.2. Nuisance. Without limiting the generality of Section 12.1, the result of every act or omission whereby any covenant contained in this Declaration or the Mutual's Governing Documents is violated, in whole or in part, is hereby declared to be a nuisance. In addition to any other remedies that may be available, such nuisance may be abated or enjoined by the Mutual, its Officers, the Board of Directors and/or any Owner.

Further, every remedy against nuisance, either public or private, shall be applicable against every such act or omission; provided, however, the Board shall not be obligated to take action to abate or enjoin a particular violation if, in the discretion of the Board, 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.

Section 12.3. Violation of Law. Any violation of a federal, state, county, municipal, local or other governmental law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Project is hereby declared to be a violation of this Declaration and subject to any and all enforcement procedures set forth herein.

Section 12.4. Cumulative Remedies. The respective rights and remedies provided by this Declaration or by law shall be cumulative, and not exclusive. The exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or others to perform or observe any provision of this Declaration or the Governing Documents.

Section 12.5. Failure Not a Waiver. The failure of any Owner, the Board of Directors, the Mutual or its officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants or easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration and/or the Mutual's Governing Documents shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability upon the Mutual or the Board, or any of its officers or agents.

Section 12.6. Rights and Remedies of the Mutual.

(a) Rights Generally. In the event of a breach or violation of any Mutual Rule or of any of the restrictions contained in any Governing Document by an Owner, the Owner's Family, guests, contract purchasers, employees, servants, invitees, licensees, lessees and/or tenants, the Board, for and on behalf of all other Owners, may enforce the obligations of each Owner to obey such rules, covenants, or restrictions through the use of such remedies as are deemed appropriate by the Board and available in law or in equity, including but not limited to the hiring of legal counsel, the imposition of fines and monetary penalties, the pursuit of legal action, or the suspension of the Owner's right to use recreational Common Facilities or suspension of the Owner's voting rights as a Member of the Mutual. The Mutual's right to undertake disciplinary action against its Members shall be subject to the conditions set forth in this Section 12.6. The initiation of legal action shall be subject to Section 12.7, below.

The decision of whether it is appropriate or necessary for the Mutual to initiate enforcement or disciplinary action in any particular instance shall be within the sole discretion of the Mutual's Board. If the Mutual declines to take action in any instance, any Owner shall have such rights of enforcement as may exist by virtue of California Civil Code Section 5975 or otherwise by law.

Upon a determination by the Board of Directors, after prior notice to the affected Member and an opportunity for a hearing pursuant to Subsections 12.6(f) and (g), that said Member has violated any provision of the Governing Documents, including but not limited to a failure to pay any Assessment when due, the Board may give notice in writing to such Member that the Member is deemed to be a Member not in good standing. Such Member shall be deemed to be a Member not in good standing until such time as the Board shall determine in writing that the violation that resulted in the Board's determination that the Member was not in good standing 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 of the Mutual in good standing.

(b) Schedule of Fines. The Board may implement a schedule of reasonable fines and penalties for particular offenses that are common or recurring for which a uniform fine schedule is appropriate (such as fines for late payment of Assessments or illegally parked vehicles). Once imposed, a fine or penalty may be collected as a Special Individual Assessment and shall be enforceable as a Special Individual Assessment pursuant to Section 5.4.

(c) Definition of "Violation". A violation of the Governing Documents shall be defined as a single act or omission occurring on a single day. If the detrimental effect of a violation continues for additional days, discipline imposed by the Board may include one component for the violation and, according to the Board's discretion, a per diem component for so long as the detrimental effect continues. Similar violations on different days shall justify cumulative imposition of disciplinary measures. The Mutual shall take reasonable and prompt action to repair or avoid the continuing damaging effects of a violation or nuisance occurring within the Common Area at the cost of the responsible Owner.

(d) "Meet and Confer" Requirement. In the event of a dispute between the Mutual and a Member concerning an alleged violation of the Governing Documents, either party may request in writing to meet with the other party to discuss the dispute. The Mutual shall comply with any request by a Member

by notifying the requesting Member of the date and time for such a meeting within thirty (30) days of receipt of the written request. If such a request is made by the Mutual to a Member, the Member may, but is not required to, respond in writing within ten (10) days agreeing to the requested meeting on the terms set forth in the Mutual's request. The meeting shall be attended by the Board or the Board's designated representative and the requesting Member. If the meeting is not attended by the entire Board, the Member may appeal any resolution resulting from the meeting to the entire Board. Any agreement between the Mutual and the Member as a result of such a meeting shall be reduced to writing and signed by the Mutual and the Member. Once signed by both parties, such agreement shall become final, binding and unappealable. The Mutual may comply with any "Meet and Confer" request by a Member pursuant to this Subsection by a disciplinary hearing pursuant to Subsection 12.6(f) below. However, if the meeting is to be in conjunction with a disciplinary hearing, the notice required by Subsection 12.6(g) must be given to the Member.

(e) Limitations of Disciplinary Rights.

(i) Loss of Rights: Forfeitures. The Mutual shall have no power to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of his or her Condominium due to the failure by the Owner (or Owner's Family members, tenants, lessees, contract purchasers, guests, invitees and/or licensees) to comply with any provision of the Governing Documents, including, but not limited to any duly enacted Mutual Rule, except where the loss or forfeiture is the result of A) the judgment of a court of competent jurisdiction, B) a decision arising out of arbitration, C) a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments levied by the Mutual, or D) where the loss or forfeiture is limited to a temporary suspension of an Owner's rights as a Member of the Mutual or the imposition of monetary penalties for failure to pay Assessments or otherwise comply with any Governing Documents as long as the Mutual's actions satisfy the due process requirements of Sections 12.6(f) and (g).

