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WALNUT CREEK MUTUAL NO. 58  
c/o Berding & Weil, LLP  
3240 Stone Valley Road West  
Alamo, CA 94507  
(925) 838-2090



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(THE WATERFORD AT ROSSMOOR)

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**AMENDED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
WALNUT CREEK MUTUAL NO. 58  
(THE WATERFORD AT ROSSMOOR)**

This Amended and Restated Declaration of Covenants, Conditions and Restrictions is made on the date hereinafter set forth by Walnut Creek Mutual No. 58, a California nonprofit mutual benefit corporation (hereinafter referred to as the "Mutual").

**RECITALS**

A. WHEREAS, the Mutual is the successor in interest to UDC-Universal Development L.P., a Delaware limited partnership doing business in California as UDC Homes Limited Partnership ("Declarant" or "Developer"), which, as Declarant, executed that certain Declaration of Covenants, Conditions and Restrictions for Walnut Creek Mutual No. 58 (The Waterford at Rossmoor), dated May 16, 1989, and recorded on May 30, 1989, Instrument/Series No. 89-98808, Official Records of Contra Costa County, State of California (hereinafter referred to as the "1989 Declaration"); and

B. WHEREAS, a First Amendment to the 1989 Declaration was recorded on December 8, 1989, as Instrument/Series No. 89-249111, Official Records of Contra Costa County, State of California; and

C. WHEREAS, a Declaration of Annexation entitled "Declaration of Annexation Walnut Creek Mutual No. 58 Phase 2" was recorded on March 30, 1990, as Instrument No. 50705, Official Records of Contra Costa County, California; and

D. WHEREAS, the 1989 Declaration, as amended, establishes certain limitations, easements, covenants, restrictions, conditions, liens, and charges which run with and are binding upon all parties having or acquiring any right, title, or interest in that certain parcel of real property located in the County of Contra Costa, State of California, and more particularly described as follows:

Lot 1 of SUBDIVISION 7176 filed in the Office of the County Recorder of Contra Costa County, California, on April 7, 1989 in Book 332 of Maps at Pages 21 through 24, EXCEPTING THEREFROM that portion thereof described on Exhibit "B" attached to this Declaration, TOGETHER WITH the real property described on Exhibit "C" attached to this Declaration, and

Lot 1 of SUBDIVISION 7444 filed in the Office of the County Recorder of Contra Costa County, California, on February 23, 1990 in Book 342 of Maps at Pages 23 through 25, and

A portion of Parcel "A" as described in the "Waiver of Parcel Map and Certificate of Compliance Subdivision MS 802W-93" recorded August 24, 1994 in Deed Series Number 94-211957, Contra Costa County Records; described as follows: Beginning at the Northeast corner of Said Parcel A; thence from said point of beginning along the easterly line of said Parcel A South 08°04'33" East 17.483 meters to the southerly line of said Parcel A, also being the northerly line of Golden Rain Road; thence along said southerly line North 84°49'28" West 12.975 meters to the beginning of a curve concave to the northeast, having a radius of 3.048 meters; thence leaving said southerly line northerly 4.788 meters along the arc of said curve through a central angle of 90°00'00"; thence North 05°10'32" East 10.141 meters to the beginning of a curve concave to the West, having a radius of 35.052 meters; thence northerly 0.994 meters along the arc of said curve through a central angle of 01°37'33" to the northerly line of said Parcel A; thence along said northerly line North 81°55'27" East 12.360 Meters to the point of beginning; (the foregoing portion of Parcel "A" is the "Employee Parking Lot" defined in Section 1.23);

and

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

F. WHEREAS, the Members, constituting at least sixty-six and two-thirds percent (66-2/3%) of the Total Voting Power of the Mutual, desire to amend, modify, and otherwise change the 1989 Declaration, as amended, pursuant to Article XI, Section 11.4 thereof; and

G. NOW, THEREFORE, pursuant to Article XI, Section 11.4 of the 1989 Declaration, as amended, the Members constituting at least sixty-six and two-thirds percent (66-2/3%) of the Total Voting Power of the Mutual, do hereby declare that the aforesaid 1989 Declaration, as amended, be and it is hereby, AMENDED AND RESTATED IN ITS ENTIRETY as set forth in the within Amended and Restated Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. 58 (The Waterford at Rossmoor); and

H. FURTHER, it is the intent of the Mutual and its Members that this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. 58 (The Waterford at Rossmoor) does not supercede any of the Declarations of Covenants, Conditions and Restrictions entered into and/or recorded by Declarant (or the predecessors of Declarant) and Golden Rain Foundation of Walnut Creek for the other projects and/or mutuals within the Rossmoor valley; and

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

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

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

## ARTICLE 1                    DEFINITIONS

- 1.1     Absolute Majority. "Absolute Majority" shall mean a majority of the Total Voting Power of the Mutual.
- 1.2     Additional Charges. "Additional Charges" shall mean all costs, fees, charges, and expenditures, including without limitation, interest, late charges, attorneys' fees, recording and filing fees, and all other costs actually incurred

by the Mutual in collecting and/or enforcing payment of Assessments, fines, and/or penalties.

- 1.3 Annual Assessments. "Annual Assessments" shall have the meaning set forth in Section 7.5.
- 1.4 Approved Occupant. "Approved Occupant" shall mean an occupant of a Unit other than an Owner who is authorized by the Board to incur Personal Charges.
- 1.5 Architectural Control Committee. "Architectural Control Committee" shall mean the committee created pursuant to Article 12 of the Declaration and Article 11 of the Bylaws.
- 1.6 Articles. "Articles" shall mean the Articles of Incorporation of Walnut Creek Mutual No. 58, as they may be amended from time to time, and as filed with the Office of the Secretary of State of California.
- 1.7 Assessments. "Assessments" shall mean any or all of the following: Annual Assessments, Special Assessments, Reimbursement Assessments, and Enforcement Assessments.
- 1.8 Board of Directors. "Board of Directors" or "Board" shall mean the governing body of the Mutual.
- 1.9 Bylaws. "Bylaws" shall mean the Bylaws of the Mutual and any duly-adopted amendments thereof.
- 1.10 City. "City" shall mean the City of Walnut Creek.
- 1.11 Civil Code. "Civil Code" shall mean the California *Civil Code*, as amended from time to time.
- 1.12 Common Area. "Common Area" shall mean, collectively, (i) all of the property comprising the Project which is owned by all of the Owners in common, but excluding the Units, and (ii) the Employee Parking Lot, which is owned by the Mutual.
- 1.13 Condominium. "Condominium" shall mean an estate in real property as defined in *Civil Code* sections 783 and 1351(f), consisting of an undivided interest in common in the Common Area, and a separate fee interest in a Unit together with any easements or other interests in the Project or any portion thereof as are described in the Declaration, in the Condominium Plan, or in the deed conveying a Condominium.

- 1.14 Condominium Building. "Condominium Building" shall mean a residential structure containing condominium Units.
- 1.15 Condominium Plan. "Condominium Plan" or "Plan" shall mean, collectively, the condominium plans (including any amendments thereto) of the type described in *Civil Code* section 1351 or predecessor statute which apply to the Project and have been recorded in the Office of the County Recorder of Contra Costa County, California.
- 1.16 Contract Purchaser/Contract Seller. "Contract Purchaser" and "Contract Seller" shall mean the purchaser and the seller, respectively, under an installment land contract in which title to the property is transferred after the final installment payment is made.
- 1.17 Corporations Code. "Corporations Code" shall mean the California *Corporations Code*, as amended from time to time.
- 1.18 County. "County" shall mean the County of Contra Costa.
- 1.19 Declaration. "Declaration" shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. 58 (The Waterford at Rossmoor), recorded in the Office of the County Recorder of Contra Costa County, California, and any duly-recorded amendments thereof.
- 1.20 Dining Room. "Dining Room" shall mean, collectively, the food preparation and dining facilities located and operated in the Common Area.
- 1.21 Eligible Insurer or Guarantor. "Eligible Insurer" or "Eligible Guarantor" shall mean an insurer or governmental guarantor who has requested notice from the Mutual regarding matters of which the insurer or guarantor is entitled to notice pursuant to the Declaration or the Bylaws.
- 1.22 Eligible Mortgage Holder. "Eligible Mortgage Holder" shall mean the holder of a First Mortgage encumbering a Condominium who has requested notice from the Mutual regarding matters of which the holder is entitled to notice pursuant to the Declaration or the Bylaws.
- 1.23 Employee Parking Lot. "Employee Parking Lot" shall mean the real property identified as such at Recital D, which was conveyed to the Mutual by the Declarant. The Employee Parking Lot is part of the Common Area but is owned by the Mutual and not the Owners as tenants in common.
- 1.24 Enforcement Assessment. "Enforcement Assessment" shall have the meaning set forth in Section 7.10.

- 1.25 Exclusive Use Common Area. "Exclusive Use Common Area" shall mean any portion of the Common Area the exclusive use of which is set aside, allocated, assigned, and restricted to the exclusive use or possession of the Residents of a particular Unit. An exclusive easement to such Exclusive Use Common Area may be specifically granted in each individual grant deed conveying a Condominium; however, the failure of any such deed to set forth such grant of easement shall not invalidate the exclusive easement herein granted. Exclusive Use Common Area shall include the following: patios, balconies, storage lockers, covered parking spaces, open parking spaces, and garage parking spaces.
- 1.26 First Mortgage. "First Mortgage" shall mean a Mortgage which constitutes a lien of first priority against any Condominium.
- 1.27 First Mortgagee. "First Mortgagee" shall mean any Mortgagee holding a First Mortgage and includes any assignee, in whole or in part, of such a First Mortgagee.
- 1.28 Foundation. "Foundation" shall mean the Golden Rain Foundation of Walnut Creek, a California nonprofit mutual benefit corporation.
- 1.29 Foundation's Governing Documents. "Foundation's Governing Documents" shall mean, collectively, the Foundation's articles of incorporation and bylaws, as amended from time to time, and any rules, policies and resolutions adopted by the Foundation's board of directors and distributed to the Foundation's members.
- 1.30 Governing Documents. "Governing Documents" shall mean, collectively, the Articles, Bylaws, Declaration, and Rules.
- 1.31 Maintenance. "Maintenance" or to "maintain" (whether the term is capitalized or not) shall mean the act of caring for property and keeping it in its existing state, preserving it from failure or deterioration, including painting, caulking, cleaning, and minor, non-structural upkeep.
- 1.32 Maintenance Policies. "Maintenance Policies" shall mean the policies adopted by the Board from time to time concerning and governing the respective responsibilities of the Mutual and the Owner as to Maintenance, Repair and Replacement of Common Area, Units and Exclusive Use Common Area.
- 1.33 Manor. "Manor" shall mean "Unit."
- 1.34 Member. "Member" shall mean an Owner.

- 1.35 Member in Good Standing. "Member in Good Standing" shall mean a Member of the Mutual who is current in the payment of all Assessments, fines, penalties, and other charges imposed in accordance with the Governing Documents, and who is in compliance with all of the provisions of the Governing Documents, as more particularly set forth in the Bylaws.
- 1.36 Mortgage. "Mortgage" shall mean a deed of trust encumbering a Condominium as well as a mortgage in the conventional sense.
- 1.37 Mortgagee. "Mortgagee" shall mean a beneficiary under a deed of trust as well as under a Mortgage.
- 1.38 Mutual. "Mutual" shall mean Walnut Creek Mutual No. 58, a California nonprofit mutual benefit corporation, its successors and assigns.
- 1.39 Owner. "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Condominium which is a part of the Project, including Contract Sellers, but excluding Contract Purchasers and excluding those having such interest merely as security for the performance of an obligation.
- 1.40 Personal Charges. "Personal Charges" shall mean any and all expenses incurred by an Owner or Approved Occupant in connection with the use of the Dining Room and other Common Area facilities or services provided by the Mutual and which are not included in the Annual Assessment.
- 1.41 Policies. "Policies" and "Rules" are synonymous terms which may be used interchangeably. "Policies" shall mean "Rules" as defined in Section 1.48.
- 1.42 Project. "Project" shall mean all of the real property described in this Declaration which comprises the Walnut Creek Mutual No. 58 condominium project, including all structures and other improvements located at any time upon said real property.
- 1.43 Quorum. "Quorum," for the purposes of Membership meetings and Membership votes, is the minimum number of Members entitled to cast votes who must be present in person or by proxy at a meeting of the Membership in order for business other than adjournment to be conducted or, for purposes of a Board meeting, the minimum number, as established in the Bylaws, of Directors who must be present in person, including present by means of conference telephone equipment or similar communications equipment to the extent permitted by law, at a meeting of the Board in order for business to be conducted. The Quorum for Membership meetings and Membership votes shall be as provided in Section 4.6 of the Bylaws, except where a different Quorum is established or required by law or under this Declaration (*for*

*example*, Sections 7.6 and 7.7.2 of this Declaration set forth different Quorum requirements imposed by *Civil Code* section 1366 for Membership votes concerning Annual Assessment increases and Special Assessments, respectively). The Quorum for Board meetings shall be as provided in Section 7.9 of the Bylaws.

- 1.44 Reimbursement Assessment. "Reimbursement Assessment" shall have the meaning set forth in Section 7.9.
- 1.45 Repair. "Repair" (whether the term is capitalized or not) shall mean the minor restoration of property that is torn, broken, or otherwise damaged, or has sustained wear, tear, or deterioration such that minor restoration is necessary.
- 1.46 Replacement. "Replacement" (whether the term is capitalized or not) shall mean substantial reconstruction, restoration, or substitution of the whole or a substantial part of property that has been damaged or destroyed through usage or through hazard or catastrophe such that it is no longer useable or serviceable in its current condition.
- 1.47 Resident. "Resident" shall mean any person who resides in a Unit within the Project whether or not such person is an Owner as defined in Section 1.39 above.
- 1.48 Rules. "Rules" and "Policies" are synonymous terms which may be used interchangeably and shall mean the rules, regulations, policies and guidelines governing the use, occupancy, management, administration, and operation of the Project or any part thereof and any other matter which is within the jurisdiction of the Mutual as adopted and published by the Board of Directors from time to time and subject to applicable law including *Civil Code* section 1357.100 *et seq.* Rules include, but are not limited to, Senior Housing Residency Restrictions and the Maintenance Policies.
- 1.49 Senior Housing Residency Restrictions. "Senior Housing Residency Restrictions" shall mean the residency policy described in Section 4.1.
- 1.50 Simple Majority. "Simple Majority" shall mean a majority of the votes represented and voting at a meeting at which a quorum is present or by written ballot in conformity with *Corporations Code* section 7513 in which the number of votes cast by ballot equals or exceeds the number required to establish a Quorum.
- 1.51 Special Assessment. "Special Assessment" shall have the meaning set forth in Section 7.7.

