

**RECORDING REQUESTED BY,  
AND WHEN RECORDED, MAIL TO:**

**WALNUT CREEK MUTUAL NO. TWENTY-NINE  
c/o HUGHES GILL COCHRANE TINETTI, P.C.  
Attn: Hanh T. Pham, Esq.  
1350 Treat Boulevard, Suite 550  
Walnut Creek, California 94597**

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(Space Above for Recorder's Use)

**SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
WALNUT CREEK MUTUAL NO. TWENTY-NINE**

**NOTICE OF RENTAL RESTRICTION**

THIS DOCUMENT CONTAINS RESTRICTIONS WHICH MAY LIMIT  
YOUR ABILITY TO LEASE YOUR UNIT.

Please note that Walnut Creek Mutual No. Twenty-Nine has a twenty-five percent (25%) rental cap. Written approval of the Board is required to lease a Unit. You are directed to review the restrictions contained in Article 5 of these CC&Rs.

## TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS .....	3
1.1 Additional Charges .....	3
1.2 Annual Assessment.....	3
1.3 Articles.....	3
1.4 Assessments .....	3
1.5 Balcony.....	3
1.6 Board of Directors.....	3
1.7 Bylaws .....	3
1.8 Capital Improvement .....	3
1.9 Carport .....	3
1.10 City .....	3
1.11 Civil Code .....	4
1.12 Common Area .....	4
1.13 Condominium .....	4
1.14 Condominium Plan .....	4
1.15 County .....	4
1.16 Deck .....	4
1.17 Declaration .....	4
1.18 Development .....	4
1.19 Exclusive Use Common Area.....	4
1.20 Foundation .....	5
1.21 Foundation's Governing Documents .....	5
1.22 Governing Documents.....	5
1.23 Guest.....	5
1.24 Invitee.....	5
1.25 Maintenance.....	5
1.26 Majority of a Quorum .....	5
1.27 Manor .....	5
1.28 Map .....	5
1.29 Member .....	5

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SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF WALNUT CREEK MUTUAL NO. TWENTY-NINE

1.30	Mortgage .....	5
1.31	Mortgagee .....	6
1.32	Mutual.....	6
1.33	Owner.....	6
1.34	Parking Space .....	6
1.35	Patio .....	6
1.36	Reimbursement Assessment.....	6
1.37	Repair.....	6
1.38	Replacement .....	6
1.39	Resident .....	6
1.40	Rules .....	6
1.41	Senior Housing Residency Restrictions.....	6
1.42	Special Assessment .....	7
1.43	Storage Space.....	7
1.44	Total Voting Power .....	7
1.45	Unit.....	7
ARTICLE 2 MUTUAL; FOUNDATION .....		7
2.1	Management and Operation.....	7
2.2	Membership.....	8
2.3	Voting.....	8
2.4	Board of Directors.....	8
2.5	Mutual Policies .....	8
2.6	Relationship to Foundation.....	8
2.7	Membership in the Foundation .....	8
2.8	Assessments .....	9
2.9	Acquisition of Property.....	9
2.10	Capital Improvements.....	9
2.11	Sale or Transfer of Mutual Property.....	9
2.12	Easements to Owners .....	9
2.13	Safety and Security .....	9

ARTICLE 3 OWNERSHIP RIGHTS AND EASEMENTS.....	9
3.1 Ownership of Condominium; Exclusive Easements .....	9
3.2 Owners' Non-Exclusive Easements of Enjoyment.....	10
3.3 Acquisition of Ownership Interest .....	10
3.4 Delegation of Rights of Use and Enjoyment.....	11
3.5 Common Area Construction .....	11
3.6 Mechanic's Liens .....	11
3.7 Easements of Encroachment .....	12
3.8 Utility Easements.....	12
3.9 Easements Granted by the Board .....	12
3.10 No Right to a View.....	13
3.11 Partition Prohibited .....	13
ARTICLE 4 USE RESTRICTIONS.....	13
4.1 Senior Citizen Residential Use .....	13
4.2 Number of Occupants.....	13
4.3 Rental of Units.....	13
4.4 Restriction on Businesses .....	13
4.5 Offensive Conduct, Nuisances, Noise .....	14
4.6 Use of the Common Area .....	14
4.7 Hazards.....	14
4.8 Requirement of Architectural Approval.....	15
4.9 Smoking Prohibited .....	15
4.10 Flooring Restrictions.....	15
4.11 Sports Apparatus.....	15
4.12 Mailboxes and Newspaper Tubes .....	15
4.13 Outside Drying and Laundering.....	15
4.14 Solar Energy Systems.....	15
4.15 Satellite Dishes and Antennas.....	15
4.16 Animals and Pets.....	16
4.16.1 Board Authority .....	16
4.16.2 Limitations on Animals and Pets .....	16