(ii) Liens Against Member's Condominium. Except as provided in the Mutual's Delinquent Assessment Collection Policy, or other Mutual Policies and Procedures, if any, an assessment imposed by the Mutual as a means of reimbursing the Mutual for costs incurred by the Mutual in the repair of damage to common areas and facilities for which the Member and/or the member's Family, guests, lessees, tenants, contract purchasers, employees, invitees and/or licensees were responsible may become a lien against the Member's Condominium enforceable by the sale of the Condominium under Civil Code Sections 2924, 2924b, and 2924c.

(f) Hearings. No penalty or temporary suspension of rights shall be imposed pursuant to this Article XII unless the Owner alleged to be in violation is given prior notice of the proposed penalty or temporary suspension, and is given an opportunity to be heard before the Board of Directors or appropriate committee established by the Board with respect to the alleged violation(s) as provided in Mutual Policies and Procedures adopted by the Board pursuant to Section 12.6(h). However, this Subsection shall not prevent the Board from taking emergency action (such as towing of vehicles) to eliminate an immediate threat to the health or safety of residents or a nuisance causing substantial interference with the property rights of other residents. The required disciplinary hearing shall be scheduled as soon as practicable after any such emergency action has been taken, and if it is determined that such action was unnecessary or improper, the Mutual shall compensate the Member for any costs incurred as a result of such action. The Mutual Policies and Procedures may specify those violations justifying emergency action pursuant to this subsection.

(g) Notices. Any notice of a disciplinary hearing pursuant to Subsection 12.6(f) above shall, at a minimum, set forth the date and time for the hearing, a brief description of the action or inaction constituting the alleged violation of the Governing Documents and a reference to the specific Governing Document provision alleged to have been violated. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice, provided that if notice is given by mail it shall be sent by first-class or certified mail sent to the last address of the Member shown on the records of the Mutual. The

Mutual's notice of a disciplinary hearing shall be delivered to the Member at least ten (10) days prior to any hearing. Notice of the Board's action as a result of the disciplinary hearing must be delivered to the Member within fifteen (15) days after the Board's decision.

(h) Rules Regarding Disciplinary Proceedings. The Board shall be entitled to adopt rules that set forth the procedures for conducting disciplinary proceedings. Such rules, when approved and adopted by the Board, shall become a part of the Mutual Policies and Procedures and shall provide for notices and procedures conforming to the requirements of California law.

Section 12.7. Court Actions; Alternative Dispute Resolution (ADR). Court actions to enforce the Governing Documents may only be initiated on behalf of the Mutual upon approval of the Board.

(a) Alternative Dispute Resolution. As long as California law requires the Mutual to offer alternative dispute resolution (ADR) prior to initiating a legal action against a member for damages or injunctive relief, the Board has the discretion to select either mediation or binding arbitration to meet this legal requirement. When a Member offers ADR to resolve a dispute, the Board may, at its discretion, participate in the requested ADR or propose another form of ADR. If the parties cannot agree on the form of ADR, the matter may proceed to litigation without ADR.

(b) Actions Relating to Assessments. Disputes related to Mutual Assessments are expressly exempted from the provisions of this Section 12.7 except to the extent ADR is required by California law as part of the lien and foreclosure process.

(c) Small Claims Court Actions. If any claim, dispute or controversy involves a sum of money not in excess of the jurisdiction of the Small Claims Court, any party to the dispute shall have the right to file a claim in Small Claims Court and have the matter determined therein in lieu of the alternative dispute resolution procedures required by this Section 12.7.

Section 12.8. Joint and Several Liability of Co-Owners. If a Condominium is owned jointly by two (2) or more persons, the liability of each Owner thereof in connection with the obligations of Owners imposed by this Declaration shall be joint and several.

Section 12.9. Costs and Attorneys' Fees. In the event that the Mutual takes any action because of any alleged breach or default of any Member or other party hereto under the Mutual's Governing Documents (whether or not any legal proceeding, including an arbitration, is initiated) the Mutual shall be entitled to recover from that Member (or other party) the costs, including attorneys' fees, the Mutual incurred as a result of the alleged breach or default. The Mutual's remedies to recover its costs and attorneys' fees shall include, but are not limited to, the imposition of a Special Individual Assessment pursuant to Section 5.4.

In the event an action (including an arbitration) is brought by a Member (or other individual with the right to enforce the Governing Documents) because of any alleged breach or default by any party hereto under the Mutual's Governing Documents, the court may award to the prevailing party in any such action (as defined by Civil Code 1717 or comparable superseding statute) such attorneys' fees and other costs, including by way of example, but not limited to court costs and experts' fees, incurred in connection therewith as the court deems just and reasonable.

ARTICLE XIII: PROTECTION OF MORTGAGES.

Section 13.1. Mortgage Permitted. Any Owner may encumber the Owner's Condominium with a mortgage.

Section 13.2. Subordination. Any lien created or claimed under the provisions of this Declaration is expressly made subject and subordinate to the rights of any First Mortgage that encumbers all or a portion of the Project, or any Condominium, made in good faith and for value, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of such First Mortgage unless the holder of the first mortgage expressly subordinates his interest in writing, to such lien. All taxes, assessments and charges that may become liens prior to the First Mortgage under local law shall relate only to the individual Unit(s) there charged and not to the Project as a whole.

Section 13.3. Notices to Eligible First Mortgagees. The Mutual shall give written notice to all Eligible First Mortgagees of the following:

(a) Any proposed amendment of the Governing Documents effecting a change in (1) the boundaries of any Unit or the exclusive easement rights pertaining to such Unit, (2) the interests in the General Common Area or Exclusive Use Common Area pertaining to any Unit or the liability of such Unit for the Common Expenses, the number of votes in the Mutual to which the Owner(s) of each Unit are entitled and/or the purposes to which any Unit or the Common Area are restricted;

(b) Any proposed termination of the Project as a common interest development;

(c) Any condemnation loss or casualty loss which affects a material portion of a Unit on which there is a First Mortgage held, insured or guaranteed by an Eligible First Mortgagee;

(d) Any delinquency in the payment of assessments or charges owed by the Owner of a Unit subject to the Mortgage of the Eligible First Mortgagee, insurer or guarantor, where such delinquency has continued for a period of 60 days; or

(d) Any lapse, cancellation or material modification of any insurance policy maintained by the Mutual pursuant to Article IX.