- 1.52 Total Voting Power. "Total Voting Power" shall mean the total number of votes of all Members entitled to vote at a particular time, calculated on the basis of one vote for each Unit, excluding any Units as to which an Owner is not then a Member in Good Standing.
- 1.53 Unit. "Unit" and "Manor" are synonymous terms which may be used interchangeably. There are 300 Units or Manors in the Project. Unit or Manor shall mean a "separate interest" as defined in *Civil Code* section 1351(f) and as shown and described as such on the Condominium Plan; provided, however, that the following are not part of any Unit or Condominium: bearing walls, columns, floors, roofs, foundations, central heating, central refrigeration and central air conditioning equipment, reservoir tanks, pumps and other central services, pipes, ducts, flues, chutes, conduits, wires and other utility installations, wherever located, except the outlets thereof when located in the Unit. In interpreting deeds, the Declaration, and the Condominium Plan, it shall be conclusively presumed that the then-existing physical boundaries of a Unit are its boundaries, rather than the metes and bounds or other description expressed in the deed, the Declaration, or the Condominium Plan, regardless of any settling or lateral movement of buildings and regardless of minor variance between the boundaries shown on the deed, the Declaration, or the Condominium Plan and the actual existing physical boundaries.

## ARTICLE 2                      PROPERTY SUBJECT TO THIS DECLARATION

- 2.1 Legal Description. The property subject to this Declaration is described in Recital Paragraph D.
- 2.2 Classification of Property. All of the property subject to this Declaration is divided into the following categories:
- (a) Common Area as defined in Section 1.12;
  - (d) Exclusive Use Common Area as defined in Section 1.25; and
  - (c) Units as defined in Section 1.53.
- 2.3 Ownership of Condominium. Ownership of each Condominium within the Project shall include (i) a designated Unit, (ii) the respective 1/300<sup>th</sup> interest as tenant in common in the Common Area (excepting the Employee Parking Lot which is owned by the Mutual and not the Owners as tenants in common), (iii) a Membership in the Mutual, (iv) to the extent provided in the Foundation's Governing Documents, a membership in the Foundation, and (v)

any exclusive easements or easements appurtenant to such Unit upon the Exclusive Use Common Area and such other easements as are applicable, all as described in the Declaration, in the deed to the Unit, or in the Condominium Plan. The undivided interests in the Common Area established in this Declaration cannot be changed.

### **ARTICLE 3**                    **COMMON AREA**

- 3.1     No Separate Conveyance of Common Area. The undivided interests in the Common Area shall not be severed or conveyed separately from the respective Units to which they are appurtenant and each such undivided interest shall in all cases be deemed to be conveyed or encumbered along with the respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit. Any purported severance or separate conveyance of an undivided interest in the Common Area apart from a conveyance of the respective Unit shall, for all purposes, be null, void, and unenforceable.
- 3.2     Owners Non-Exclusive Easements of Enjoyment. Every Owner of a Condominium shall have a non-exclusive easement of use of and enjoyment in, to, and throughout the Common Area of the Project for ingress, egress, and support over and through the Common Area; provided, however, such non-exclusive easements shall be subordinate to, and shall not interfere in any way with the exclusive easements, if any, appurtenant to Units over Exclusive Use Common Area. Each such non-exclusive easement shall be appurtenant to and pass with the title to every Condominium, subject to the following rights and restrictions:
- (a)     The right of the Board of Directors to establish and enforce reasonable rules and regulations governing the use of the Common Area and facilities thereon (including the Dining Room);
  - (b)     The right of the Board to charge reasonable admission and other fees for the use of any facilities situated upon the Common Area;
  - (c)     The right of the Board to suspend an Owner's rights to use the recreational facilities for any period during which any Assessment against such Owner's Condominium remains unpaid and/or for infraction of the Governing Documents of the Mutual;
  - (d)     The right of the Board, as set forth in Article 4, to grant licenses, easements and rights of way in, on, over, or under the Common

Area subject to any required approval of the Members and such conditions as may be agreed to by the Board;

- (e) The right of the Board, subject to approval of the Members as set forth in Section 6.7, to acquire capital improvements;
- (f) The right of the Board, subject to approval of the Members as set forth in Section 6.8, to sell, transfer or dedicate property owned by the Mutual;
- (g) The right of the Board, subject to approval of the Members as set forth in Section 6.9, to grant easements, licenses and rights of way to Owners; and
- (h) The right of the Mutual or its authorized agents, as provided in this Declaration, to perform its obligations under this Declaration, including obligations with respect to construction, Maintenance, Repair, or Replacement for the benefit of the Common Area or the Owners in common.

3.3 Exclusive Use Common Area. Certain portions of the Common Area, referred to as "Exclusive Use Common Areas," are subject, as the servient tenements, to exclusive easements in favor of the Units to which they are attached or appurtenant as shown and described on the Condominium Plan, or assigned by the Board, as applicable, as the dominant tenements, and such exclusive easements shall be appurtenant to those designated Units. Exclusive Use Common Area is defined in Section 1.25.

3.4 Delegation of Use. Any Owner may delegate his or her rights of use and enjoyment, including easements, in the Project to the members of his or her household, tenants, Contract Purchasers, guests and invitees, subject to the terms of the Governing Documents. Upon the leasing or renting of a Unit, or upon occupancy of a Unit by a Contract Purchaser, the Owner shall be deemed to have delegated and assigned all such rights exclusively to the tenants or Contract Purchasers of such Unit. Each Owner shall notify the managing agent of the Mutual of the names of any tenants or any such Contract Purchasers of such Owner's Unit. Each Owner, tenant, or Contract Purchaser shall also notify the managing agent of the Mutual of the names of all members of his or her household to whom such Owner, tenant, or Contract Purchaser has delegated any rights of enjoyment in the Project as provided herein and the relationship which each such person bears to such Owner, tenant, or Contract Purchaser. Any rights of enjoyment delegated pursuant to this Section 3.4 are subject to suspension to the same extent that rights of Owners are subject to suspension as provided in the Governing Documents.

- 3.5 Common Area Construction. Except as may be authorized by the Board, no person or entity, other than the Mutual or its duly-authorized agents, shall construct, reconstruct, refinish, alter, or maintain any improvement upon the Common Area, or shall make or create any excavation or fill upon the Common Area, or shall change the natural or existing drainage of the Common Area, or shall plant, remove, or destroy any seed, plant material, tree, shrub, or other vegetation upon the Common Area.
- 3.6 Mechanic's Liens. In the event there shall be filed against the Common Area a Notice of Mechanic's Lien for, or purporting to be for, labor or materials alleged to have been furnished or delivered for any Owner within the Project or his or her Condominium, such Owner shall forthwith cause such lien to be discharged by payment, bond, or otherwise. If the Owner fails to cause the lien to be discharged, the Board may send written notice to the Owner specifying that unless the Owner causes the lien to be discharged within five (5) days from the date of such notice, the Board may cause the lien to be discharged. Within such five (5) day period, and notwithstanding any other provision of the Governing Documents concerning notice and hearing, the Owner shall be permitted a hearing before the Board regarding the validity of such lien and any offsets or defenses thereto. At that time, the Board shall determine whether the lien adversely and improperly affects and encumbers the rights and interests of the Mutual or the other Owners. If the Board of Directors determines that the lien does adversely and improperly affect and encumber such rights and interests and that adequate protection of such rights and interests has not been provided, the Board may cause the lien to be discharged by payment, bond, or otherwise. The Board shall have the right to levy a Reimbursement Assessment against the Owner responsible for causing the lien in an amount equal to all amounts paid by the Mutual together with interest thereon at the legal rate and all costs and expenses paid or incurred in connection therewith, including reasonable attorneys' fees.

#### ARTICLE 4                      EASEMENTS

- 4.1 Easements in General. In addition to all easements reserved and granted on the Condominium Plan(s) and the easements provided in Sections 3.2 and 3.3, there are hereby specifically reserved and granted for the benefit of the Units and Unit Owners in common and for each Unit and Unit Owner severally, and for the Mutual, as their respective interests shall obtain, the easements, reciprocal negative easements, secondary easements and rights of way as particularly identified in this Article 4.

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

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

- 4.3 Utility Easements. The Board shall have the power to grant and convey easements over and under the Project or any portion thereof for the installation, repair, maintenance, and replacement of overhead or underground lines, cables, wires, conduits, or other devices for electricity, cable or satellite television or master television antenna lines, power, telephone, data transmission and other purposes, sanitary sewer lines and facilities, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities, and for any other purposes deemed by the Board to be appropriate and not inconsistent with the purposes and interests of the Mutual, and each purchaser, in accepting a deed to a Unit, expressly consents thereto; provided, however, that no such easements may be granted if such easement would interfere with the use, occupancy, or enjoyment by an Owner or Resident of any Unit and any existing easements over Exclusive Use Common Area appurtenant thereto, if any, without the consent of the Owner(s) affected. The Mutual shall maintain all utility installations located in the Common Area except for (i) those installations maintained by utility companies, public, private, or municipal, and (ii) utility installations which are within a Unit as defined in Section 1.53. The Mutual shall pay all charges for utilities supplied to the Project except those metered or charged separately to the Units.

- 4.4 Easements Granted by The Board. Subject to compliance, if applicable, with the provisions of Section 10.1(d) below, the Board shall have the power to grant and convey to any person or entity easements and rights of way, in, on, over, or under the Common Area for the purpose of constructing, erecting, operating, or maintaining thereon, therein, or thereunder overhead or underground lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating

and gas lines or pipes, and any similar public or quasi-public improvements or facilities, and for any other purposes deemed by the Board to be appropriate and not inconsistent with the purposes and interests of the Mutual, and each purchaser, in accepting a deed to a Unit, expressly consents thereto; provided, however, that no such easements may be granted if such easement would interfere with the use, occupancy, or enjoyment by an Owner or Resident of any Unit and any existing exclusive easements over Common Area appurtenant thereto, if any, without the consent of the Owner(s) affected.

## ARTICLE 5                    USE RESTRICTIONS

- 5.1     Senior Citizen Residential Use. Units shall be occupied and used for senior citizen residential purposes only. Business activity shall not be permitted except as provided in Section 5.5. Occupants, including guests, of each Unit shall be subject to the age and other restrictions set forth in a written policy (*i.e.*, the Senior Housing Residency Restrictions) adopted by the Board in compliance with applicable federal and California law as those laws may be amended from time to time. It is the intention of this provision to restrict occupancy to older persons or senior citizens to the fullest extent permitted by applicable law.
- 5.2     Number of Occupants. No more than two persons may occupy a studio Unit, and no more than two persons per bedroom plus one person per Unit may occupy larger Units (*i.e.*, a maximum of three persons in a 1-bedroom Unit, five persons in a 2-bedroom Unit, and seven persons in a 3-bedroom Unit). The number and regulation of guests shall be governed by Rules adopted by the Board concerning guests.
- 5.3     Rental Restrictions. Subject to the provisions of the Governing Documents and this Section 5.3, an Owner shall have the right to lease his or her Unit.
- 5.3.1   Requirements for Renting. An Owner renting his or her Unit shall:
- (a)     do so pursuant to a written lease or rental agreement for a term of at least three (3) months which expressly provides (1) that the agreement is subject to the provisions of the Governing Documents and that the breach of any provision of the Governing Documents shall constitute a default under the lease; and (2) that the Project is a "senior citizen housing development" and that all guests, visitors and occupants are restricted by and must satisfy the Senior Housing Residency Restrictions;

- (b) provide the tenant(s) with copies of the Governing Documents and all subsequent amendments;
- (c) provide the Mutual with a copy of the signed lease or rental agreement;
- (d) notify the Mutual of the name of the tenants and members of the tenants' household and the duration of the lease; and
- (e) upon request by the Mutual, cause all tenant(s) and occupants to execute and submit to the Mutual an affidavit or certificate on a form prescribed by the Mutual which includes the following and such other items as are reasonably required by the Mutual: that he/she/they understand that (1) the Project is a "senior citizen housing development" and that all guests, visitors and occupants are restricted by and must satisfy the Senior Housing Residency Restrictions, (2) he/she/they has/have received copies of all of the Governing Documents, including but not limited to the Senior Housing Residency Restrictions, (3) the lease is expressly subject to all of the provisions of the Governing Documents, that all tenants and occupants must comply with the Governing Documents, and (4) the breach of any provision of the Governing Documents shall constitute a default under the lease.

5.3.2 No Short-Term Rentals. With the exception of a lender in possession of a Unit following a default in a first Mortgage, a foreclosure proceeding, or any deed or other arrangement in lieu of foreclosure, no Owner shall be permitted to lease his or her Unit for transient or hotel purposes, which shall include, but is not limited to, rental for any period less than thirty (30) days or any rental where the occupants of a Unit are provided customary hotel services such as room service for food and beverage, maid service, periodic furnishing of clean bed linen or towels, laundry service, and bellboy services.

5.3.3 Owner's Responsibility for Tenant's Actions. Each Owner leasing a Unit shall be strictly responsible and liable to the Mutual for the actions of such Owner's tenant(s) in or about the Project and for each tenant's compliance with the provisions of the Governing Documents.