4.16.3	Service Animals and Assistance Animals .....	16
4.16.4	Owner's Responsibility for Animals and Pets .....	16
4.16.5	Rules .....	17
4.17	Trash Disposal .....	17
4.18	Construction Materials, Construction Debris .....	17
4.19	Machinery and Equipment; Vehicle Maintenance .....	17
4.20	Signs, Banners, Flags .....	17
4.21	Vehicles and Parking .....	18
4.21.1	Parking Rules .....	18
4.21.2	Oversized Vehicles .....	18
4.21.3	Commercial Vehicles .....	18
4.22	Parking Enforcement; Parking Rules .....	19
4.23	Carports/Assigned Parking Spaces .....	19
4.24	Window Coverings .....	19
4.25	Roof Access .....	19
4.26	Outbuildings .....	19
4.27	BBQs and Other Open Flame Devices .....	19
4.28	Combining Units .....	19
4.29	Drainage .....	19
4.30	Mineral Exploration .....	20
ARTICLE 5	RENTING OR LEASING .....	20
5.1	Requirements for Renting .....	20
5.2	Rental of Entire Unit .....	21
5.3	No Subletting or Short-Term Rentals; Roommates .....	21
5.4	Time-Share Arrangements Prohibited .....	21
5.5	Restriction on Number of Units Leased or Rented .....	22
5.5.1	Legacy Status/Termination of Right to Rent .....	22
5.5.2	Hardship Waivers .....	22
5.6	List of Rented Units .....	23
5.7	Written Application for Permission to Rent; Waiting List .....	23

5.7.1	Review of Application to Rent .....	23
5.7.2	Reconsideration of Denied Application or Request for Hardship Waiver .....	23
5.7.3	Duration of Authorization to Rent .....	24
5.7.4	Decision of Board Conclusive .....	24
5.8	Implementation .....	24
5.9	Private Exchanges Prohibited .....	24
5.10	Mutual as Third-Party Beneficiary .....	24
5.11	Assignment of Rents as Security for Payment of Liens.....	25
5.12	Owner Responsible for Tenant’s Actions; Indemnification of Mutual.....	25
5.13	Owner Prohibited from Using Common Facilities While Unit Rented.....	26
5.14	Owner-Owner Leases.....	26
<b>ARTICLE 6 MAINTENANCE, REPAIR, AND REPLACEMENT RESPONSIBILITIES .....</b>		<b>26</b>
6.1	Common Area .....	26
6.2	Exclusive Use Common Area.....	26
6.2.1	Cable, Electrical, Telephone, and Telecommunications Wiring .....	27
6.2.2	Balconies and Decks.....	27
6.2.3	Carports .....	27
6.2.4	Chimney, Chimney Caps, and Flues.....	27
6.2.5	Dryer Vent Lines and Vent Cap .....	28
6.2.6	Electric Vehicle Charging Stations .....	28
6.2.7	HVAC Systems .....	28
6.2.8	Mailboxes.....	29
6.2.9	Patios and Balconies.....	29
6.2.10	Plumbing.....	29
6.2.11	Skylights and Solar Tubes .....	30
6.2.12	Storage Spaces .....	30
6.2.13	Water Heaters.....	30
6.2.14	Smoke Detectors.....	30

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SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF WALNUT CREEK MUTUAL NO. TWENTY-NINE