Section 13.4. Restrictions on Certain Changes. Unless after receiving written notice, fifty-one percent (51%) of the Eligible First Mortgagees holding mortgages on Condominiums have given their prior written approval (one vote for each Unit secured by a Mortgage), neither the Mutual nor the Owners shall be entitled to:

(a) Seek to restore or repair the Units after condemnation or and insurable hazard in a manner that is not substantially in accordance with this Declaration and the original plans and specifications for the Project;

(b) Elect to terminate the Project as a common interest development following substantial destruction or a substantial taking of the Project through condemnation proceedings;

(c) Effect a reallocation of interests in the Common Area or Common Facilities following condemnation or partial destruction of the Project, unless the formula for such reallocation is fixed in advance by this Declaration or by applicable law;

(d) Change the fundamental purpose for which the Project was created (*i.e.*, change from residential use to a different use);or

(e) Use hazard insurance proceeds for losses to Units or Common Area in the Project for other than the repair, replacement or restriction of Improvements, except as provided by statute or by this Declaration in case of substantial loss to the Units or Common Area of the Project.

A Mortgagee who receives a written request to approve any of the above acts by certified or registered mail and who does not deliver or post to the requesting party a negative response within sixty (60) days shall be deemed to have approved such request.

Section 13.5. Approval of Certain Amendments. The consent of the Owners of at least 67 % of the Units in the Project and 51% of the Eligible First Mortgagees shall be required to materially amend any provision of the Articles, Declaration or Bylaws, or to add any material provisions thereto, which establish, provide for, govern or regulate any of the following:

- (a) Voting;
- (b) Assessments, assessment liens or subordination of such liens;
- (c) Reserves for maintenance, repair and replacement of the Common Area and Common Facilities;
- (d) Insurance or Fidelity Bonds;
- (e) Rights to use of the Common Area or Common Facilities;
- (f) Responsibility for maintenance and repair of the several portions of the Condominium;
- (g) Expansion or contraction of the Project or the addition, annexation or withdrawal of property from the Project;
- (h) Boundaries of any Unit;
- (i) The interests in the General Common Area or Exclusive Use Common Area;
- (j) Convertibility of Units into Common Area/Common Facilities or of Common Area/Common Facilities into Units;
- (k) Leasing of Units;
- (l) Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit;
- (m) Establishment of self-management by the Mutual where professional management has been required by any agency or corporation; and
- (n) Any provision which is for the express benefit of Eligible First Mortgagees or insurers of Units within the Project.

A Mortgagee who receives a written ballot to approve any of the above amendments to the Governing Documents, by certified or registered mail and who does not return a ballot with a negative response within thirty (30) days shall be deemed to have approved such amendment.

Section 13.6. Right to Examine Books and Records. Eligible First Mortgagees can examine the books and records of the Mutual and can require the submission of financial data concerning the Mutual, including annual audit reports, if any, and operating statements as furnished to the Owner. Any Owner, at the expense of such Owner, or the holders of fifty-one percent (51%) or more of First Mortgagees, at the First Mortgagees' expense, may request at anytime an independent audit of the Mutual.

Section 13.7. Distribution of Insurance and Condemnation Proceeds. Notwithstanding any other provision of this Declaration, no Unit Owner or any other party, shall have priority over any right of First Mortgagees of Units pursuant to their mortgages in case of a distribution of insurance proceeds or condemnation awards for losses to (or a taking of) Units or Common Area. Any such distribution shall be made pursuant to the terms and provisions of the applicable Mortgage. Any provision to the contrary, in this Declaration or in the Bylaws or other documents relating to the Project, is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses naming the first mortgagees, as their interests may appear.

Section 13.8. Effect of Breach. If any Condominium is encumbered by a first mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration for assessments, or installments of assessments, shall not operate to effect or impair the lien of the first mortgage. On foreclosure of the First Mortgage, the lien for assessments or installments that has accrued up to the time of foreclosure shall be subordinate to the lien of the First Mortgage, with the foreclosure-purchaser taking title to the Condominium free of the lien for assessments or installments that have accrued up to the time of the foreclosure sale.

On taking title to the Condominium, the foreclosure-purchaser shall be bound to all covenants, conditions and restrictions contained in the Governing Documents, but shall only be obligated to pay assessments or other charges levied or assessed by the Mutual after the foreclosure-purchaser acquired title to the Condominium.

Nothing in this Section shall be construed to release any prior Owner from the Owner's obligation to pay for any assessment levied pursuant to this Declaration.

Section 13.9. Non-Curable Breach. Any mortgagee who acquires title to a Condominium by foreclosure or by deed in lieu of foreclosure or assignment-in-lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure.

Section 13.10. Payment by Mortgagees. Mortgagees of a Unit may, jointly or singularly, pay taxes or other charges that are in default and that may or have become a charge against the Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for Common Area improvements or other insured property of the Mutual. Upon making any such payments, such Mortgagees shall be owed immediate reimbursement therefor from the Mutual. This provision shall constitute an agreement by the Mutual for the express benefit of all Mortgagees. Upon the request of any Mortgagee, the Mutual shall execute and deliver to such Mortgagee a separate written agreement embodying the provisions of this Section 13.10.

Section 13.11. Loan to Facilitate. Any First Mortgage given to secure a loan to facilitate the resale of a Condominium after acquisition by foreclosure or by a deed-in-lieu of foreclosure or by assignment-in-lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of this Article XIII.

Section 13.12. Appearance at Meetings. Because of its financial interest in the Project, any Eligible First Mortgagee may appear (but cannot vote) at meetings of the Members and the Board to draw attention to violations of the Governing Documents that have not been corrected or made the subject of remedial proceedings or assessments and/or other matters of concern to the Mortgagee.

Section 13.13. Right to Furnish Information. Any Mortgagee can furnish information to the Board concerning the status of any mortgage.