- 5.3.4 Mutual As Third Party Beneficiary. Notwithstanding the failure of an Owner to comply with the requirements of Subsection 5.3.1, and whether or not it is so stated in a written contract or other agreement between such Owner and such tenant, the Owner and the tenant of any Unit subject to this Declaration shall be conclusively deemed to have agreed that the Mutual is an intended third party beneficiary to the contract between the Owner and the tenant; that failure of the tenant, members of the tenant's household, or guests to comply with applicable provisions of the Governing Documents shall constitute a breach of the terms of the contract between the Owner and the tenant; and that the Mutual shall have the right but not the obligation to enforce the contract and to pursue every remedy available under the contract, under this Declaration including but not limited to entering upon and taking possession of such Owner's Unit pursuant to Section 7.16 (concerning assignment of rents), or under the law. This Subsection 5.3.4 shall apply to any tenancy commencing or extended or renewed after the date this Declaration is recorded.
- 5.3.5 Mutual's Costs and Expenses. Owners shall be responsible for the reasonable costs and expenses incurred and/or levied by the Mutual in connection with an Owner's rental of his or her Unit. Such costs and expenses shall be due and payable to the Mutual when billed to the Owner and shall constitute Reimbursement Assessments in accordance with Section 7.9.
- 5.3.6 Indemnification of Mutual. Every Owner of a Unit that is occupied by persons other than the Owner pursuant to a lease or otherwise, agrees to and shall indemnify and defend the Mutual, its officers, directors, and agents and shall hold them harmless from any cost, loss, claim, or damages of any kind, including but not limited to attorneys' fees arising out of the conduct or presence of the occupants of the Unit upon the Project, including any such arising or alleged to have arisen out of the enforcement or nonenforcement by the Mutual of the Governing Documents against such occupants. Without limiting the generality of the foregoing, all costs, including attorneys' fees incurred by the Mutual to enforce the Governing Documents against such occupants, including exercise of the Mutual's right under Section 7.16 (concerning assignment of rents), injunctive relief against the Owner or the occupant pursuant to Section 13.6, and contract enforcement by the Mutual pursuant to Subsection 5.3.4, shall be reimbursed to the Mutual by the Owner and may be assessed by the Mutual as a Reimbursement Assessment.

#### 5.4 Time-Share and Private Exchange Arrangements.

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

5.4.2 Private Exchanges. Notwithstanding the provisions of Subsection 5.4.1 above and the requirement in Section 5.3 that all leases or rental agreements must be for a term of at least three (3) months, an Owner shall not be prohibited from entering into a private exchange arrangement with another person whereby the Owner will occupy the dwelling of the other person to the exchange for a defined temporary period and that other person will occupy the Owner's Unit during the same period; provided that an exchange period shall not exceed ninety (90) consecutive days and an Owner shall not enter into an exchange arrangement involving his or her Unit for more than two such periods in any calendar year. Each Owner who enters into a private exchange arrangement shall provide written notice to the Board in advance of arrival of the guest(s), which notice shall include the guest(s) name(s) and such other information as the Board shall require. The Owner shall be responsible for the reasonable costs and expenses incurred and/or levied by the Mutual in connection with the Owner's private exchange arrangement. Such costs and expenses shall be due and payable to the Mutual when billed to the Owner and shall constitute Reimbursement Assessments.

#### 5.5 Restriction on Businesses.

5.5.1 Limitations. No business of any kind shall be established, maintained, operated, permitted, or conducted within the Project except: (i) such professional and administrative professions as may be permitted by applicable governmental ordinances, provided that there shall be no external evidence thereof and that such activity is

merely incidental to the use of the Unit for residential purposes; and  
(ii) certain facilities to the extent specifically authorized by statute.

5.5.2 External Evidence. External evidence may include, but is not limited to, signs, the presence of employees, or business traffic including clients, vendors or delivery services.

5.5.3 Indemnification. To the fullest extent permitted by law, every Owner or Resident who conducts or engages in any business, commercial endeavor, or profession within any Unit or the Project, or whose tenant does so, agrees to and shall indemnify and defend the Mutual, its officers, directors, employees, and agents and shall hold them harmless from any cost, loss, claim, or damages of any kind, arising out of the conduct or presence of such activity, including but not limited to attorneys' fees, any claims for consequential damages, and any claims arising or alleged to arise out of the enforcement or nonenforcement by the Mutual of the Governing Documents, including but not limited to the restriction on business contained in this Section 5.5. Without limiting the generality of the foregoing, all costs, including attorneys' fees, incurred by the Mutual to enforce Section 5.5 against any occupant of the Unit or to defend any claim subject to Section 5.5 shall be reimbursed to the Mutual by the Owner of the Unit and may be assessed by the Mutual as a Reimbursement Assessment.

5.6 Offensive Conduct, Nuisances, Noise. No noxious, harmful, or offensive activities shall be conducted upon or within any part of the Project, nor shall anything be done thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to any Residents of the Project, or which shall in any way interfere with their use of the Common Area and facilities thereon or the use and enjoyment of their Condominiums or Units. Without limiting any of the foregoing, no Resident shall permit noise, including but not limited to the barking of dogs, to emanate from the Resident's Unit, which would unreasonably disturb another Resident's enjoyment of his or her Unit or of the Common Area. Each Owner and Resident shall comply with all requirements of all federal, state, and local governmental authorities and all laws, ordinances, rules and regulations applicable to his or her Unit. As provided in Section 13.1, the Mutual has the sole and absolute authority and discretion to decide whether or not it will take action to abate a nuisance or an alleged nuisance.

5.7 Use of the Common Area. All use of Common Area is subject to the Governing Documents. Without limiting the generality of the foregoing, no alterations or additions to the Common Area shall be permitted without the prior written approval of the Board; nothing shall be altered, constructed,

placed, kept, stored, parked, planted on, or removed from the Common Area without the prior written consent of the Board; and the Common Area shall be kept free of rubbish, debris, and other unsightly or unsanitary materials. Each Owner shall avoid causing any damage to the Common Area.

- 5.8 Hazards. There shall be no obstruction of any part of the Common Area. Nothing shall be done, placed, or kept within the Project that will increase the rate of insurance or result in the cancellation of insurance under any insurance policy obtained by the Mutual, or which will be in violation of any governmental statute, ordinance, rule, or regulation. Nothing shall be stored in the Common Area without the prior consent of the Board.
- 5.9 Requirement of Architectural Approval. Construction, installation, modification, or alteration of buildings, outdoor structures, landscaping, and outdoor lighting are subject to prior approval of the Board as provided in Article 12 entitled "Architectural and Landscape Control."
- 5.10 Outside Drying and Laundering. No outside clothesline or other outside clothes washing, drying, or airing facilities shall be maintained anywhere in the Project.
- 5.11 Antennas and Satellite Dishes. To the fullest extent permitted by law, the Board may adopt and enforce Rules regarding the installation and maintenance of external antennas, satellite dishes, and other radio or telecommunications facilities.
- 5.12 Animals.
- 5.12.1 Limitation on Pets. No animals shall be kept, bred, or raised within the Project for any commercial purpose. Not exceeding two (2) pets (dogs, cats or caged birds), none of which weighs more than twenty-five (25) pounds, may be kept in any Unit or Exclusive Use Common Area without the prior written consent of the Board. Pets shall not be allowed on other portions of the Common Area except as may be permitted by "Pet Rules" adopted by the Board in accordance with Subsection 5.12.4 below. Except as provided above, no animals, livestock, birds or poultry shall be brought within the Project or kept in any Unit or on any portion of the Common Area.
- 5.12.2 Owner's Responsibility for Pets. The owner of each pet shall be responsible for immediately removing and disposing of any waste introduced to any portion of the Project by such pet.

- 5.12.3 Liability for Pets. Each Owner, Resident, and any person bringing or keeping an animal within the Project shall be absolutely liable to the Mutual and all other persons for any injury or damage to persons or property caused by the animal brought upon or kept upon the Project by such person or by members of his or her household, tenants, guests, or invitees. The Owner shall indemnify the Mutual and its officers, directors, and agents against, and be responsible for any and all claims, damages, losses, demands, liabilities, costs and expenses, including but not limited to extra housekeeping charges, cleaning expenses for elevators and interior Condominium Building hallways, and attorneys' fees, arising out of or resulting from the presence or conduct of any animal brought upon or kept within the Project by the Owner, members of his or her family, guests, tenants, or invitees.
- 5.12.4 Pet Rules; Mutual Authority. The Board may adopt and enforce "Pet Rules" in addition to the provisions of Section 5.12. The Mutual shall have the right to prohibit the keeping of any animal which, in the sole and exclusive opinion of the Board, makes excessive noise or otherwise constitutes an unreasonable annoyance to other Owners or Residents.
- 5.13 Trash Disposal. Trash, garbage, accumulated waste plant material, and other non-toxic waste and refuse shall be properly wrapped, tied and removed from the Unit and deposited in the chutes located in the trash room on the floor where the Unit is located.
- 5.14 Construction Materials, Construction Debris. No portion of the Project shall be used for the storage of building materials other than in connection with approved construction. All construction debris shall be picked up and deposited daily in an appropriate container.
- 5.15 Power Equipment. No power equipment, hobby shops or car maintenance (other than emergency work) shall be permitted anywhere in the Project, except with prior written approval of the Board. Approval shall not be unreasonably withheld and in deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections.
- 5.16 Signs, Banners, Flags. No sign, billboard, poster, banner, or flag of any kind shall be displayed to the public view from any portion of the Project except that this limitation shall not apply to:
- (a) Signs required by legal proceedings;

- (b) Noncommercial signs or posters no larger than 9 square feet in size and noncommercial flags or banners no larger than 15 square feet in size, displayed in or on a Unit or in a window of a Unit, only to the extent permitted by *Civil Code* section 1353.6;
- (c) A single sign of customary and reasonable dimension and design, complying with the provisions of any applicable ordinance and Architectural Rules and reasonably located on a Unit advertising a Unit for sale or rent;
- (d) A single identification sign which has been approved by the Board located on a Unit identifying the number or address of the Unit and/or the names of the occupants;
- (e) Other signs which by law cannot be prohibited;
- (f) Signs approved by the Board located at or near any entrance to the Project identifying the Project;
- (g) Signs required for traffic control and regulation of streets or open areas within the Project;
- (h) Signs on the Common Area as approved by the Board for a purpose reasonably related to the affairs of the Mutual; and
- (i) A flag of the United States, subject to any City or County restriction as to time, place, and manner of display.

Nothing in this Section 5.16 shall be deemed to authorize the posting or display of any sign, poster, banner, or flag on, in, or upon the Common Area without authorization of the Board.

- 5.17 Vehicles and Parking. Except as otherwise provided in Rules adopted by the Board, the following shall not be parked, kept, stored, or permitted to remain upon any area within the Project: (i) campers, mobile homes, boats and other recreational vehicles, (ii) trailers, commercial vehicles, or trucks (other than standard size pickup trucks), (iii) dilapidated, inoperable, or abandoned vehicles, (iv) any vehicle that does not have a current state registration, and (v) any vehicle that is not currently registered to a Mutual Resident.

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

Use of designated guest parking spaces and of golf cart parking areas and other portions of the Common Area that are not Exclusive Use Common Area shall be subject to the Rules.

- 5.18 Parking Enforcement. In addition to the provisions of Section 5.17 above, the Board shall have the power and authority to adopt, promulgate, and enforce parking rules and shall have the power to impose fines and other sanctions for violations of provisions of the Governing Documents relating to vehicles and parking. Such power shall include the power and authority to cause the towing, at the vehicle owner's expense, of vehicles which are parked within the Project in violation of any of the provisions of the Governing Documents, provided that towing of vehicles of guests and other non-Residents of the Project shall be subject to the provisions of applicable law. Costs incurred by the Mutual relating to the towing and/or storage of any vehicle parked in violation of any provision of the Governing Documents shall be assessed as a Reimbursement Assessment against the Owner responsible or whose household members, tenants, Contract Purchasers, or guests are responsible for the presence of such vehicle.
- 5.19 Assigned Parking Spaces.
- 5.19.1 Permitted Vehicle Parking Only. Only motor vehicles permitted by Section 5.17 and Rules adopted pursuant to Section 5.18 may be parked in assigned parking spaces.
- 5.19.2 Prohibition on Storage. Parking spaces shall be used only for parking of permitted motor vehicles and shall not be used for storage of personal belongings. Storage closets, lockers, cupboards and other storage units or facilities, potting sheds and stands may not be installed or otherwise placed in parking spaces.
- 5.20 Window Coverings. Drapes, curtains, window shades, blinds, shutters and other window coverings which are installed in the windows of any Unit shall comply with the Rules.
- 5.21 Outbuildings. No outbuilding, tent, shack, trailer, shed, or temporary building of any kind shall be constructed or installed within the Project by any Owner or Resident.
- 5.22 Use of Patios and Balconies. Patios and balconies shall not be used for the storage of personal property or other belongings. Storage lockers and other storage units, potting sheds and stands are expressly prohibited in these areas. The Board may adopt Rules to further regulate the use of patios and balconies, including but not limited to Rules which identify the types of

furnishings, plants, trees and other landscaping which may, or may not be placed in these areas.

- 5.23 Outside Fires. There shall be no exterior fires anywhere within the Project except for barbeque and controlled fires contained within receptacles designed for that purpose and located in areas designated by the Board or the Rules.
- 5.24 Floor Coverings. No change in the floor covering materials originally installed in the Units shall be permitted except with the prior written consent of the Board. Where there is a permitted change in floor covering materials, in order to reduce sound transmission, all Units that are above other Units shall have all floor areas, except kitchens, bathrooms and entry halls, covered with carpet or other material that provides equivalent insulation against sound transmission to the Unit below.
- 5.25 Combining Units. Contiguous Units may be combined for use as a single residence, and previously combined Units may be reconstructed as independent Units, with prior written approval (which may include conditions) of the Board in each instance. Notwithstanding physical combination of Units, a combined Unit shall be treated as separate Units for purposes of Assessments and voting rights. In addition to architectural plans, the Owner shall provide a certificate of a structural engineer licensed in the State of California and approved by the Board stating that those portions of the Common Area affected by a proposed combination of Units are not required for structural support, and certificates by electrical and plumbing contractors licensed in the State of California setting forth in detail the effect of the proposed combination or separation of the Units on any Common Area plumbing and wiring. The work must be performed by a contractor licensed in the State of California and a completion bond naming the Mutual and the Board as obligees (or other security acceptable to the Board) shall be provided to assure the prompt completion of the work in a workmanlike manner free of mechanics' liens.
- 5.26 Sale of Combined Units. If Units have been combined, no part of the combined Units shall be separately conveyed, leased, or transferred unless and until reconstruction to separate the Units has been approved by the Board, and completed.