6.3	Units .....	31
6.3.1	Windows and Doors .....	31
6.3.2	Interior Decorations.....	31
6.3.3	Hoses and Water Lines.....	31
6.3.4	Water Damage and Mold .....	32
6.3.5	Compliance with Architectural Rules.....	32
6.4	Other Components .....	32
6.4.1	Fire Extinguishers .....	32
6.5	Reimbursement Assessments for Damage to or Caused by Owner-Maintained Components.....	32
6.6	Owner Alterations.....	33
6.7	Repair of Damage Caused by Wood-Destroying Pests or Organisms and Other Pests .....	33
6.8	Modifications that Affect Structural Integrity or Common Systems.....	33
6.9	Owner Liability .....	33
6.10	Availability or Applicability of Insurance Proceeds.....	33
6.11	Mutual's Right of Entry .....	34
6.11.1	Notice of Entry .....	34
6.11.2	Emergency Entry.....	34
6.11.3	Duty to Cooperate with Mutual.....	34
6.11.4	Duty to Vacate .....	34
6.11.5	Permit Access .....	35
6.11.6	Failure to Cooperate/Vacate .....	35
6.12	Board Discretion.....	35
ARTICLE 7 ARCHITECTURAL REVIEW.....		35
7.1	Architectural Approval Required.....	35
7.1.1	Improvements and Modifications .....	35
7.1.2	Satellite Dishes and Antennas .....	36
7.1.3	Solar Energy Systems.....	36
7.1.4	Merger of Units .....	36

7.2	Architectural Rules .....	36
7.3	Application .....	37
7.4	Fees; Consultants.....	37
7.5	Decisions on Architectural Applications.....	37
7.6	Grant of Approval .....	38
7.7	Timing and Form of Approval .....	38
7.8	Commencement.....	39
7.9	Completion .....	39
7.10	Inspection of Completed Work; Non-Compliance.....	39
7.11	Non-Waiver .....	40
7.12	Liability .....	40
7.13	Compliance with Governmental Requirements .....	41
ARTICLE 8 ASSESSMENTS AND LIENS .....		41
8.1	Covenant of Owner.....	41
8.1.1	Mutual's Power to Collect.....	41
8.1.2	Each Assessment is a Separate Obligation .....	41
8.1.3	Obligation Runs with the Land .....	41
8.1.4	Owner's Liability after Transfer .....	41
8.2	Creation of Lien .....	42
8.2.1	Continuing Lien .....	42
8.3	Purpose of Assessments.....	42
8.4	Authority of the Board.....	42
8.5	Mutual Funds.....	42
8.6	Annual Assessment.....	43
8.6.1	Calculation of Estimated Requirement.....	43
8.6.2	Allocation of Annual Assessment.....	43
8.6.3	Surplus Funds.....	43
8.6.4	Increases in Annual Assessment.....	43



8.7	Special Assessments .....	44
8.7.1	Purpose of Special Assessments.....	44
8.7.2	Allocation of Special Assessments.....	44
8.7.3	Approval of Special Assessments .....	44
8.8	Notice of Assessment Increases .....	44
8.9	Reimbursement Assessments .....	44
8.10	Foundation Assessments .....	44
8.11	Failure to Fix Assessments .....	45
8.12	No Offsets .....	45
8.13	Delinquent Assessments .....	45
8.14	Power of Sale .....	45
8.15	Remedies Cumulative .....	46
8.16	Certificate of Satisfaction and Release of Lien .....	46
8.17	Priority .....	46
8.18	Waiver of Exemptions.....	46
8.19	Property Exempt from Assessments .....	46
ARTICLE 9 ENFORCEMENT .....		47
9.1	Violations as Nuisance .....	47
9.2	Violation of Law is a Violation of Declaration.....	47
9.3	Owners' Responsibility for Conduct of Others and Damages.....	47
9.4	No Avoidance .....	48
9.5	Rights and Remedies of the Mutual.....	48
9.5.1	Rights and Remedies are Cumulative.....	48
9.5.2	Imposition of Sanctions .....	48
9.5.3	Continuing Violations .....	48
9.6	Inadequacy of Legal Remedy.....	48
9.7	Limitation on Disciplinary Rights.....	49
9.8	Disciplinary Rules .....	49
9.9	Investigation of Complaints .....	49
9.10	Emergency Situations.....	49
9.11	Notices .....	50

9.12	Dispute Resolution .....	50
9.12.1	Alternative Dispute Resolution .....	50
9.12.2	Internal Dispute Resolution .....	50
9.13	Non-Waiver .....	50
9.14	Costs and Attorneys' Fees .....	50
ARTICLE 10 INSURANCE.....		51
10.1	Liability and Fidelity Insurance .....	51
10.1.1	Commercial General Liability Policy.....	51
10.1.2	Directors and Officers Liability Policy .....	51
10.1.3	Crime Insurance.....	51
10.2	Mutual Property Insurance .....	52
10.2.1	Property Covered.....	52
	Covered Cause of Loss.....	52
10.2.3	Coverage Levels .....	53
10.2.4	Primary.....	53
10.2.5	Endorsements.....	54
10.2.6	Waiver of Subrogation.....	54
10.2.7	Deductible .....	54
10.3	Insurance Rating and Cancellation.....	54
10.4	Board's Insurance Authority .....	54
10.5	Members' Individual Insurance Requirements.....	55
10.6	Insurance by Tenant.....	56
ARTICLE 11 DAMAGE OR DESTRUCTION OF BUILDINGS; CONDEMNATION.....		56
11.1	Damage to a Unit or Units .....	56
11.2	Damage to Common Area .....	57
11.2.1	Procedure Where Insurance Proceeds Cover at Least 85% of Cost or Repair .....	57
11.2.2	Procedure Where Insurance Proceeds are less than 85% of Cost of Repair .....	57
11.2.3	Receipt of Insurance Proceeds .....	58