Section 13.14. Inapplicability of Right of First Refusal to Mortgagee. No right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey the Owner's Condominium shall be granted to the Mutual without the consent of any Eligible First Mortgagee of the Condominium. Any right of first refusal or option to purchase a Unit that may be granted to the Mutual (or other person, firm or entity) shall not apply to any conveyance or transfer of title to such Unit, whether voluntary or involuntary, to a mortgagee that acquires title to or from or ownership of the Unit pursuant to the remedies provided in its mortgage or deed or by reason of foreclosure of the mortgage or deed (or assignment) in lieu of foreclosure.

Further, no such right shall impair the rights of a First Mortgagee to:

- (a) Foreclose or take title to a Condominium pursuant to the remedies provided in the Mortgage,
or
- (b) Accept a deed (or assignment) in lieu of foreclosure in the event of default by a Mortgagor,
or
- (c) Sell or lease a Condominium acquired by the Mortgagee.

Section 13.15. Amendments to Conform with Mortgagee Requirements. It is the intent of the Mutual that this Declaration and the Articles and Bylaws of the Mutual, and the Project in general, meet all reasonable requirements necessary to purchase, guarantee, insure or subsidize any mortgage of a Unit in the Project by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Mutual, the Federal Housing Administration and the Veterans' Administration. The Board and each Owner shall take any action or shall adopt any resolutions necessary to conform the Governing Documents and/or the Project to the reasonable requirements of any of said entities or agencies. Each Owner, by the acceptance of a deed to a Condominium, grants to the Board an irrevocable power of attorney to act as attorney-in-fact for such purpose. The provisions of this Declaration and the Mutual's other Governing Documents shall be liberally interpreted so as to comply with the reasonable requirements of institutional lenders, the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Mutual.

ARTICLE XIV: AMENDMENT OF DECLARATION.

Section 14.1. Amendment in General. This Declaration may be amended or revoked in any respect by the vote or assent of Members representing at least fifty-one percent (51%) of all Members in Good Standing. Notwithstanding the foregoing, the percentage of the Members necessary to amend a specific clause or provision of this Declaration shall be at least the percentage of affirmative votes prescribed in said clause or provision.

Section 14.2. Effective Date of Amendments. Any amendment to this Declaration will be effective upon the recording in the Office of the Recorder of Contra Costa County a Certificate of Amendment, duly executed and certified by the president and secretary of the Mutual setting forth in full the amendment so approved and that the approval requirements of Section 14.1 above, have been duly met. Notwithstanding anything to the contrary herein contained, no such amendment shall affect the rights of the holder of any first deed of trust or Mortgage recorded prior to the recording of such amendment. If the consent or approval of any governmental authority, Mortgagee or other entity is required under this Declaration to amend or revoke any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained.

Section 14.3. Reliance on Amendments. Any amendments made in accordance with the terms of this

Declaration shall be presumed valid by anyone relying on them in good faith.

ARTICLE XV: GENERAL PROVISIONS.

Section 15.1. Effective Date. This Declaration shall become effective upon its recordation in the Official Records of the County of Contra Costa, State of California.

Section 15.2. Notices.

(a) Mailing as Alternative to Personal Service. Any communication or notice of any kind permitted or required pursuant to any provision of the Governing Documents shall be in writing and may be served, as an alternative to personal service, by mailing the same as follows: to an Owner at the Owner's Unit or to such other address as the Owner by designate from time to time in writing to the Mutual; to the Mutual at the principal office of the Mutual Manager or to such other address as the Board may from time to time designate in writing to the Mutual Members; and to Eligible First Mortgagees at the most recent address of the Eligible First Mortgagee provided in writing to the Mutual. Any mailing by the Mutual based upon the information in its records at the time of the mailing shall be deemed effective for any notice required under the Governing Documents.

(b) Personal Service Upon Co-Owners & Others. Personal service of a notice or demand to one of the co-Owners of any Unit, to any general partner of a partnership that is the Owner of Record of the Unit, or to any officer or agent for service of process of a corporation that is the Owner of Record of the Unit, shall be deemed delivered to all such co-owners, to such partnership, or to such corporation, as the case may be.

(c) Deemed Delivered. All notices and demands served by mail shall be by first-class or certified mail, with postage prepaid, and shall be deemed delivered seventy-two (72) hours after deposit in the United States mail. All notices and demands served by personal delivery are delivered upon service.

Section 15.3. No Public Rights in Project. Nothing contained in this Declaration shall be deemed to be a gift or a dedication of all or any portion of the Project to the general public or for any public use or purpose whatsoever.

Section 15.4. Construction of Declaration.

(a) Restrictions Construed Together. All of the covenants, conditions, and restrictions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the Project as set forth in the Recitals of this Declaration. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.

(b) Restrictions Severable. Notwithstanding the provisions of Subsection (a) above, the covenants, conditions, and restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision, which shall remain in full force and effect.

(c) Singular Includes Plural/Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter, as the context requires.

(d) Captions. All captions, titles or headings used in this Declaration are intended solely for convenience of reference and shall not affect the interpretation or application of that which is set forth in any of the terms or provisions of the Declaration.

(e) Conflicts. In the event of any conflict between any of the provisions of this Article XV and any other provisions of this Declaration, the provisions of this Article XV shall control. In the event of any conflict between any of the provisions of this Declaration and any other provisions of the Governing Documents, the provisions of this Declaration shall control. Further, neither the Articles nor the Bylaws shall be amended so as to be inconsistent with this Declaration; and, in the event of any inconsistency, the provisions of this Declaration shall control.

(f) Exhibits. All exhibits to which reference is made herein are deemed to be incorporated herein by reference, whether or not actually attached.

Section 15.5. Power of Attorney. To the extent necessary to carry out and enforce the provisions of this Declaration and the Mutual's Governing Documents in general, an irrevocable power of attorney coupled with an interest is granted to the Mutual by the Owners.