**ARTICLE 6**                    **MUTUAL; FOUNDATION**

- 6.1     Management and Operation. The Mutual shall manage and operate the Project in accordance with the applicable provisions of the Governing Documents and the applicable provisions of California and federal law. The Mutual shall have all of the powers set forth in the Governing Documents together with general power to do any and all things that a nonprofit mutual benefit corporation may lawfully do under the laws of the State of California, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Governing Documents.
- 6.2     Membership. Every Owner of a Condominium within the Project shall be a Member of the Mutual and shall remain a Member thereof until such time as his or her Condominium ownership ceases for any reason. Membership shall be appurtenant to and may not be separated from ownership of a Condominium and shall not be transferred, encumbered, pledged, alienated, or otherwise hypothecated in any way, except in connection with the sale or encumbrance of the Condominium to which it is appurtenant.
- 6.3     Voting. Only Members in Good Standing shall be entitled to vote, and only one vote shall be cast for each Condominium, as more particularly set forth in the Bylaws.
- 6.4     Board of Directors. The affairs of the Mutual shall be managed by or under the direction of a Board of Directors. The number and qualifications of Directors shall be as established in the Bylaws, and the members of the Board shall be elected as provided in the Bylaws. The Board of Directors shall have all of the powers and duties set forth in any provision of the Governing Documents, including without limitation such powers and duties as may be expressly set forth in this Declaration.
- 6.5     Mutual Rules. The Board of Directors shall have the power and the authority to establish, promulgate, amend, repeal, and enforce such Rules (including Senior Housing Residency Restrictions and Maintenance Policies) as the Board deems necessary for the management and operation of the Project and the conduct of business and affairs of the Mutual.
- 6.6     Membership in the Foundation. Membership in the Foundation and the voting rights and privileges of members of the Foundation shall be as prescribed in the Foundation's Governing Documents, as amended from time to time. No Owner shall transfer any membership and/or interest in the Foundation except in compliance with the provisions of the Foundation's Governing Documents.

Members of the Foundation shall be required to pay assessments, fees and other charges to the Foundation and comply with the rules and restrictions of the Foundation in compliance with the Foundation's Governing Documents. The sum for the charges that Mutual is required to pay to the Foundation as the Mutual's pro rata share (based on the number of Units within the Project) or that the Member is required to pay to the Foundation in accordance with this Section 6.6 for services provided by the Foundation for the benefit of the Mutual and/or its Members shall be charged to the Mutual's Members in compliance with Article 7 below.

- 6.7 Capital Improvements. The Board of Directors shall have the power and authority, to provide for the construction, reconstruction, installation, or acquisition of new capital improvements (*i.e.*, that did not previously exist in any form) upon the Common Area, provided that the prior approval of a Simple Majority (that is, a majority of Members voting provided a Quorum has been established) shall be required for any capital improvements involving a total expenditure in excess of five percent (5%) of the Mutual's budgeted gross expenditures for the current fiscal year.
- 6.8 Sale, Transfer or Dedication of Mutual Property. The Board of Directors shall have the power to sell, transfer or dedicate property owned by the Mutual, provided that in the case of any sale, transfer or dedication of Mutual real property that is valued, as determined by the Board, at more than five percent (5%) of the Mutual's budgeted gross expenditures for the current fiscal year, the prior approval of a Simple Majority (that is, a majority of Members voting provided a Quorum has been established) shall be required.
- 6.9 Easements and Licenses to Owners. Subject to compliance, if applicable, with Section 10.1(d) below, the Board shall have the power to grant and convey easements, licenses for use and rights of way in, over, or under the Common Area or any portion thereof to Owners, for such purposes as the Board deems to be appropriate and not inconsistent with the purposes and interests of the Mutual.
- 6.10 Access. The Board and its duly authorized agents or representatives shall have the right to enter any Unit and Exclusive Use Common Area to perform the Maintenance, Repair or Replacement authorized herein or to inspect such Unit or Exclusive Use Common Area, and for any other purpose reasonably related to the performance by the Mutual or the Board of their responsibilities. Such entry shall be made with as little inconvenience to the Residents as practicable and only upon reasonable advance notice of not less than twenty-four (24) hours, except in emergency situations.

**ARTICLE 7****ASSESSMENTS AND LIENS**

- 7.1 Covenant of Owner. Each Owner of a Condominium within the Project, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, shall be deemed to have covenanted and agreed to pay to the Mutual: (i) Annual Assessments (including the Unit's share of charges that the Mutual or the Owner is required to pay to the Foundation), (ii) Special Assessments, (iii) Personal Charges, (iv) Reimbursement Assessments, and (v) Enforcement Assessments levied by the Mutual, together with all Additional Charges.
- 7.1.1 Mutual's Power to Collect. 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, Personal Charges and Additional Charges and for the enforcement of the liens hereinafter provided for.
- 7.1.2 Assessments Are A Personal Obligation. Assessments levied by the Mutual under this Article 7 (including the Unit's share of charges that the Mutual or the Owner is required to pay to the Foundation), Personal Charges and all Additional Charges, shall be a personal debt and obligation of the Owner against whom they are assessed, and shall bind his or her heirs, devisees, personal representatives, successors, and assigns.
- 7.1.3 Obligation Runs with the Land. Such obligation to pay Assessments (including the Unit's share of charges that the Mutual or the Owner is required to pay to the Foundation), Personal Charges and Additional Charges and the right and power of the Mutual to initiate all actions and procedures for collection shall run with the land, so that each successive Owner or Owners of record of any Condominium within the Project shall, in turn, become liable to pay all such Assessments (including the Unit's share of charges that the Mutual or the Owner is required to pay to the Foundation), Personal Charges and Additional Charges assessed during the time he or she is record Owner of such Condominium.
- 7.1.4 Owner's Liability After Transfer. After an Owner transfers of record any Condominium he or she owns, he or she shall not be liable for any Assessments (including the Unit's share of charges that the Mutual or the Owner is required to pay to the Foundation) or other charges levied thereafter with respect to such Condominium. Such Owner shall remain personally liable, however, for all unpaid

amounts due and owing at the time of transfer, together with Additional Charges accruing until time of collection. A Contract Seller of any Condominium shall continue to be liable for all Assessments (including the Unit's share of charges that the Mutual or the Owner is required to pay to the Foundation), Personal Charges and Additional Charges until a conveyance by deed of such Condominium is recorded in the Office of the County Recorder of Contra Costa County.

7.2 Creation of Lien. Each Assessment levied by the Mutual pursuant to this Declaration (including the Unit's share of charges that the Mutual or the Owner is required to pay to the Foundation), Personal Charges and all Additional Charges shall be a charge upon the land and upon levy shall be secured by a continuing lien upon the property against which such Assessment, Personal Charges and other charges are levied. The Mutual shall have a separate lien and a separate lien is hereby created upon each Condominium to secure the payment of any such Assessments (including the Unit's share of charges that the Mutual or the Owner is required to pay to the Foundation), Personal Charges and such Additional Charges as may be levied under this Declaration.

7.2.1 Lien is Continuing. The lien provided for herein shall continue to secure all Assessments (including the Unit's share of charges that the Mutual or the Owner is required to pay to the Foundation), Personal Charges and Additional Charges levied upon any Condominium notwithstanding the transfer of record title to such Condominium, and any such transfer shall be subject to the Mutual's lien, provided that, prior to such transfer, a Notice of Delinquent Assessment has been recorded as provided in the Declaration and by law.

7.2.2 Priority of Liens. The priority of all such liens on each Condominium shall be in inverse order so that upon the foreclosure of the lien for any particular charge on any Condominium, any sale of such Condominium pursuant to foreclosure of the lien will be made subject to all liens securing the Assessments (including the Unit's share of charges that the Mutual or the Owner is required to pay to the Foundation), Personal Charges and Additional Charges on such Condominium that become due and payable subsequent to the lien being foreclosed upon.

7.3 Purpose of Assessments. The Assessments levied by the Board shall be used exclusively to pay for the costs of management and operation of the Project, conducting the business and affairs of the Mutual, to promote the recreation, health, safety, welfare, benefit, and interests of the Owners and Residents

in the Project, and for the improvement and maintenance of the Common Area and, to the extent provided for in the Governing Documents or by law, of the Units situated within the Project or which, in the opinion of the Board, shall be deemed to be necessary or proper for the management of the Project or of the affairs of the Mutual, or the benefit of the Condominium Owners, or for the enforcement of the Governing Documents.

7.4 Authority of the Board. The Board shall have the power and the duty to levy Annual and Special Assessments sufficient to meet the Mutual's obligations under the Governing Documents and applicable law. The Board shall also have the power and duty to collect the Unit's share of charges that the Mutual or the Owner is required to pay to the Foundation, and pay amounts so collected to the Foundation.

7.5 Annual Assessments.

7.5.1 Calculation of Estimated Requirement. Prior to the beginning of each fiscal year, the Board shall estimate the net funds required by the Mutual for such fiscal year to manage, administer, operate, and maintain the Project, to conduct the affairs of the Mutual, and to perform all of the Mutual's duties in accordance with this Declaration, including a reasonable amount allocated to contingencies and to a reserve fund for restoration, repair, and/or replacement of those components for which the Mutual is responsible and which must be repaired or replaced on a periodic basis. The amount of estimated required funds shall constitute the Annual Assessment.

7.5.2 Allocation of Annual Assessment. Annual Assessments shall be allocated as set forth in this Section 7.5.2.

(a) Except as provided in Section 7.5.2(b) below, the Board shall allocate and assess the amount of estimated required funds equally among the Condominiums by dividing the amount by the number of Condominiums within the Project.

(b) All Condominiums in the Project are separated into six (6) categories, as set forth on Exhibit "A" to this Declaration, for the purpose of allocating the costs of Unit housekeeping and the portion of the Mutual's property insurance premiums attributed to the Unit (and not the Common Area) among the Condominiums. The Annual Assessment for each Condominium to pay the costs of Unit housekeeping and the portion of the Mutual's property insurance premiums attributed to the Unit (and not the Common Area) shall be

equal for each Condominium in each category and, as to each category, shall in the aggregate be in the following proportions:

<u>Category</u>	<u>Relative Aggregate Proportion</u>
1 (65 Condominiums)	13.73%
2 (74 Condominiums)	24.23%
3 (77 Condominiums)	24.54%
4 (47 Condominiums)	20.38%
5 (25 Condominiums)	10.84%
6 (12 Condominiums)	6.28%

7.5.3 Levy and Payment of Annual Assessment. Unless the Board shall designate otherwise, Annual Assessments shall be levied on an annual basis and shall be paid in twelve (12) equal monthly installments during the fiscal year, and each installment shall be due and payable on the first day of each month.

7.5.4 Notice of Annual Assessment. Not less than thirty (30) days and not more than ninety (90) days prior to the beginning of each fiscal year, the Board shall send to each Owner a notice of the amount of the Annual Assessment allocated to his or her Unit, except that if there is an increase in the Annual Assessment over the previous year, the notice shall be mailed by first class mail to the Owner not less than thirty (30) days and not more than sixty (60) days before the due date of the increased Annual Assessment.

7.5.5 No Credit for Unused Services. It is contemplated that the Annual Assessment shall include the cost of one (1) meal per day per Unit and once per week housekeeping services for each Unit. In the event an Owner chooses not to utilize either of these services, no credit shall be given to the Owner against the Owner's share of the Annual Assessment except pursuant to Rules which may be adopted by the Board.

7.6 Increases in Annual Assessment. Except as otherwise provided by law, the Board shall not increase the Annual Assessment for any fiscal year above the amount of the Annual Assessment for the preceding fiscal year by more than the maximum amount permitted by law, except upon the affirmative vote or written consent of a majority of Members voting on any such increase in the Annual Assessment, provided that a Quorum is established. For purposes of the preceding sentence, a Quorum shall mean more than fifty percent (50%) of the Members of the Mutual, notwithstanding any lower Quorum requirement which may be set forth in the Bylaws.

## 7.7 Special Assessments.

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

7.7.2 Approval of Special Assessments. Except in the case of an emergency situation as defined in *Civil Code* section 1366, in any fiscal year the Board may not levy Special Assessments which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Mutual for that fiscal year, except upon the affirmative vote or written consent of a majority of the Members voting on any such Special Assessment, provided that a Quorum is established. For purposes of the preceding sentence, a Quorum shall mean more than fifty percent (50%) of the Members of the Mutual, notwithstanding any lower Quorum requirement which may be set forth in the Bylaws.

7.7.3 Allocation of Special Assessments. Special Assessments shall be allocated and assessed among the Condominiums equally except as follows:

(a) Special Assessments against Owners and Units to raise funds for the rebuilding or major Repair of a portion of the structural Common Area shall be levied upon the basis of the ratio of the square footage of the floor area of the Unit of the Condominium to the total square footage of the aggregate floor area of the Units in all Condominiums to be assessed.

(b) Special Assessments to pay the costs of Unit housekeeping shall be equal for each Condominium in each category as described in attached Exhibit "A" and Section 7.5.2(a) above, and as to each category, shall in the aggregate be in the same proportions set forth in Section 7.5.2(a).

7.8 Personal Charges. The Board shall have the right to adopt Rules with respect to the amount, collection and administration of Personal Charges for the use of the Dining Room and other Common Area facilities and services, the cost of which are not included in the Annual Assessment. The Rules may include, but shall not be limited to, provisions for (i) financial qualifications for

incurring Personal Charges; (ii) qualification of occupants of Units other than the Owner who are authorized by the Board to incur Personal Charges ("Approved Occupant," as defined in Section 1.4); (iii) billing and collection procedures; and (iv) revocation of the ability to incur Personal Charges.