11.3	Sale of Entire Development.....	58
11.4	Condemnation of Common Area .....	58
ARTICLE 12 AMENDMENT .....		59
12.1	Amendment by the Members .....	59
12.2	Amendment by the Board of Directors.....	59
ARTICLE 13 GENERAL PROVISIONS .....		59
13.1	Headings .....	59
13.2	Severability.....	59
13.3	Liberal Construction.....	60
13.4	Conflict Between Governing Documents.....	60
13.5	Amendment to Referenced Statutes.....	60
13.6	Number; Gender.....	60
13.7	Easements Reserved and Granted .....	60
13.8	Term.....	60

For Member Review

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**SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
WALNUT CREEK MUTUAL NO. TWENTY-NINE**

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This Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. Twenty-Nine (the "Declaration") is made on the date hereinafter set forth by WALNUT CREEK MUTUAL NO. TWENTY-NINE, a California nonprofit mutual benefit corporation (the "Mutual").

**RECITALS**

A. WHEREAS, an instrument entitled "Amended Declaration of Covenants, Conditions and Restrictions of Mutual No. Twenty-Nine," was recorded on August 6, 2003, as Document No. 2003-0384872-00, in the Official Records of Contra Costa County, California (the "2003 Declaration");

B. WHEREAS, an instrument entitled "First Amendment to Amended Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. Twenty-Nine" was recorded on May 11, 2012, as Document No. 2012-0110738, in the Official Records of Contra Costa County, California;

C. WHEREAS, the 2003 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 those certain parcels of real property located in the City of Walnut Creek, Contra Costa County, State of California and described as follows (collectively, the "Development"):

Lot 1, as shown upon the "Map of Subdivision 4213,  
City of Walnut Creek, Contra Costa County, California,"  
filed for record on November 3, 1971, in Book 141 of  
Maps, Pages 28, 29 and 30, excepting therefrom all  
that certain area designated Ptarmigan Drive, as

shown on said Map of Subdivision 4213, in the Office of the County Recorder of Contra Costa County, State of California.

D. WHEREAS, the Members, constituting at least a majority of Total Voting Power of the Members of the Mutual, desire to amend, modify, and otherwise change the 2003 Declaration, as amended, pursuant to Section 11.1 thereof;

E. NOW, THEREFORE, pursuant to Section 11.1 of the 2003 Declaration, as amended, the Members, constituting at least a majority of Total Voting Power of the Members of the Mutual, do hereby declare that the aforesaid 2003 Declaration, as amended, be and hereby is, AMENDED AND RESTATED IN ITS ENTIRETY as set forth within this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. Twenty-Nine. This Second Amended Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. Twenty-Nine replaces and supersedes all previously-recorded Declarations of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. Twenty-Nine;

F. IT IS FURTHER HEREBY DECLARED that all of the real property described herein, including all improvements thereon, constitute a "condominium project" within the meaning of *California Civil Code* section 4125;

G. IT IS FURTHER HEREBY DECLARED that the Development (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 2003, 42 U.S.C. section 3607(b)(2);

H. 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

I. IT IS FURTHER HEREBY DECLARED that all of the covenants, conditions, and restrictions herein set forth shall constitute enforceable equitable servitudes as provided in *Civil Code* section 5975, shall constitute covenants that shall run with the said real property, and shall be binding upon and inure to the

benefit of each Owner of any portion of the said real property or of any interest therein and their heirs, successors, and assigns.

## ARTICLE 1

### DEFINITIONS

1.1 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.

1.2 Annual Assessment. “Annual Assessment” shall have the meaning set forth in Section 8.6. “Annual Assessment” may also be referred to as “Regular Assessment,” “Dues,” or the “coupon.”