Section 15.6. Term of Declaration. The provisions of this Declaration shall be effective to bind the Owners, the Mutual, its Board of Directors, its officers and agents and their successors in interest for a period of 60 years from the date this Declaration is recorded. After the expiration of this term, the term of this Declaration shall be automatically extended for successive periods of 10 years each, unless within 6 months before the expiration of the initial 60-year term established by this Section, or any 10-year extension period, a recordable written instrument approved by Owners entitled to vote and holding a majority of the voting power of the Mutual (or such other majority of Owners as may be required by California law) terminating the effectiveness of this Declaration is recorded.

Certification

We, the undersigned hereby certify, under penalty of perjury, that this Declaration of Covenants, Conditions and Restrictions set for herein was duly adopted with the vote or written consent of the Members (the Members consisting of at least seventy-five percent (75%) of the total voting power held by the membership of the Mutual).

Dated: 6/9/13

WALNUT CREEK MUTUAL NO. 70

By: Eldon Rowe
Eldon Rowe, President

By: Ellen Dietschy
Ellen Dietschy, Secretary

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Contra Costa

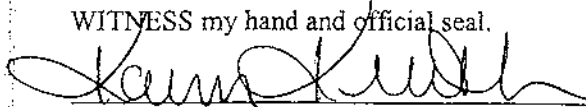
On 5/9/13 before me, Karen Kruth, Notary Public
(Here insert name and title of the officer)

personally appeared Ellen Dietschy & Eldon Rowe

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 of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

| |
|--|
| DESCRIPTION OF THE ATTACHED DOCUMENT <u>CC & RS</u> <small>(Title or description of attached document)</small> |
| _____ <small>(Title or description of attached document continued)</small> |
| Number of Pages <u>1</u> Document Date _____ <small>(Additional information)</small> |

| |
|---|
| CAPACITY CLAIMED BY THE SIGNER <input type="checkbox"/> Individual (s) <input type="checkbox"/> Corporate Officer _____ <small>(Title)</small> <input type="checkbox"/> Partner(s) <input type="checkbox"/> Attorney-in-Fact <input type="checkbox"/> Trustee(s) <input type="checkbox"/> Other _____ |
|---|

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, ~~is/are~~) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

EXHIBIT A

REVISED 3/26/76
REVISED 10/2/78

PARKING ASSIGNMENTS
Mutual 47

Page One

| <u>UNIT NO.</u> | <u>GARAGE</u> | <u>CARPORT</u> |
|-----------------|---------------|----------------|
| 4701-1A | 4 | 15 |
| 4701-1B | 5 | 16 |
| 4701-2A | 3 | 14 |
| 4701-2B | 1&2 | - |
| 4702-1A | 7 | - |
| 4702-1B | 6 | - |
| 4702-2A | 8 | - |
| 4702-2B | 9 | - |
| 4703-1A | 10&11 | - |
| 4703-1B | 12 | 13 |
| 4704-1A | 23 | 19 |
| 4704-1B | 24 | - |
| 4704-2A | 22 | 20 |
| 4704-2B | 21 | - |
| 4705-1A | 28 | 17 |
| 4705-1B | 29&30 | - |
| 4705-2A | 26&27 | - |
| 4705-2B | 25 | 18 |
| 4706-1A | 31&32 | - |
| 4706-1B | 33 | 278 |
| 4707-1A | 35 | - |
| 4707-1B | 34 | - |
| 4707-2A | 36 | - |
| 4707-2B | 37 | - |
| 4708-1A | 39&40 | - |
| 4708-1B | 38 | 223 |
| 4709-1A | 48 | - |
| 4709-1B | 49 | - |
| 4709-1C | 47 | - |
| 4709-2A | 51 | 53 |
| 4709-2B | 50 | 54 |
| 4709-2C | 46 | 52 |
| 4709-3A | 58 | 56 |
| 4709-3B | 41 | 55 |
| 4709-3C | 45 | 57 |
| 4709-4A | 43 | - |
| 4709-4B | 42 | - |
| 4709-4C | 44 | - |
| 4710-1A | 60 | - |
| 4710-1B | 59 | - |
| 4710-2A | 61 | - |
| 4710-2B | 62 | - |

EX-9043
PAGE 534

REVISED 3/20/78

PARKING ASSIGNMENTS
Mutual 47.

Page Two

| <u>UNIT NO.</u> | <u>GARAGES</u> | <u>CARPORT</u> |
|-----------------|----------------|----------------|
| 4711-1A | 65 | - |
| 4711-1B | 64 | - |
| 4711-1C | 66 | - |
| 4711-2A | 76 | - |
| 4711-2B | 63 | 75 |
| 4711-2C | 67 | 73 |
| 4711-3A | 77 | 74 |
| 4711-3B | 72 | 78 |
| 4711-3C | 68 | 80 |
| 4711-4A | 70 | 79 |
| 4711-4B | 71 | - |
| 4711-4C | 69 | - |
| 4712-1A | 83 | - |
| 4712-1B | 84 | 94 |
| 4712-2A | 82 | 95 |
| 4712-2B | 81 | 93 |
| | | 92 |
| 4713-1A | 87 | - |
| 4713-1B | 88&89 | 97 |
| 4713-2A | 86 | - |
| 4713-2B | 85 | 96 |
| | | 281 |
| 4714-1A | 90&91 | - |
| 4714-1B | 296 | - |
| | | 98 |
| 4715-1A | 102 | - |
| 4715-1B | 101 | - |
| 4715-1C | 103 | - |
| 4715-2A | 113 | - |
| 4715-2B | 100 | 112 |
| 4715-2C | 104 | 110 |
| 4715-3A | 114 | 111 |
| 4715-3B | 109 | 115 |
| 4715-3C | 105 | 117 |
| 4715-4A | 107 | 116 |
| 4715-4B | 108 | - |
| 4715-4C | 106 | - |
| 4716-1A | 124 | - |
| 4716-1B | 122&123 | 118 |
| 4716-2A | 125&126 | - |
| 4716-2B | 127 | - |
| | | 119 |
| 4717-1A | 129&130 | - |
| 4717-1B | 128 | - |
| | | 120 |