- 7.9 Reimbursement Assessments. The Mutual shall levy a Reimbursement Assessment against any Owner and his or her Condominium if a failure by such Owner, or any person or pet for whom the Owner is responsible, to comply with any provision of the Governing Documents has necessitated or resulted in an expenditure of funds by the Mutual to deal with such lack of compliance or to bring such Owner or his Condominium into compliance. A Reimbursement Assessment may also be levied to reimburse the Mutual for damages to property maintained by the Mutual (including property within a Unit or Exclusive Use Common Area) when such damage is due to the act or neglect of an Owner or any person or pet for whom the Owner is responsible, or otherwise as provided in this Declaration. The term "Reimbursement Assessment" shall also include (i) costs and expenses billed to an Owner in connection with the rental of his or her Unit (as provided in Subsection 5.3.5), and (ii) costs and expenses billed to an Owner in connection with a private exchange arrangement (as provided in Subsection 5.4.2). A Reimbursement Assessment shall include any costs, including attorneys' fees, incurred by the Mutual, and also including costs of collecting from an Owner any amount which the Owner is obligated to pay to the Mutual. A Reimbursement Assessment shall be due and payable to the Mutual when levied.
- 7.10 Enforcement Assessments. Provided notice and opportunity for hearing is given to the Owner as provided in Article 13, the Board may levy an Enforcement Assessment (and any fine imposed by the Board in accordance with the provisions of the Governing Documents shall be deemed to be such an Enforcement Assessment), for violation of any of the provisions of the Governing Documents. Any Enforcement Assessment shall be due and payable to the Mutual when levied.
- 7.11 Failure to Fix Assessments. The failure or omission by the Board to fix or levy any Annual Assessment provided for by the terms of this Declaration before the expiration of any fiscal year, for that fiscal year or the next fiscal year, shall not be deemed either a waiver or a modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay Assessments or any installment thereof for that or any subsequent year, but the amount of the Annual Assessment fixed for the preceding fiscal year shall be the amount of the Annual Assessment for the ensuing fiscal year until a new Annual Assessment is levied.

- 7.12 No Offsets. All Assessments levied by the Board shall be payable in the full amount specified, including any Additional Charges imposed as provided by the terms of this Declaration, and no offsets against any such amounts shall be permitted for any reason whatsoever, including without limitation a claim that the Mutual has failed to properly exercise its duties of maintenance or enforcement.
- 7.13 Delinquent Assessments. Any installment or other portion of an Assessment not received within fifteen (15) days after its due date shall be delinquent and shall be subject to interest and late charges not to exceed the maximum rate permitted by law, as well as all other Additional Charges.
- 7.14 Enforcement By Action At Law or Foreclosure. The Board, on behalf of the Mutual, may enforce the payment of any delinquent Assessment plus Additional Charges by bringing an action at law against any Owner personally obligated to pay the same, or by foreclosing the lien against the Owner's Condominium by judicial or non-judicial foreclosure, except as prohibited by law. To the extent prohibited by *Civil Code* section 1367.1(e), the amount of an Enforcement Assessment may not become a lien that is enforceable by non-judicial foreclosure.
- 7.14.1 Pre-Lien Notice. At least thirty (30) days prior to recording a Notice of Delinquent Assessment against a Unit to collect a debt that is past due, the Mutual shall provide written notice to the Owner(s) of the Unit, as required by *Civil Code* section 1367.1(a) ("Pre-Lien Notice").
- 7.14.2 Owner's Right To Dispute the Debt. An Owner may dispute a debt noticed in the Pre-Lien Notice by sending to the Board a written explanation of the reasons for such dispute. If the Owner's written dispute is mailed to the Board (as evidenced by a postmark or receipt of mailing) within fifteen (15) days after the postmark on Pre-Lien Notice, the Board shall respond in writing to the Owner within fifteen (15) days of the postmark date of the Owner's written dispute.
- 7.14.3 Owner's Right To Discuss Payment Plan. An Owner may submit to the Board a written request to discuss a payment plan for a debt noticed in a Pre-Lien Notice. If the Owner's written request is mailed to the Board (as evidenced by a postmark or receipt of mailing) within fifteen (15) days after the postmark on the Pre-Lien Notice, the Board shall meet with the Owner within forty-five (45) days of the postmark date of the Owner's written request, unless there is not a regularly scheduled Board meeting within the period, in which case the Board, in its discretion, may hold a special meeting

in executive session to meet with the Owner or may designate a committee of one or more Board members to meet with the Owner.

- 7.14.4 Notice of Delinquent Assessment. The amount of the past due debt noticed in the Pre-Lien Notice shall be a lien from and after the recording of a Notice of Delinquent Assessment. The Notice of Delinquent Assessment shall be mailed in the manner set forth in *Civil Code* section 2924b to all record owners of the Unit no later than ten (10) days after recordation as required by *Civil Code* section 1367(b).
- 7.14.5 Initiating Foreclosure. As provided in *Civil Code* section 1367.1(g), no procedures shall be initiated to foreclose the lien securing any noticed past due debt under this Article 7 until after the expiration of thirty (30) days following the recording of a Notice of Delinquent Assessment.
- 7.14.6 Amount Due and Payable. Except with respect to the amount of any Enforcement Assessment, upon the recording of the Notice of Delinquent Assessment referred to above, the Mutual may, at its option, declare the entire balance of all sums then due or to become due from the Owner, immediately due and payable, which total sum may then be included in any suit, action, or other procedure initiated to collect said sums, including all Additional Charges.
- 7.15 Power of Sale. Each Owner does hereby appoint the Mutual as trustee to enforce and to foreclose any lien which is established pursuant to the terms of this Declaration, by private power of sale, as provided in Division III, Part 4, Title 14, Chapter 2, Article 1, of the *Civil Code*, and does further grant to the Board of Directors, on behalf of the Mutual, the authority and power to sell the Condominium of such Owner in the event of any default in payment of any Assessments or Additional Charges levied against such Condominium, for lawful money of the United States, to the highest bidder, to satisfy said lien. The Mutual, as trustee for the remaining Owners, or any other Owner, may purchase the Condominium at said sale.
- 7.16 Assignment of Rents. As security for the payment of all liens provided for under this Declaration, each Owner hereby gives to and confers upon the Mutual the right, power, and authority during the continuance of such ownership to collect the rents, issues, and profits of the Owner's Unit, reserving unto the Owner the right, prior to any default by such Owner in performance of that Owner's obligations under the Governing Documents in payment of any indebtedness to the Mutual or in performance of any agreement thereunder including but not limited to those set forth in Section 5.3 of this Declaration, to collect and retain such rents, issues, and profits

as they become due and payable. Upon any such default, the Mutual may at any time, upon ten days written notice to such Owner, then (either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for such indebtedness) enter upon and take possession of such Owner's Unit or any part thereof, in its own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any such indebtedness, and in such order as the Mutual may determine or as required by applicable law. The entering upon and taking possession of said property, the collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not cure or waive any default under the Governing Documents or invalidate any act done pursuant to this Declaration.

- 7.17 Remedies Cumulative. The Board may commence any procedure for the collection of delinquent Assessments upon its own decision. The remedies provided in this Declaration for collection of delinquent Assessments shall be cumulative and not exclusive.
- 7.18 Certificate of Satisfaction and Release of Lien. Upon payment in full of a delinquent Assessment, including any Additional Charges, or the satisfaction thereof, the Board shall cause to be recorded, in the same manner as the Notice of Delinquent Assessment, a further certificate stating the satisfaction thereof and the release of the lien.
- 7.19 Subordination to Lien of First Mortgage. Except as otherwise expressly provided by law, the lien securing each of the Assessments provided for under this Declaration shall have priority as of the date of recording of the original 1989 Declaration applicable to the Project over all other liens and encumbrances applicable to the Condominiums; provided, however, that such Assessment lien shall be subordinate to the lien of any First Mortgage recorded against the Condominium; and provided, further, that such subordination shall apply only to the Assessments which have become due and payable prior to the sale of such property pursuant to a decree of foreclosure of any such Mortgage, or pursuant to a power of sale contained in any such Mortgage. Such foreclosure sale shall not relieve such property from liability for any Assessments and Additional Charges thereafter becoming due, nor from the lien of any subsequent Assessment.
- 7.20 Funds to be Held in Mutual Name. Unless otherwise determined by the Board, the Mutual shall maintain at least two separate accounts in one or more banks or other depositories selected by the Board, which accounts shall be clearly designated WALNUT CREEK MUTUAL NO. 58 OPERATING ACCOUNT and WALNUT CREEK MUTUAL NO. 58 RESERVE ACCOUNT. The Assessments and other sums collected by the Mutual shall be properly

deposited into such accounts or paid over to the Foundation, as the case may be.

- 7.21 Funds Held in Trust for Owners. The Assessments collected by and for the Mutual shall be held in trust by the Mutual for and on behalf of each Owner and shall be used for the purposes set forth in Section 7.3. Upon sale or transfer of any Condominium by any Owner, the Owner's interest in the funds held in trust by the Mutual shall terminate and shall be deemed automatically transferred to the successor-transferee of such Owner.
- 7.22 Waiver of Exemptions. Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Article 7, the benefit of any homestead or exemption laws of the State of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed pursuant to the terms of this Article 7.
- 7.23 Property Exempt From Assessments. The following property subject to this Declaration shall be exempt from the Assessments, Additional Charges, and liens created herein:
- (a) All property dedicated to and accepted by the City or County or other local public authority and devoted to public use;
  - (b) Any Condominium which is owned by the Mutual as a result of the Mutual having acquired such Condominium through foreclosure; provided, however, that such exemption shall be applicable only during the period in which the Mutual is record owner of such Condominium; and
  - (c) All Common Area.

## **ARTICLE 8**                    **INSURANCE**

- 8.1 Types of Insurance. The Board shall, on behalf of the Mutual, procure and maintain adequate casualty, liability and other insurance on property owned by the Mutual and other appropriate insurance, all in compliance with governing laws and as follows:
- (1) A master fire insurance policy for the full replacement value of the Condominium Building structures and Common Area improvements. The form and content of such policy must be satisfactory to all institutional First Mortgagees and shall meet the maximum standards

of the various institutional First Mortgagees whose loan(s) encumber any of the Condominiums;

- (2) A public liability and property damage insurance policy with cross liability endorsement, if available, insuring the Mutual, any manager and the Owners against liability incident to ownership or use of the Common Area. The limits of such insurance shall not be less than \$1,000,000 covering all claims for death, personal injury and property damage arising out of a single occurrence;
- (3) If requested by Members of the Mutual who have at least ten percent (10%) of the Mutual's Total Voting Power or any First Mortgagee or any insurer or governmental guarantor of any First Mortgagee, a fidelity bond or insurance policy covering members of the Board, officers and employees of the Mutual, and employees of any manager or managing agent, whether or not such persons are compensated for their services, naming the Mutual as obligee and written in an amount equal to the amount of funds held by the Mutual during the term of the bond but not less than one-fourth (1/4) of the estimated annual operating expenses of the Mutual, including reserves. Such fidelity bond or insurance policy shall be obtained if any First Mortgage is acquired by the Federal National Mortgage Association ("FNMA");
- (4) Statutory workers' compensation insurance covering any employee of the Mutual; and
- (5) Any other insurance deemed necessary or prudent by the Board of Directors.

8.2 Owner's Responsibilities. Individual Owners are encouraged to obtain, at their sole cost and expense, an insurance policy (or policies) to cover their personal property, improvements or alterations to their Units, and personal injuries or other losses that may occur within or around their Unit or Exclusive Use Common Area. However, no Owner shall insure his or her Condominium in any manner which would cause any diminution in insurance proceeds from the Mutual's master policy. Should any Owner violate this provision he or she shall be responsible to the Mutual for any such diminution, and the Mutual shall levy a Reimbursement Assessment against such Owner in the amount of such diminution.

8.3 Waiver of Subrogation. All insurance policies procured by the Mutual or an Owner shall contain a waiver of subrogation by the insurer(s) against the Mutual, Board and Owners.

- 8.4 Owner's Insurance is Primary. To the extent that insurance coverage obtained by the Owner overlaps with insurance coverage obtained by the Mutual, any due and collectable insurance obtained by the Owner shall be considered primary in all respects.
- 8.5 Premiums. Premiums for the insurance carried by the Mutual shall be a common expense and shall be included in the Annual Assessment levied by the Mutual.
- 8.6 Deductibles. The Board may adopt Policies relating to payment of insurance deductibles as between the Mutual and Owners consistent with the obligations and provisions contained in the Bylaws and the Declaration.
- 8.7 Processing Claims. The Board may adopt Policies relating to making claims, adjusting claims, and receiving and disbursing proceeds from any insurance settlements consistent with the obligations and provisions contained in the Bylaws and the Declaration.
- 8.8 FNMA Requirements. Anything contained herein to the contrary notwithstanding, the Mutual shall maintain such insurance coverage as may be required by the Federal National Mortgage Association ("FNMA") so long as FNMA holds a Mortgage on or owns any Condominium.
- 8.9 Annual Review. The Board shall review the limits and coverage of all insurance policies of the Mutual at least once a year and shall increase or decrease said limits and coverage as the Board deems necessary or appropriate.

## **ARTICLE 9                      DAMAGE OR DESTRUCTION OF BUILDINGS; CONDEMNATION**

- 9.1 Casualty Destruction of Common Area. If any portion of the Common Area is damaged or destroyed by fire or other casualty, then:
- (a) If the cost of repairing or rebuilding does not exceed the amount of the available insurance proceeds by more than five percent (5%) of the budgeted gross expenses of the Mutual for the fiscal year during which the repairs or rebuilding is necessitated, the Board shall contract to Repair or rebuild the damaged portions of the Common Area substantially in accordance with the original plans and specifications therefor.
- (b) If the cost of repairing or rebuilding exceeds the amount of available insurance proceeds by more than five percent (5%) of the budgeted

gross expenses of the Mutual for the fiscal year during which the repairs or rebuilding is necessitated, and if the Owners holding in aggregate more than fifty percent (50%) interest in the Common Area agree to the Repair or restoration of the Project, then the Board shall contract as provided in Section 9.1(a) above.