1.3 Articles. “Articles” shall mean the Articles of Incorporation of Walnut Creek Mutual No. Twenty-Nine, as they may be amended from time to time, and as filed with the Office of the Secretary of State of California.

1.4 Assessments. “Assessments” shall mean any or all of the following: Annual Assessment, Special Assessments, and Reimbursement Assessments.

1.5 Balcony. “Balcony” shall mean a raised platform, typically enclosed by a railing, adjacent to an upper-level Unit or the upper level of a Unit, the exclusive use of which is set aside, allocated, assigned and/or restricted to the exclusive use of the Residents of the Unit to which it is adjacent. Balconies are Exclusive Use Common Area.

1.6 Board of Directors. “Board of Directors” or “Board” shall mean the governing body of the Mutual.

1.7 Bylaws. “Bylaws” shall mean the Bylaws of Walnut Creek Mutual No. Twenty-Nine and any duly adopted amendments thereto.

1.8 Capital Improvement. “Capital Improvement” shall mean the original construction of an improvement that did not previously exist, as distinguished from the repair, upgrade or replacement of an existing improvement.

1.9 Carport. “Carport” shall mean a covered space located in the Common Area established and designed for the parking of motor vehicles, the exclusive use of which is set aside, allocated, assigned, and/or restricted to the exclusive use of the Residents of a particular Unit. Carports are Exclusive Use Common Area.

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 all real and personal property, improvements and airspace comprising the Development which is owned by all of the Owners in common, but excluding the Units. Some portions of Common Area are Exclusive Use Common Area.

1.13 Condominium. “Condominium” shall mean an estate in real property, as defined in *Civil Code* section 4125, consisting of an undivided interest in all or any portion of the Common Area together with a separate fee interest in a Unit and all easements appurtenant thereto as described in the Declaration or in the deed conveying a Condominium.

1.14 Condominium Plan. “Condominium Plan” or “Plan” shall mean the condominium plan or plans (including any amendments thereto) of the type described in *Civil Code* section 4285, which applies to the Development and has been recorded in the Office of the County Recorder of Contra Costa County, California.

1.15 County. “County” shall mean the County of Contra Costa.

1.16 Deck. “Deck” shall mean a ground level improvement made of wood or comparable material and adjacent to a ground level Unit or the ground level of a Unit, the exclusive use of which is set aside, allocated, assigned and/or restricted to the exclusive use of the Residents of the Unit to which it is adjacent. Decks are Exclusive Use Common Area.

1.17 Declaration. “Declaration” shall mean this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. Twenty-Nine, recorded in the Office of the County Recorder of Contra Costa County, California, and any amendments thereto. The Declaration may also be referred to as the “CC&Rs.”

1.18 Development. “Development” shall mean all the real property described in this Declaration which comprises the Walnut Creek Mutual No. Twenty-Nine condominium project, including such additions thereto as may hereafter be brought within the jurisdiction of the Mutual.

1.19 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/or restricted to the exclusive use or possession of the Residents of a particular Unit and/or which exclusively serves a particular Unit, including, without limitation: Balconies; Decks; Patios; Carports; Storage Spaces within Carports; skylights (including all frames, the lens/bubble, flashing, and other

waterproofing components); chimneys, flues, and heating and air conditioning ducts; internal and external telephone wiring; and internal and external cable, broadband, and other telecommunications wiring and cabling.

1.20 Foundation. “Foundation” shall mean the Golden Rain Foundation of Walnut Creek, a California nonprofit mutual benefit corporation.

1.21 Foundation’s Governing Documents. “Foundation’s Governing Documents” shall mean, collectively, the Foundation’s articles of incorporation and bylaws, as amended from time to time, any policies and resolutions adopted by the Foundation’s board of directors and distributed to the Foundation’s members, and the Establishing Agreement.

1.22 Governing Documents. “Governing Documents” shall mean the Articles, Bylaws, Declaration, Policies, and Rules adopted by the Board and distributed to the Members.

1.23 Guest. “Guest” shall mean a person who spends one or more nights in a Unit and is not a Resident.

1.24 Invitee. “Invitee” shall mean a person who is temporarily on the premises by the express or implied invitation of a Resident, but who does not spend one or more nights in a Unit.

1.25 Maintenance. “Maintenance” or to “maintain” (whether the term is capitalized or not) shall mean the act of caring for property, preserving it from failure or deterioration including, but not limited to painting, caulking, cleaning, and minor, non-structural upkeep.