BOOK 8773 PAGE 172

REVISED 3/20/78

PARKING ASSIGNMENTS
Mutual 47

PAGE Three

| <u>UNIT NO.</u> | <u>GARAGE</u> | <u>CARPORT</u> |
|-----------------|---------------|----------------|
| 4718-1A | 132&133 | - |
| 4718-1B | 131 | 127 |
| 4719-1A | 137 | - |
| 4719-1B | 138&139 | 284 |
| 4719-2A | 135&136 | - |
| 4719-2B | 134 | 285 |
| 4720-1A | 146 | - |
| 4720-1B | 147 | 142 |
| 4720-2A | 145 | 143 |
| 4720-2B | 144 | 141 |
| 4721-1A | 148&149 | - |
| 4721-1B | 150 | 183 |
| 4722-1A | 153 | - |
| 4722-1B | 154&155 | 177 |
| 4722-2A | 152 | - |
| 4722-2B | 151 | - |
| 4723-1A | 158 | - |
| 4723-1B | 156&157 | 279 |
| 4723-2A | 159&160 | - |
| 4723-2B | 161 | 280 |
| 4724-1A | 165&166 | - |
| 4724-1B | 167 | - |
| 4724-2A | 164 | 179 |
| 4724-2B | 162&163 | 178 |
| 4725-1A | 169&170 | - |
| 4725-1B | 168 | 180 |
| 4726-1A | 174&175 | - |
| 4726-1B | 176 | - |
| 4726-2A | 173 | 181 |
| 4726-2B | 171&172 | 182 |
| 4727-1A | 185&186 | - |
| 4727-1B | 287 | 184 |
| 4728-1A | 189 | - |
| 4728-1B | 188 | - |
| 4728-1C | 190 | - |
| 4728-2A | 200 | - |
| 4728-2B | 197 | 199 |
| 4728-2C | 191 | 197 |
| 4728-3A | 201 | 198 |
| 4728-3B | 196 | 202 |
| 4728-3C | 192 | 204 |
| 4728-4A | 194 | 203 |
| 4728-4B | 195 | - |
| 4728-4C | 193 | - |

BUILDING NO. 173

3/20/78

PARKING ASSIGNMENTS
Mutual 47

BOOK 8773 pg. 174
Page Four

| <u>UNIT NO.</u> | <u>GARAGES</u> | <u>CARPORT</u> |
|-----------------|----------------|----------------|
| 4729-1A | 205&206 | - |
| 4729-1B | 288 | 99 |
| 4730-1A | 209 | - |
| 4730-1B | 210 | 213 |
| 4730-2A | 208 | 214 |
| 4730-2B | 207 | 212 |
| 4731-1A | 218 | 211 |
| 4731-1B | 219 | 220 |
| 4731-2A | 217 | 221 |
| 4731-2B | 215&216 | 222 |
| 4732-1A | 225 | - |
| 4732-1B | 224 | - |
| 4732-2A | 226 | - |
| 4732-2B | 227&228 | 282 |
| 4733-1A | 231 | - |
| 4733-1B | 230 | - |
| 4733-1C | 232 | - |
| 4733-2A | 242 | - |
| 4733-2B | 229 | 241 |
| 4733-2C | 233 | 239 |
| 4733-3A | 243 | 240 |
| 4733-3B | 238 | 244 |
| 4733-3C | 234 | 246 |
| 4733-4A | 236 | 245 |
| 4733-4B | 237 | - |
| 4733-4C | 235 | - |
| 4734-1A | 248 | - |
| 4734-1B | 247 | 252 |
| 4734-2A | 249 | 251 |
| 4734-2B | 250 | 253 |
| 4735-1A | 256&257 | 254 |
| 4735-1B | 255 | - |
| 4736-1A | 260 | 283 |
| 4736-1B | 259 | - |
| 4736-1C | 261 | - |
| 4736-2A | 271 | - |
| 4736-2B | 258 | 270 |
| 4736-2C | 262 | 268 |
| 4736-3A | 272 | 269 |
| 4736-3B | 267 | 273 |
| 4736-3C | 263 | 275 |
| 4736-4A | 265 | 274 |
| 4736-4B | 266 | - |
| 4736-4C | 264 | - |
| 4737-1A | 275&277 | - |
| 4737-1B | 259 | - |

END OF DOCUMENT



* \$ R 0 0 0 1 4 8 4 4 0 1 \$ *

Electronically Recorded
CONTRA COSTA Co Recorder Office
KRISTIN B. CONNELLY, Clerk-Recorder



DOC - 2025-0111850
Thursday, Oct 23, 2025 10:21:00
SB2 Fee: \$75.00

Recording Requested By:

Walnut Creek Mutual No. Seventy

When Recorded, Mail To:

Walnut Creek Mutual No. Seventy
c/o Adams Stirling PLC
2566 Overland Avenue, Suite 730
Los Angeles, CA 90064

Total Paid: \$119.00

Receipt #: 202500108126

9 - Ingeo

268 / LGPC / 1-10

Space above this line for recorder's use

**FIRST AMENDMENT
TO AMENDED & RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF
WALNUT CREEK MUTUAL NO. SEVENTY
a California nonprofit mutual benefit corporation**

If this document contains any restriction based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, 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 by submitting a "Restrictive Covenant Modification" form, together with a copy of the attached document with the unlawful provision redacted to the county recorder's office. The "Restrictive Covenant Modification" form can be obtained from the county recorder's office and may be available on its internet website. The form may also be available from the party that provided you with this document. 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.

**FIRST AMENDMENT
TO AMENDED & RESTATED DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS
OF
WALNUT CREEK MUTUAL NO. SEVENTY
a California nonprofit mutual benefit corporation**

This First Amendment to the Amended & Restated Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. Seventy (hereafter "First Amendment") is incorporated into and made a part of the Amended & Restated Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. 70, recorded in the office of the County Recorder of Contra Costa County on May 20, 2013 as Document No. 2013-0127171-00 (the "CC&Rs"). The CC&Rs and this First Amendment together shall constitute the "Amended CC&Rs." If any term or provision in this First Amendment conflicts with any term or provision in the CC&Rs, the provisions of this First Amendment shall control.