- (c) If the Owners do not so agree to the Repair or rebuilding of the Common Area as provided in Section 9.1(b) above, then each Owner (and such Owner's Mortgagee(s) as their respective interests then appear) shall be entitled to receive that portion of the insurance proceeds equal to the proportion of the decrease in fair market value of his or her Condominium as compared to the aggregate decrease in the fair market values of all the Condominiums caused by such damage or destruction. For purposes hereof, fair market value shall be determined by a member of the American Institute of Real Estate Appraisers selected by the Board and hired by and at the expense of the Mutual. Should a dispute arise as to the distribution of insurance proceeds, the dispute shall be decided by arbitration by the American Arbitration Association pursuant to its "Commercial Rules of Arbitration."
- (d) Anything in Section 9.1(c) above to the contrary notwithstanding, the Board shall contract for such Repair or rebuilding of Common Area which consists of Condominium Building(s) containing Units if fifty percent (50%) or more of the Owners owning Units in the Condominium Building(s) agree to the Repair or rebuilding of the Condominium Building(s).
- (e) If a bid to Repair or rebuild is accepted, the Board shall levy a Special Assessment against each Condominium in the proportion the Condominiums are assessed, pursuant to Section 7.7 above, for purposes of raising funds for the rebuilding or major Repair of a portion of the structural Common Area, to make up any deficiency between the total insurance proceeds and the contract price for such Repair and rebuilding, and such Special Assessment and all insurance proceeds, whether or not subject to liens of Mortgagees, shall be paid to the account of the Mutual to be used for such rebuilding.

9.2 Taking of Common Area. If any portion of the Common Area is taken by condemnation, eminent domain or any proceeding in lieu thereof, and the award therefor is not apportioned among the Owners (and their Mortgagees as their respective interests then appear) by court judgment or by agreement between the condemning authority and each of the affected Owners, then the Owners of the Common Area (and their Mortgagees as their respective

interests then appear) shall be entitled to receive a distribution from the award for such taking in the same proportion as insurance proceeds will be distributed pursuant to Section 9.1(c) above; provided, however, that should it be determined to Repair or rebuild any portion of the Common Area, such proceeds shall be paid to the Mutual for that purpose in the same manner and subject to the same terms, conditions and limitations as are set forth in Section 10.1 below for repairing damaged or destroyed portions of the Common Area. A decision to Repair or rebuild shall be made in the same manner and subject to the same conditions and limitations as provided above in Section 9.1 for determining whether to rebuild or Repair following damage or destruction.

- 9.3 Casualty Destruction of Unit. In the event of damage or destruction to any Unit, the Owner thereof shall use all available insurance proceeds to reconstruct the Unit as soon as reasonably practicable and substantially in accord with the original plans and specifications therefor; provided, however, that any such Owner may, with the written consent of the Board, reconstruct or Repair the same pursuant to new or changed plans and specifications. If the insurance proceeds are inadequate the Owner shall pay the deficiency. In the event the Board fails to approve or disapprove such changed plans and specifications within sixty (60) days of the receipt thereof, they shall be deemed to have been approved.
- 9.4 Taking of Unit. In the event of any taking of a Unit, the Owner (and such Owner's Mortgagees as their interests may then appear) of the Unit shall be entitled to receive the award for such taking and after acceptance thereof, the Owner (and such Owner's Mortgagees) shall be divested of any further interests in the Project if such Owner shall vacate the Unit as the result of such taking. In such event, said Owner shall grant his or her remaining interests in the Common Area appurtenant to the Unit so taken, if any, to the other Owners owning a fractional interest in the same Common Area, such grant to be in proportion to the fractional interest in the Common Area then owned by each.
- 9.5 Mortgagee Approval. Any restoration or Repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with original plans and specifications, unless other action is approved by Eligible Holders of First Mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Mortgage Holders' Mortgages.

**ARTICLE 10****RIGHTS OF MORTGAGEES**

- 10.1 Actions Requiring Mortgagee Approvals. Provided that the Mortgagee informs the Mutual in writing of its appropriate address and requests in writing to be notified, neither the Mutual nor any Owner shall do any of the following, unless the First Mortgagees of Mortgages encumbering at least sixty-seven percent (67%) of the Condominiums which are encumbered by a Mortgage have given their prior written approval:
- (a) Seek, by act or omission, to abandon the Project or to terminate the Condominium Plan or the Declaration (whether or not because of any destruction of the Project), or change, waive or abandon any scheme of regulation or enforcement thereof pertaining to the architectural design or the exterior appearance or maintenance of Units or the Common Area;
  - (b) Change the pro rata interest or obligations of any Condominium for purposes of levying Assessments or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the pro rata share of the Common Area appurtenant to each Unit;
  - (c) Partition or subdivide any Condominium;
  - (d) Seek, by act or omission, to abandon, partition, subdivide, encumber, sell or transfer the Common Area; provided, however, that the granting of easements for public utility or other public purposes consistent with the uses of the Common Area shall not be deemed a transfer within the meaning of this provision;
  - (e) Use hazard insurance proceeds for losses to any portion of the Project for other than the repair, replacement or reconstruction of the Project, except as may be provided by statute upon substantial loss to the Unit or Common Area; and
  - (f) Fail to maintain fire and extended coverage insurance on the Common Area and the improvements thereto on a current replacement cost basis in an amount less than one hundred percent (100%) of the insurable value, based on current replacement cost.
- 10.2 Notification to Mortgagee. Upon written request to the Mutual, identifying the name and address of the holder, insurer or guarantor and the Condominium number or address, any Eligible Mortgage Holder or Eligible Insurer or Guarantor will be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Condominium on which there is a First Mortgage held, insured or guaranteed by such Eligible Holder or Eligible Insurer or Guarantor, as applicable;
- (b) Any delinquency in the payment of Assessments or charges owed by an Owner of a Condominium subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, which remains uncured for a period of sixty (60) days; provided, however, notice shall be given prior to recording a notice of delinquency with respect to such payment;
- (c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Mutual; and
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as required in the Bylaws or in the Declaration.

## ARTICLE 11                    MAINTENANCE OF PROPERTY

### 11.1 Mutual Responsibility

11.1.1 Mutual Responsibility for Common Area. The Mutual shall provide Maintenance, Repair, and Replacement of the Common Area and all facilities, improvements, and landscaping thereon, including but not limited to (i) the man-made lake known as "Lake Waterford," (ii) the Dining Room (as defined in Section 1.20), interior social, recreational, administrative and work areas, (iii) private streets, (iv) parking spaces, (v) the Employee Parking Lot (as defined in Section 1.23) currently set aside for employee use, (vi) sidewalks, (vii) trash enclosures in the service area, (viii) landscaped and "green belt" areas, (ix) utility facilities, except for those utility facilities which are maintained by public or private utility companies or agencies, and (x) all other real and/or personal property that may be acquired by the Mutual, keeping such property in good condition and good Repair. Notwithstanding the foregoing, the Mutual shall not be responsible for Maintenance, Repair, or Replacement of Exclusive Use Common Area and other portions of the Common Area to the extent the responsibility therefor is expressly assigned to one or more Owners, as set forth in this Article 11. The Mutual shall further be responsible for providing lighting, landscaping, gardening, and janitorial services for the Common Area, as needed, and shall cause

any and all other acts to be done which may be necessary to assure the Maintenance of the Common Area in good condition and Repair, including painting of the exterior surfaces of the Condominium Buildings and such other interior and exterior portions of the Common Area as the Board, in its discretion, determines to be necessary.

- 11.1.2 Mutual Responsibility for Units. The Mutual may, pursuant to Maintenance Policies adopted and amended by the Board from time to time, assume or undertake some or all of the Owner's responsibilities for Units which are set forth in Subsection 11.4.1.
- 11.1.3 Mutual Responsibility for Exclusive Use Common Area. The Mutual may, pursuant to Maintenance Policies adopted and amended by the Board from time to time, assume or undertake some or all of the Owner's responsibilities for Exclusive Use Common Area which are set forth in Subsection 11.4.2.
- 11.2 Authority for Entry of Unit or Exclusive Use Common Area. The Mutual or its agents may enter any Unit or any portion of Exclusive Use Common Area which has been designated or assigned for the exclusive use of the Residents of a particular Unit, whenever such entry is necessary, in the Board's sole discretion, in connection with the performance of any Maintenance, Repair, construction, or Replacement for which the Board is responsible or which it is authorized to perform. Such entry shall be made with as little inconvenience to the Residents as practicable and only upon advance notice of not less than twenty-four (24) hours, except in emergency situations.
- 11.3 Mutual Liability. Except as specifically provided in Subsections 11.1.2 and 11.1.3, the Mutual shall not be responsible or liable for any Maintenance, Repair, or Replacement of a Unit or Exclusive Use Common Area or any improvement thereon, except to the extent that the need for such Maintenance, Repair, or Replacement results from the negligence or fault of the Mutual, its employees, contractors, or agents.
- 11.4 Owner Responsibility.
- 11.4.1 Owner Responsibility for Units. Each Owner shall be responsible for the Maintenance, Repair, and Replacement of (i) the glass doors and windows, including metal frames and tracks, enclosing the Unit, (ii) the interior of the Unit and all appliances whether "built-in" or freestanding within the Unit, and (iii) the interior surfaces of the Unit. Each Owner shall also be responsible for the Maintenance and Repair of the plumbing, electrical and heating systems servicing his or her Unit and located within the outside perimeter of the exterior

bearing walls, floors and ceilings thereof, including television cable equipment and connections, and all appliances and equipment located within or without said Unit, so long as those systems are used exclusively by such Owner and not in common. The provisions of this Subsection 11.4.1 shall not be construed to permit any interference with or damage to the structural integrity of any building. The Mutual may, pursuant to Maintenance Policies adopted and amended by the Board from time to time, assume or undertake some or all of the Owner's responsibilities under this Subsection 11.4.1.

11.4.2 Owner Responsibility for Exclusive Use Common Area. Each Owner shall be responsible for the Maintenance and Repair of the patio or balcony which is appurtenant to his or her Unit, including the interior surfaces of any fence or railing (but not the exterior surfaces), and shall make such repairs as the Board deems necessary to preserve the attractive appearance and protect the value thereof. The Mutual may, pursuant to Maintenance Policies adopted and amended by the Board from time to time, assume or undertake some or all of the Owner's responsibilities under this Subsection 11.4.2.

11.5 Interior Decorations. Each Owner shall have complete discretion as to furniture, furnishings, and interior decorating of the interior of his or her Unit and shall have the exclusive right to paint, plaster, panel, tile, wax, paper, or otherwise refinish and decorate the interior surfaces of the walls, ceilings, floors, and doors bounding his or her Unit, and to substitute new finished surfaces for the finished surfaces existing on said walls, ceilings, floors, and doors, including, without limiting the generality of the foregoing, substitution of paint for paper or paper for paint, substitution of any type of panel for plaster or plaster for paneling, substitution of tile for paneling or paneling for tile, or substitution of wood for linoleum or tile or of linoleum or tile for wood; subject, however, to the Maintenance Policies and the Architectural Rules adopted by the Board from time to time. In no instance shall the Owner do anything in or about his or her Unit or Exclusive Use Common Area that will affect the structural integrity of the building in which such Unit and Exclusive Use Common Area are located.

11.6 Board Discretion. The Board shall have the absolute discretion to determine whether any Maintenance, Repair, or Replacement, which is the responsibility of an Owner, is necessary to preserve the appearance and value of the property within the Project or any portion thereof and may notify an Owner of the work the Board deems necessary. In the event an Owner fails to perform such work within sixty (60) days after notification by the Board to the Owner, the Board may, after written notice to the Owner and the right of a hearing before the Board in accordance with the Bylaws, cause such

work to be done and charge the cost thereof to the Owner as a Reimbursement Assessment.

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

## ARTICLE 12                    ARCHITECTURAL AND LANDSCAPE CONTROL

- 12.1 Submission of Plans and Specifications. Except for improvements made or constructed by or on behalf of the Mutual, no landscaping and no building, fence, wall, obstruction, screen, patio, deck, patio cover, tent, awning, carport cover, or other improvement or structure of any kind, and no landscaping shall be commenced, erected, painted, or maintained within the Project, nor shall any exterior addition to or change or alteration therein be made, until the plans and specifications showing the nature, kind, shape, color, height, size, materials, and location of the same shall have been submitted to the Architectural Control Committee for review and recommendation to the Board and then approved in writing by the Board as to quality of workmanship and design, harmony of external design and location in relation to surrounding structures, topography, and finished grade elevation. Further, installation of washers and dryers in Units shall require application to and approval by the Board in accordance with this Article 12.
- 12.2 Appointment of Architectural Control Committee. The members of the Architectural Control Committee shall be appointed by the Foundation. The execution and recordation of a certificate of identity of the persons constituting the Committee shall be conclusive evidence of the membership of the Committee in favor of any person relying thereon in good faith. If at any time there shall not be a duly-constituted Architectural Control Committee, the Board shall exercise the functions of the Architectural Control Committee in accordance with the terms of this Article 12.
- 12.3 Duties. If there is a duly constituted Architectural Control Committee that Committee shall review all proposals and requests for approval submitted in accordance with Section 12.1 and provide recommendations to the Board concerning those proposals and requests for approval. The Board has the authority to accept, modify or reject the Committee's recommendations and shall make the final decision on all proposals and requests for approval.

- 12.4 Meetings; Minutes. The Architectural Control Committee shall meet as necessary to properly perform its duties hereunder. The Committee shall keep and maintain a record of all actions taken by it at such meetings or otherwise.
- 12.5 Architectural Rules. Subject to the requirements of *Civil Code* section 1357.100 *et seq.*, the Architectural Control Committee may, from time to time, recommend and the Board may approve, adopt, amend, and repeal rules and regulations to be known as "Architectural Rules." Architectural Rules shall set forth the standards for Board review and guidelines for architectural design, placement of buildings and other structures, landscaping, color schemes, exterior finishes and materials, and similar features which are recommended for use in the Project; provided, however, that Architectural Rules shall not be in derogation of the minimum standards required by this Declaration.
- 12.6 Written Request for Board Approval. Any Owner proposing to perform any work that requires prior approval pursuant to this Article 12 shall submit to the Architectural Control Committee, or if no such Committee exists, to the Board, a written request setting forth the nature of the proposed work and furnishing such information and documentation as the Architectural Control Committee or the Board may require.
- 12.7 Fees. The Committee may charge a reasonable fee or fees for its review of architectural or landscaping applications, drawings, plans, and specifications which may include the cost of retaining outside consultants including but not limited to architects, engineers, soils experts, or contractors.
- 12.8 Decisions To Be Made in Good Faith. An Owner's request for approval shall be considered by the Board in an open Board meeting. The Owner and, in the Board's discretion, other interested persons may present information relevant to the requested approval. The Board's decision shall be made in good faith and shall not be unreasonable, arbitrary, or capricious. The Board shall grant the requested approval only if:
- (a) The Owner has submitted a complete application;
  - (b) The Board finds that the plans and specifications conform to this Declaration and to the Architectural Rules in effect at the time such plans were submitted to the Board; and

- (c) The Board determines that the proposed improvements would be consistent with the standards of the Unit and the purposes of this Declaration as to quality of workmanship, design and materials, as to harmony of exterior design with the existing structures, and as to location with respect to topography and finished grade elevations.

12.9 Decisions In Writing. All approvals and rejections of requests for approval shall be in writing and shall be issued by the Board within sixty (60) days from the date of submission of a complete application to the Committee. If a request is rejected, the decision shall include an explanation of the Board's decision.

12.10 Internal Dispute Resolution. If the Board shall fail to act on a request for approval within the time specified in Section 12.9, or if a request for approval is rejected by the Board, the Owner shall be entitled to invoke internal dispute resolution pursuant to *Civil Code* section 1363.840, discussed in Section 13.16.

12.11 Commencement of Approved Work. Upon receipt of written approval, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of all approved work pursuant to such approval, such commencement to occur, in all cases, within ninety (90) days from the date of such approval.

12.12 Completion. The Owner shall, in any event, complete all approved work within one (1) year after commencement thereof, except that the date for completion may be extended as long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities, or other supervening forces beyond the control of the Owner or his agents, provided the Owner notifies the Mutual of such occurrence within a reasonable time after becoming aware of it. If an Owner fails to comply with this Section 12.12, the Board shall proceed in accordance with the provisions of Section 12.14, below, as though the failure to complete the improvements were a non-compliance with approved plans.

12.13 Inspection of Completed Work. Upon the completion of any work for which approval is required under this Article 12, the Owner shall give written notice thereof to the Board. Within sixty (60) days after receiving notice of completion from the Owner, the Board or its duly authorized representative may inspect such work to determine if it substantially complies with the

granted approval. If the Board fails to notify the Owner of any non-conformity within such sixty (60) day period, the work shall be deemed to be in accordance with the granted approval.

- 12.14 Notice of Non-Conformity. If the Board finds that the work was not done in substantial conformity with the granted approval, it shall notify the Owner in writing before the end of such sixty (60) day period, specifying particulars of non-conformity and requiring the Owner to remedy the same.
- 12.15 Failure to Remedy Non-Conformity. If the Owner shall have failed to remedy such non-conformity within thirty (30) days from the date of the notice from the Board, the Board shall then, pursuant to the procedures set forth in Section 13.12, set a date on which a hearing before the Board shall be held regarding the alleged non-conformity. If the Board finds at such hearing that a substantial non-conformity exists and orders the Owner to remedy or remove such non-conformity, and the Owner thereafter fails to do so within the time specified by the Board, the Board may, in addition to any other remedy, remove or remedy the non-conformity and, in that event, all expenses incurred by the Mutual in connection therewith shall be assessed against the Owner as a Reimbursement Assessment.
- 12.16 Non-Waiver. The approval by the Board of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring the approval under this Article 12, 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.
- 12.17 Reconstruction After Destruction. The reconstruction after destruction by casualty or otherwise of any Units which is accomplished in substantial compliance with the Condominium Plan shall not require compliance with the provisions of this Article 12. Such reconstruction shall be conclusively deemed to be in substantial compliance with such Condominium Plan if it has received the approval of the Mutual.
- 12.18 Liability. Neither the Board nor any member thereof shall be liable to the Mutual or to any Owner for any damage, loss, or prejudice suffered or claimed on account of: (i) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; or (iii) the development of any property within the Project, provided the Board or such member has acted in good faith on

the basis of such information as may be possessed by the Board or such member. Without in any way limiting the generality of the foregoing, the Board or any member thereof may, but is not required to, consult with or hear the views of the Mutual or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Board.

- 12.19 Compliance With Governmental Requirements. The Owner of each Unit is solely responsible for complying with any applicable building permit process or other governmental requirements with respect to any work done upon the Unit. Submission of a request for approval by the Board and the review and approval of any proposals, plans, or other submittals shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements, nor shall it constitute the assumption of any liability by or impose any liability on the Board, the Architectural Control Committee, or their members as to the accuracy, efficacy, or sufficiency thereof.

### **ARTICLE 13            ENFORCEMENT; NOTICE; HEARINGS**

- 13.1 Violations as Nuisance. Every act or omission constituting or resulting in a violation of any of the provisions of the Governing Documents shall be deemed to constitute a nuisance and, in addition to any other remedies which may be available, such nuisance may be abated or enjoined by the Mutual or its officers or Board of Directors or by any Owner; provided, however, that the Board shall not be obligated to take action to abate or enjoin a particular violation if, in the exercise of its discretion, the Board determines that acting to abate or enjoin such violation is not likely to foster or protect the interests of the Mutual and its Members as a whole. Notwithstanding the preceding sentence and without limiting the generality of the proviso therein, nothing in the Governing Documents shall be deemed to impose upon the Mutual, the Board, or the officers, employees, or agents of the Mutual a duty to intervene in any physical dispute or altercation or any criminal or alleged criminal activity other than to notify law enforcement officials.
- 13.2 Violation of Law. Any violation of a state, municipal or local law, ordinance or regulation pertaining to the ownership, occupancy, or use of any property within the Project is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth herein.

- 13.3 Owners' Responsibility for Conduct and Damages. Each Owner shall be fully responsible for informing members of his or her household and his or her tenants, Contract Purchasers, and guests of the provisions of the Governing Documents, and shall be fully responsible for the conduct, activities, any Governing Document violation of any of them, and for any damage to the Project or the Mutual resulting from the negligent or intentional conduct of any of them or any household pets. If a Unit is owned jointly by two or more persons, the liability of each Owner in connection with the obligations imposed by the Governing Documents shall be joint and several. The foregoing provisions of this Section 13.3 are in addition to and shall not limit the generality of the provisions of Subsection 5.12.3 (concerning pets) and Section 5.3 (concerning rentals).
- 13.4 No Avoidance. No Owner may avoid the burdens or obligations imposed by the Governing Documents through non-use of any Common Area facilities or by abandonment of his or her Unit.
- 13.5 Rights Cumulative. The Mutual, its Directors, officers, or agents, and any Owner shall have the right to enforce any and all provisions of the Governing Documents by any proceeding at law or in equity, or through the use of such other remedies as are available and deemed appropriate by the Board. Each remedy provided is cumulative and not exclusive.
- 13.6 Inadequacy of Legal Remedy. Except for the non-payment of any Assessment levied pursuant to the provisions of this Declaration, it is hereby declared that a remedy at law to recover damages for a default in the performance of any of the terms and provisions of any of the Governing Documents or for the breach or violation of any such provisions is inadequate and that the failure of any Owner or a member of the household of any Owner or an Owner's tenants, guests, or household pets or any other occupant or user of any of the property within the Project to comply with any provision of the Governing Documents may be enjoined in any judicial proceedings initiated by the Mutual, its officers or Board of Directors, or by any Owner or by their respective successors in interest.
- 13.7 Limitation on Disciplinary Rights. The Mutual shall not have the power and authority to cause a forfeiture or abridgment of a Member's right to the full use and occupancy of his or her Unit as the result of the failure by such Owner, members of such Owner's household, or his or her tenants, guests, invitees or household pets to comply with any provision of the Governing Documents, except where such forfeiture or abridgment is the result of the

judgment of a court of competent jurisdiction, a decision arising out of an arbitration proceeding, or a foreclosure or sale under private power of sale for failure of such Owner to pay Assessments levied by the Mutual pursuant to this Declaration and except to the extent of the Mutual's rights pursuant to Section 7.16 (concerning assignment of rents). The provisions of this Section 13.7 shall not affect the Mutual's right to impose other sanctions including imposing Enforcement Assessments.

13.8 Imposing Sanctions. Upon an explicit finding and for reasons specified by the Board following a hearing conducted in accordance with this Article 13, the Board shall have the power to impose sanctions on a Member who is in default in the payment of any Assessment or Additional Charge levied by the Board or is found to be in violation of any provision of the Governing Documents. Sanctions may include loss of good standing, suspension of other rights, and/or monetary penalties (fines), as described below.

13.8.1 Loss of Good Standing. The Board may suspend a member's Good Standing for so long as the Member remains in default of such payment or until the violation is remedied. When a Member is not in Good Standing, his or her Mutual voting rights shall be suspended and the Member shall be disqualified from serving on the Board.

13.8.2 Suspension of Other Rights. The Board may suspend a Member's or a Resident's right to use Common Area recreational facilities for so long as a Member remains in default of such payment, or for such period as may be specified by the Board if the violation involves misbehavior related to Common Area recreational facilities.

13.8.3 Monetary Penalties. The Board may impose monetary penalties or fines as Enforcement Assessments in accordance with a schedule adopted by the Board and distributed to the Members.

13.8.4 Reimbursement Assessment Not a Sanction. The imposition of a Reimbursement Assessment pursuant to the Declaration does not constitute and shall not be deemed to be a sanction.

13.8.5 Monthly Sanctions For Continued Violations. In the case of a continuing violation, such as an uncorrected architectural

violation, where an Owner fails to remedy the violation after notice from the Board to do so, the Board may impose separate and successive sanctions, including monetary penalties, not more frequently than once every 30 days, provided the Board conducts a separate hearing before imposing each successive sanction. The Board may limit the scope of such hearing to facts and circumstances occurring subsequent to the previous hearing relating to the subject continuing violation.

- 13.9 Investigation of Complaints. Upon receipt of a written complaint from an Owner or a Resident, the Board shall conduct an investigation of the allegations in the complaint and shall make relevant findings upon which the Board shall base a decision to pursue or not pursue the matter. If the Board decides not to pursue a matter it shall notify the complaining party in writing stating the reason(s) for its decision.
- 13.10 Written Notice of Violation. If the Board determines, whether on its own initiative or pursuant to a written complaint, that a violation of the Governing Documents exists or has occurred, it shall notify the responsible Owner(s) by written notice in compliance with Section 13.11.
- 13.11 Notices: Content, Delivery. Any notices required or given under this Article 13 shall be in writing and shall, at a minimum, comply with any applicable statutes as to content and as to time and method of service. If no specific statutory requirements apply, any notice given by the Mutual to a Member shall, at a minimum, set forth a brief description of the act or omission constituting the alleged violation of the Governing Documents, a reference to the specific Governing Document provision or provisions alleged to have been violated, and, if applicable, a statement that the Member may request a hearing by the Board; the date, time, and location of any hearing called by the Board, and any sanction, disciplinary action, or other enforcement action being contemplated by the Board. If no specific statutory requirements apply, any notice may be given by any method reasonably calculated to give actual notice to the affected Member or the Mutual, as the case may be; provided, however, that if notice is given by mail, it shall be sent by first-class mail, postage prepaid and, if given by the Mutual to a Member, it shall be sent to the most recent address for the affected Member as shown on the records of the Mutual.
- 13.12 Hearings Called By the Board. Whenever the Board determines to conduct a hearing, it shall notify the affected Owner(s) at least ten (10) days before

the Board meeting at which the matter will be considered. If the matter concerns Member discipline or the imposition of sanctions, the Board shall meet in executive session if requested by the Member. If the matter concerns compliance with architectural approval requirements, the hearing shall be conducted in open meeting pursuant to *Civil Code* section 1378(a)(5). In the Board's discretion, other interested person(s) may attend a hearing and may present information relevant to the subject matter of the hearing. If a notified Owner fails to attend a noticed hearing, the Board may nevertheless conduct its deliberations and make a determination based on its own investigation and any other information supplied to it that the Board deems reasonably reliable.

13.13 Owner Request for Hearing. An Owner may request a hearing before the Board by submitting a written request to the Board. If the Owner is requesting a hearing concerning a notice of violation sent pursuant to Section 13.10 or a notice of corrective action sent pursuant to Section 13.15, the request for hearing must be submitted within ten (10) days after the date of such notice. The Board shall schedule a hearing at its next regular meeting that is at least five (5) days after its receipt of an Owner's request for hearing or, in the Board's discretion, at another time agreed by the Board and the Owner. Hearings shall be conducted in executive session or at an open meeting as provided in Section 13.12.

13.14 Notice of Hearing Decisions. Within fifteen (15) days after a hearing is conducted, the Board shall notify the Member in writing as to its decision. If the Board decides to impose sanctions, the notice shall describe the sanctions imposed and, if applicable, their effective dates.

13.15 Enforcement by Mutual in Emergency Situations:

13.15.1 Definition of Emergency Situation. For purposes of this Section 13.15, the following shall constitute emergency situations: (i) an immediate and unreasonable infringement of or threat to the safety or peaceful enjoyment of Residents of the Project, (ii) a traffic or fire hazard, (iii) a threat of material damage to or destruction of the Project or any portion thereof, and (iv) a violation of any provision of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether the violation has occurred (such as parking violations).

13.15.2 Immediate Corrective Action. Notwithstanding any other provisions of the Governing Documents, under circumstances that constitute an emergency, the Board or its duly authorized agents may undertake immediate corrective action. The Board shall promptly thereafter send written notice of the corrective action to the affected Owner including notice of any Reimbursement Assessment assessed to the Owner for costs incurred by the Mutual in connection therewith. If the Owner requests a hearing pursuant to Section 13.13, enforcement of any Reimbursement Assessment imposed by the Board shall be held in abeyance and shall be pursued only if affirmed by the Board at the hearing.

13.16 Internal Dispute Resolution.

13.16.1 Applies to Certain Disputes Between Mutual and Member. As to any dispute between the Mutual and any Member that is subject to *Civil Code* section 1363.810 (which applies to, among other things, enforcement of applicable provisions of the *Corporations Code* and enforcement of the Governing Documents), the parties shall abide by the internal dispute resolution procedures provided in *Civil Code* section 1363.840, or successor statute. Any resolution so agreed upon by the parties thereto, that is not in conflict with the law or the Governing Documents, shall bind the parties and shall be judicially enforceable as provided in *Civil Code* section 1363.830.