The legal description of the development is:

Lots 1, 2, 3 and 4 as shown on the Map of Subdivision 5001 (Mutual 47), City of Walnut Creek, Contra Costa County, California, filed August 23, 1977, in Book 201 of Maps, Pages 26 to 29, inclusive, in the office of the County Recorder of Contra Costa County.

AMENDMENTS

The existing Article IX "Insurance" is hereby **deleted in its entirety**, and the following is inserted in its place:

ARTICLE IX: INSURANCE

9.1 Mutual Insurance. The Mutual must obtain and maintain policies of insurance as described below. To help keep premiums at a reasonable level, the Mutual is authorized to establish appropriate deductibles for its policies of insurance, participate in group policies procured and maintained by GRF or any successor entity, and to participate in a deductible sharing agreement with other Rossmoor mutuals. Unless otherwise determined by the Board, coverage must be on an occurrence basis.

(a) Automobile Liability Insurance. If appropriate, the Mutual is permitted to purchase non-owned and hired automobile liability coverage and garage-keepers legal liability coverage.

(b) Boiler and Machinery Insurance. If appropriate, the Mutual is permitted to purchase insurance for the loss or damage to or as a result of equipment failures such as boilers, pressure vessels, pressure pipes, motors, mechanical breakdowns, electrical failures, and the like.

(c) Commercial General Liability ("CGL"). The Mutual must maintain one or more CGL policies which provide appropriate liability limits for injury or death to one or more Persons

in any one accident or occurrence. The Mutual must carry coverage in amounts that meet or exceed those called for in Civil Code §5805 and any successor statutes.

(d) Direct Physical Loss.

(1) Generally. Unless unavailable, the Mutual must maintain one or more policies for loss or damage by fire or other perils covered by the standard "Special Form" policy (or its equivalent) covering all Common Area Improvements in the Development, and such other Improvements in the Development as the Board may deem appropriate.

(2) Coverage Levels. The amount of such insurance must be the best and highest amount available, taking into consideration availability and reasonable cost. If coverage for one hundred percent (100%) of the aggregate full insurable value of the insured property is not available through one or more carriers, the Mutual must obtain coverage for the highest percentage of the property available to the extent such percentage is also economically feasible. When determining economic feasibility for a given amount of coverage, the Board may consider:

(i) The risk analysis/risk assessment obtained from a qualified risk manager or insurance broker who is using industry standards to evaluate cost and availability of insurance products for similarly situated communities;

(ii) The market availability of coverage;

(iii) The possibility of various possible maximum loss scenarios laid out by the qualified risk manager or insurance broker or third party consultant used by GRF;

(iv) The overall cost effectiveness of available coverage;

(v) The difference in cost between different percentages of coverage;

(vi) The relative risks of experiencing different percentages of loss, such as the risk of a 50% loss vs. a 100% loss;

(vii) Actual or anticipated increases in other required Mutual expenses;
and

(viii) Such other financial and economic factors that a reasonable Board would consider under the circumstances.

(3) Blanket Basis. The coverage must be written on a blanket basis with an agreed value endorsement and an inflation guard endorsement, if available.

(4) Primary Coverage. The Mutual's insurance policy must be primary with respect to property damage in the event of overlapping coverage with a Member's property

damage policy. Because construction costs can be unpredictable and suddenly escalate whenever large losses occur, Directors are not liable if actual construction costs are greater than the replacement cost provided by the insurance policy.

(5) Ordinance or Law Coverage. If available and economically feasible, the Mutual must provide “Ordinance or Law Coverage” or its equivalent, including:

- (i) Coverage for Loss to the Undamaged Portion of the building or structure.
- (ii) Demolition Cost Coverage.
- (iii) Increased Cost of Construction Coverage.

(6) Maintenance Fee Receivable Coverage. If available and economically feasible, the Mutual must provide “Maintenance Fees Receivable” coverage, or its equivalent, to cover the loss from unpaid or uncollected Assessments resulting from a covered property loss.

(7) Other Coverage. The Mutual may include such other endorsements which the Board may deem necessary or reasonable.

(e) Directors and Officers. The Mutual must purchase Directors and Officers errors and omission insurance insuring the Mutual, Directors, Officers, Committee members, trustees, Mutual employees, Mutual volunteers, any community manager in contract with the Mutual, any management company in contract with the Mutual and employees of such Mutual management company who perform services on behalf of the Mutual. The Mutual must carry coverage in amounts that meet or exceed those called for in Civil Code §5800 and any successor statutes.

(f) Employment Practices Liability. The Mutual should consider purchasing employment practices liability coverage (whether or not it has employees), when available and affordable.

(g) Crime Insurance and Fidelity Bond. The Mutual must maintain crime insurance, employee dishonesty coverage, fidelity bond coverage, or their equivalent, for its directors, officers, and employees in an amount that is equal to or more than the combined amount of the reserves of the Mutual and total Assessments for three months. The coverage maintained by the Mutual shall also include protection in an equal amount against computer fraud and funds transfer fraud. If the Mutual uses a managing agent or management company, the Mutual’s crime insurance, employee dishonesty coverage, fidelity bond coverage, or their equivalent, shall additionally include coverage for, or otherwise be endorsed to provide coverage for, dishonest acts by that Person or entity and its employees. Self-insurance does not meet the requirements of this section.

(h) Umbrella Policy. The Mutual may purchase an excess or umbrella policy over its public liability and property damage, Directors and Officers liability, and workers’ compensation policies to provide higher liability limits as the Board determines.

(i) **Workers' Compensation.** The Mutual must carry workers' compensation insurance as required by law to cover employees of the Mutual. If available, the Mutual is also permitted to purchase a Voluntary Labor Endorsement to protect its volunteers.