13.16.2 Alternative Dispute Resolution May Also Apply. If the subject matter of the dispute (including, among other things, enforcement of applicable provisions of the *Corporations Code* and enforcement of the Governing Documents) and the remedy sought (including certain kinds of declaratory, injunctive, or writ relief, which may be in conjunction with certain limited monetary relief, but excluding small claims actions and excluding Assessment disputes) are subject to *Civil Code* section 1369.510 *et seq.* and the Mutual and the affected Member do not agree on a resolution through the foregoing internal dispute resolution process provided for in Section 13.16.1, no party to the dispute may pursue a civil remedy that is subject to *Civil Code* section 1369.510 *et seq.* without first

complying with the "alternative dispute resolution" procedures set forth in that statute and referenced in Section 13.17.

- 13.16.3 Annual Description of Internal Dispute Resolution Process. The Mutual shall annually provide the Members with a description of the internal dispute resolution process as part of the notice required by *Civil Code* section 1369.590.

### 13.17 Alternative Dispute Resolution Before Initiating Lawsuit.

- 13.17.1 When ADR Applies. This section applies to civil action or proceedings as defined in *Civil Code* section 1369.510(b) when the remedy sought is solely for declaratory, injunctive, or writ relief or if for the foregoing relief in conjunction with monetary damages not in excess of \$5,000, as provided in *Civil Code* section 1369.520(b). This Section 13.17 does not apply to an action in small claims court. *Civil Code* sections 1369.510 *et seq.* apply to disputes between Members as well as to disputes between the Mutual and a Member.

- 13.17.2 Statutory ADR Process. In accordance with *Civil Code* section 1369.510 *et seq.*, the Mutual, or an Owner or a Member may not file an "enforcement action" as defined in the statute unless the parties have endeavored to submit their dispute to "alternative dispute resolution" as the term is defined in *Civil Code* section 1369.510(a) and as the process is specified in *Civil Code* sections 1369.530, 1369.540, and 1369.550.

- 13.17.3 Annual Summary of Alternative Dispute Resolution Process. In accordance with *Civil Code* section 1369.590, the Mutual shall annually provide the Members with a summary of the provisions of *Civil Code* section 1369.510 *et seq.* including the statement specified in *Civil Code* section 1369.590(a), and including a description of the Mutual's internal dispute resolution process as required by *Civil Code* section 1363.850.

- 13.18 Non-Waiver. Failure to enforce any provision of the Governing Documents at any time shall not be deemed a waiver of the right to do so thereafter with respect to the same or any other violation of any provision of the Governing Documents.

13.19 Costs and Attorneys' Fees. In the event the Mutual shall take any action to enforce any of the provisions of the Governing Documents or shall determine that any Member or members of his or her household or his or her tenants, Contract Purchasers, guests, invitees or household pets have violated any provision of the Governing Documents, and whether or not legal or judicial proceedings are initiated, the Mutual shall be entitled to recover the full amount of all costs including attorneys' fees incurred by the Mutual in responding to such a violation and/or in enforcing any Governing Document provision. In awarding attorneys' fees, the court shall not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses and attorneys' fees paid or incurred in good faith. The remedies of the Mutual to recover the amount of such costs and attorneys' fees shall include, but shall not necessarily be limited to, the imposition of a Reimbursement Assessment as provided in this Declaration.

## ARTICLE 14      AMENDMENT

- 14.1 Amendment by the Members. This Declaration may be amended by the affirmative vote or written consent of Members representing at least an Absolute Majority of the Members, that is, a majority of the Total Voting Power.
- 14.2 Amendments Material to Mortgagees. Notwithstanding anything contained herein to the contrary, including Section 14.1 above, no amendment material to a Mortgagee may be made to this Declaration without the prior written consent of Eligible Mortgage Holders whose Mortgages encumber sixty-seven percent (67%) or more of the Condominiums within the Project which are subject to Eligible Mortgage Holder Mortgages. For purposes hereof, any amendments to provisions of this Declaration governing any of the following subjects shall be deemed "material to a Mortgagee":
- (a) The fundamental purpose for which the Project was created (such as a change from a residential use to a different use);
  - (b) Assessments, assessment liens and subordination thereof;
  - (c) The reserve for Maintenance, Repair and Replacement of the Common Area;
  - (d) Property Maintenance and Repair obligations;

- (e) Casualty, liability insurance and fidelity bonds;
- (f) Reconstruction in the event of damage or destruction;
- (g) Rights to use the Common Area;
- (h) Annexation;
- (i) Voting;
- (j) The percentage interest of the Owners in the Common Area;
- (k) Boundaries of any Unit;
- (l) The interests in Exclusive Use Common Areas and other portions of the Common Area;
- (m) Leasing of Condominiums;
- (n) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his or her Condominium; and
- (o) Any provision which, by its terms, is specifically for the benefit of the First Mortgagees, or specifically confers rights on First Mortgagees.

An amendment to the Declaration shall not be considered material if it is for the purpose of correcting technical errors or for clarification. An Eligible Mortgage Holder who receives a written request to approve amendments (including additions) who does not deliver or mail to the requesting party a negative response within thirty (30) days, shall be deemed to have approved the request.

Anything contained herein to the contrary notwithstanding, the percentage of voting power of Members necessary to amend a specific clause or provision of the Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause or provision.

14.3 Further Approvals. If the consent or approval of any governmental authority, Mortgagee or other entity is required under this Declaration to amend, modify or revoke any provision of this Declaration, no such amendment, modification or revocation shall become effective unless such consent or approval is obtained.

- 14.4 Execution and Recording. Any amendment of the Declaration shall be signed and acknowledged by the duly authorized officer(s) of the Mutual and recorded in the Office of the Contra Costa County Recorder.

## ARTICLE 15      GENERAL PROVISIONS

- 15.1 Headings. The headings used in this Declaration are for convenience only and are not to be used in interpreting the meaning of any of the provisions of this Declaration, or otherwise.
- 15.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision hereof shall not invalidate any other provisions hereof.
- 15.3 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of fostering a plan of community ownership and occupancy and of management of the Project for the benefit of the community.
- 15.4 Number; Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine, and neuter shall each include the masculine, feminine, or neuter, as the context requires.
- 15.5 Easements Reserved and Granted. Any and all easements referred to herein shall be deemed reserved or granted, or both reserved and granted, as appropriate, by reference to this Declaration in a deed to any Condominium.
- 15.6 Power of Attorney. To the extent necessary to carry out and enforce the provisions of this Declaration, an irrevocable power of attorney coupled with an interest is granted to the Mutual by the Owners and each of them.
- 15.7 Term. The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges, and equitable servitudes contained in this Declaration shall run with and shall benefit and burden all of the real property subject to this Declaration, including without limitation the Units and Common Area, and shall inure to the benefit of and be binding upon the Owners, the Mutual, its Board of Directors and officers, and their respective agents and successors in interest, for a term of thirty (30) years from the date of recordation of this Declaration. Thereafter the term shall be automatically extended for successive periods of ten (10) years

each, unless within the six (6) months prior to the expiration of the initial 30-year term or any 10-year extension period a written instrument, approved by Owners entitled to vote and holding at least a majority of the Total Voting Power of the Mutual, terminating the effectiveness of this Declaration shall be recorded in the Office of the County Recorder of Contra Costa County, California.

IN WITNESS WHEREOF, we, the Members of Walnut Creek Mutual No. 58, constituting at least sixty-six and two-thirds percent (66-2/3%) of the Total Voting Power of the Mutual, hereby affirm, approve, and adopt the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. 58 (The Waterford at Rossmoor), in accordance with Article XI, Section 11.4 of the 1989 Declaration, as amended, by means of the signatures of the President and Secretary of Walnut Creek Mutual No. 58, duly authorized by written consent of at least sixty-six and two-thirds percent (66-2/3%) of the Total Voting Power of the Mutual, which Amended and Restated Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. 58 (The Waterford at Rossmoor) shall be recorded in the Office of the County Recorder of Contra Costa County, California.

DATED: August 4, 2005

WALNUT CREEK MUTUAL NO. 58

James McCort  
James McCort, President

James H. Riggs  
James H. Riggs, Secretary

## Exhibit A

## UNIT TYPE 1

Unit ID	1101	1248	1426	2213	2414
Numbers	1104	1250	1434	2214	2422
	1112	1254	1442	2222	2436
	1118	1301	1448	2236	2437
	1142	1304	1450	2237	2445
	1148	1318	1454	2245	
	1154	1326	2104	2304	
	1201	1334	2108	2313	
	1204	1342	2113	2314	
	1210	1348	2114	2322	
	1212	1350	2136	2336	
	1218	1354	2137	2337	
	1226	1401	2142	2345	
	1234	1404	2145	2404	
	1242	1418	2204	2413	

## UNIT TYPE 2

Unit ID	1106	1236	1349	2133	2317
Numbers	1111	1239	1406	2138	2333
	1114	1240	1411	2143	2338
	1120	1246	1414	2144	2343
	1121	1249	1420	2147	2344
	1139	1306	1421	2207	2347
	1140	1311	1424	2212	2407
	1146	1314	1436	2217	2412
	1149	1320	1439	2233	2417
	1206	1321	1440	2238	2433
	1211	1324	1446	2243	2438
	1214	1336	1449	2244	2443
	1220	1339	2107	2247	2444
	1221	1340	2112	2307	2447
	1224	1346	2117	2312	

## UNIT TYPE 3

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Unit ID	1108	1241	1416	2132	2315	2435
Numbers	1116	1244	1419	2135	2318	2440
	1119	1252	1422	2140	2324	
	1122	1308	1428	2205	2326	
	1138	1316	1430	2206	2332	
	1141	1319	1432	2210	2335	
	1144	1322	1438	2215	2340	
	1152	1328	1441	2218	2405	
	1208	1330	1444	2224	2406	
	1216	1332	1452	2232	2410	
	1219	1338	2105	2235	2415	
	1222	1341	2106	2240	2418	
	1228	1344	2110	2305	2424	
	1230	1352	2115	2306	2426	
	1232	1408	2118	2310	2432	

## UNIT TYPE 4

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Unit ID	1102	1402	2230	2434
Numbers	1107	1407	2234	2446
	1117	1417	2246	
	1143	1443	2301	
	1153	1453	2302	
	1202	2101	2316	
	1207	2102	2320	
	1217	2116	2330	
	1243	2130	2334	
	1253	2134	2346	
	1302	2146	2401	
	1307	2201	2402	
	1317	2202	2416	
	1343	2216	2420	
	1353	2220	2430	

## UNIT TYPE 5

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Unit ID	1103	2229
Number	1203	2241
	1209	2309
	1227	2323
	1233	2329
	1303	2341
	1327	2409
	1333	2423
	1403	2429
	1427	2441
	1433	
	2129	
	2141	
	2209	
	2223	

## UNIT TYPE 6

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Unit ID	1312
Numbers	1412
	2128
	2208
	2228
	2242
	2308
	2328
	2342
	2408
	2428
	2442

## EXHIBIT B

REAL PROPERTY SITUATED IN THE CITY OF WALNUT CREEK, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF LOT 1, AS SAID LOT IS SHOWN AND SO DESIGNATED ON THAT CERTAIN MAP ENTITLED "SUBDIVISION 7176", RECORDED IN BOOK 332 OF MAPS, AT PAGE 21, IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHERLY TERMINUS OF THE COURSE DESIGNATED AS T21 ON SAID MAP (332 M 21); THENCE, SOUTHERLY ALONG THE EASTERLY BOUNDARY OF SAID LOT 1 (332 M 21), SOUTH 30°01'33" EAST, 28.00 FEET; THENCE, SOUTH 04°21'33" EAST, 38.00 FEET; THENCE, SOUTH 31°11'33" EAST, 55.00 FEET; THENCE, SOUTH 26°13'27" WEST, 21.00 FEET; THENCE, SOUTH 73°08'27" WEST, 25.08 FEET; THENCE, LEAVING SAID EASTERLY BOUNDARY (332 m 21), NORTH 05°06'42" WEST, 135.83 FEET, TO THE POINT OF BEGINNING.

CONTAINING 2345 SQUARE FEET, MORE OR LESS.

## EXHIBIT C

REAL PROPERTY SITUATED IN THE CITY OF WALNUT CREEK, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL ONE, DESCRIBED IN THE GRANT DEED RECORDED IN BOOK 12409 OF OFFICIAL RECORDS, AT PAGE 617, IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHERLY TERMINUS OF THE COURSE DESIGNATED AS T10 AS SHOWN ON THAT CERTAIN SUBDIVISION MAP, AT PAGE 21, IN SAID OFFICE OF THE COUNTY RECORDER; THENCE, NORTHERLY ALONG THE EASTERLY BOUNDARY OF LOT 1 ON SAID MAP (332 M 21), NORTH 60°54'33" WEST, 30.00 FEET; THENCE, NORTH 61°21'33" WEST, 21.00 FEET; THENCE, NORTH 32°21'33" WEST, 37.00 FEET; THENCE, NORTH 43°01'33" WEST, 36.00 FEET; THENCE, NORTH 07°58'27" EAST, 19.00 FEET; THENCE, NORTH 73°08'27" EAST, 12.92 FEET; THENCE, LEAVING SAID EASTERLY BOUNDARY (332 M 21), SOUTH 35°14'04" EAST, 128.29 FEET, TO THE POINT OF BEGINNING.

CONTAINING 2345 SQUARE FEET, MORE OR LESS.

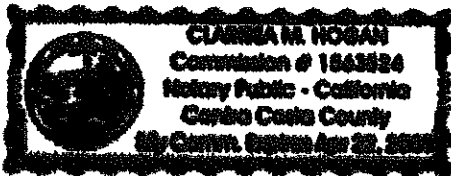
CERTIFICATE OF ACKNOWLEDGMENT

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

On 8-4-05, before me, Clarissa M Hogen personally appeared James McCort + James H. Riggs, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) ~~is~~are subscribed to the within Amended Declaration of Covenants, Conditions and Restrictions and acknowledged to me that ~~he~~~~she~~they executed the same in ~~his~~~~her~~their authorized capacity(ies), and that by ~~his~~~~her~~their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Clarissa M. Hogen (Seal)



END OF DOCUMENT