9.2 Member Obligation to Carry Insurance.

(a) **Member Insurance.** At their sole expense, Members must purchase and maintain insurance covering their real and personal property whether the Unit is Member occupied, vacant or held out for rent. This includes, without limitation:

(1) Personal property coverage that insures the contents of their Unit against damage or loss;

(2) Real property coverage that insures their Unit against damage or loss, including, but not limited to, all improvements to the Unit and all fixtures and components within or appurtenant to the Unit;

(3) Real property coverage that insures Exclusive Use Common Area servicing the Unit

(4) Premises liability that includes protection for bodily injury and property damage;

(5) Personal liability coverage with a policy limit of at least One Million Dollars (\$1,000,000);

(6) Loss of use that protects a Member for additional living expenses, loss of rents, or any other losses should their Unit become uninhabitable due to a covered loss;

(7) Loss assessment coverage that protects against Special Assessments due to a loss which exceeds the Mutual's master policy limits or deductible; Master policy deductible coverage, and;

(8) Such other coverage as the Member deems appropriate.

(b) **Automobile Coverage.** If a Member operates a vehicle which is driven across or stored in the Mutual's Common Areas, the Member must carry appropriate automobile insurance. The Mutual has no obligation to police this provision and is specifically relieved of any responsibility or liability from doing so or failing to do so.

(c) **Waiver of Claims.** Members waive their claims against the Mutual to the extent such claims are covered under insurance which Members are required to carry under these CC&Rs, regardless of whether Members actually carry such insurance.

(d) **Assignment of Proceeds.** If any loss intended to be covered by the Mutual's insurance occurs and the proceeds payable by the Mutual's insurance are reduced because of proceeds paid under a Member's insurance coverage, that Member must assign such insurance

proceeds to the Mutual, to the extent of the reduction. The Board must apply those proceeds to the same purposes as the reduced proceeds received by the Mutual.

9.3 Tenant Insurance. Members must require Tenants to have renters or tenant insurance, including coverage for damage to or loss of personal property, personal liability, medical payment to others, and loss of use. The liability insurance must have a policy limit of at least One Million Dollars (\$1,000,000).

9.4 Responsibility for Deductible.

(a) Payment of 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, 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.

(b) Participation in GRF Deductible Sharing Agreement. The Mutual may enter into a deductible sharing agreement with other Rossmoor mutuals. If the event of such an agreement, to the extent there is any conflict between the payment of deductibles as set forth in this subsection and such agreement, the agreement shall control.

(c) Losses Triggering the Deductible Sharing Agreement. With regard to insured losses which trigger the Rossmoor-wide Agreement to Share the Deductible ("Agreement"), and which are also in excess of available coverage, the Mutual's Members shall pay for the loss according to the pro rata share formula set forth in the Agreement. The Board shall determine the best source of funds for this obligation.

9.5 Liability for Increased Insurance Rates. If any negligent act or omission of any Member, Member's Tenant, or their respective family, guests, invitees, vendors, or pets causes an increase in the cost of the Mutual's insurance, the amount of the increase must be assessed against the Member and their Unit as a Reimbursement Special Assessment.

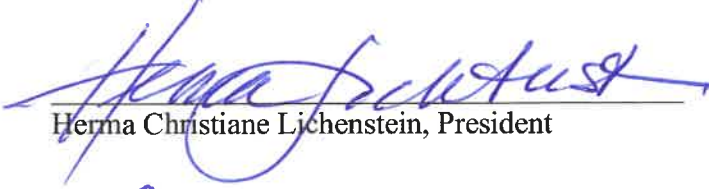
9.6 Choice of Contractor. With respect to any repairs for which proceeds of insurance are paid or are payable to the Mutual, the Board shall designate contractors to perform repairs to the Common Areas.

9.7 Insurance Company Rating. All policies of insurance required by this Article must be issued by either a California admitted insurance company or an approved carrier on the California List of Approved Surplus Line Insurers (LASLI). Each such carrier must hold an A.M. Best Insurance or Standard and Poor's rating of "A" or better, to the extent such policies are available.

CERTIFICATION

WE CERTIFY this 30th day of OCTOBER, 2025, that this First Amendment to the Amended & Restated Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. 70 has been duly approved and adopted by at least fifty-one percent (51%) of the membership of Walnut Creek Mutual No. Seventy.

WALNUT CREEK MUTUAL NO. SEVENTY



Herma Christiane Lichenstein, President



Dennis Raymond Fay, Secretary

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Contra Costa }

On 10/3/25 before me, Claudia Marlatte, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Herma Christiane Lichenstein
Name(s) of Signer(s)

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.



Place Notary Seal and/or Stamp Above

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 Claudia Marlatte
Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer is Representing: _____

Signer's Name: _____

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer is Representing: _____

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

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State of California }
County of Contra Costa

On 10/3/25 before me, Claudia Marlatte, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Dennis Raymond Fay
Name(s) of Signer(s)

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 Claudia Marlatte
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____
Document Date: _____ Number of Pages: _____
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____
 Corporate Officer – Title(s): _____ Corporate Officer – Title(s): _____
 Partner – Limited General Partner – Limited General
 Individual Attorney in Fact Individual Attorney in Fact
 Trustee Guardian or Conservator Trustee Guardian or Conservator
 Other: _____ Other: _____
Signer is Representing: _____ Signer is Representing: _____

ILLEGIBLE NOTARY SEAL DECLARATION

GOVERNMENT CODE 27361.7

I certify under penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:

Name of Notary Claudia Marlatte
Date Commission Expires August 5, 2028
Notary Identification Number # 2496590 - Contra Costa County
(For Notaries commissioned after 1/1/1992)
Manufacturer/Vendor Identification Number NNA1
(For Notaries commissioned after 1/1/1992)
Place of Execution of this Declaration Monterey Park, CA
Date October 23, 2025

Claudia Marlatte
c/o Golden Rain Foundation
2101 Vanderslice Ct. No.16
Walnut Creek, CA 94596
(925) 988-7700

 David Anderson
Signature - First Legal Support Services