1.26 Majority of a Quorum. “Majority of a Quorum” shall mean a majority of the votes cast in any lawful vote or election by the Members in which the number of votes cast equals or exceeds the number required to establish a quorum.

1.27 Manor. “Manor” shall mean “Unit.”

1.28 Map. “Map” or “Subdivision Map” shall mean the map entitled “Map of Subdivision 4129, City of Walnut Creek, Contra Costa County, California,” filed for record on June 10, 1971, in Book 137 of Maps, Pages 50, 51 and 52, excepting therefrom all that certain area designated Ptarmigan Drive and Terra Granada Drive, as shown on said Map of Subdivision 4129, in the Office of the County Recorder of Contra Costa County, State of California.

1.29 Member. “Member” shall mean an Owner.

1.30 Mortgage. “Mortgage” shall mean a deed of trust as well as a mortgage in the conventional sense.



1.31 Mortgagee. “Mortgagee” shall mean a beneficiary under a deed of trust as well as under a Mortgage. A “First Mortgagee” shall mean a beneficiary under a deed of trust as well as under a Mortgage first in priority of lien over all other encumbrances.

1.32 Mutual. “Mutual” shall mean Walnut Creek Mutual No. Twenty-Nine, its successors and assigns.

1.33 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 Development.

1.34 Parking Space. “Parking Space” shall mean a space within the Common Area designed for parking a motor vehicle. Assigned Parking Spaces are Exclusive Use Common Area.

1.35 Patio. “Patio” shall mean a ground level improvement made of concrete or comparable material and adjacent to a ground level Unit or ground level of a Unit, the exclusive use of which is set aside, allocated, assigned and/or restricted to the exclusive use of the Residents of the Unit to which it is adjacent. Patios are Exclusive Use Common Area.

1.36 Reimbursement Assessment. “Reimbursement Assessment” shall have the meaning set forth in Section 8.9.

1.37 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.

1.38 Replacement. “Replacement” or to “replace” (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.

1.39 Resident. “Resident” shall mean any person who resides in a Unit within the Development whether or not such person is an Owner as defined in Section 1.33, above.

1.40 Rules. “Rules” shall mean the rules, regulations, and policies governing the use, occupancy, management, administration and operation of the Development or any part thereof as adopted and published by the Board of Directors from time to time.

1.41 Senior Housing Residency Restrictions. “Senior Housing Residency Restrictions” shall mean the residency policy described in Section 4.1.

1.42 Special Assessment. “Special Assessment” shall have the meaning set forth in Section 8.7.

1.43 Storage Space. “Storage Space” shall mean an area appurtenant to a particular Unit or a space located with the Carport designed for the storage of personal items, the exclusive use of which is set aside, allocated, assigned and/or restricted to the exclusive use of the Residents of the Unit to which it is appurtenant. Storage Spaces are Exclusive Use Common Area.

1.44 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 Condominium.

1.45 Unit. “Unit” and “Manor” are synonymous terms which may be used interchangeably and shall mean the elements of a Condominium that are not owned in common with the other Owners of Condominiums within the Development. Each Unit is an individual residence shown as a separately designated and numbered area on a Condominium Plan. Each Unit consists of (i) the interior space bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, and ceilings of each such interior space; (ii) all interior partitions (*i.e.*, nonbearing walls) that are located entirely within the boundaries of such space and any ducts, vents or flues located within any such interior partition or nonbearing wall; provided, however, that bearing walls, interior stairs, soffits and furred down ceilings located within such space are Common Area and not part of the Unit; (iii) interior and exterior doors, sliding glass doors, screen doors, doorjambs, window assemblies, window frames, window glass, window screens, and hardware and interior trim of all the foregoing; (iv) utility installations, fixtures, and appliances that exclusively serve the Unit, whether located within such space or elsewhere including, but not limited to furnaces, air conditioners, hot water heaters, and ventilation fans; and (v) electrical wiring and plumbing from the connection at the wall, floor or ceiling. Each Unit includes both the portion of the building so described and the airspace so encompassed. There are 106 Units in the Development.

## ARTICLE 2

### MUTUAL; FOUNDATION

2.1 Management and Operation. The Mutual shall manage and operate the Development in accordance with the Governing Documents and California law. The Mutual shall have all of the powers set forth in the Governing Documents, together with the general power to do any and all things that a nonprofit mutual benefit corporation may lawfully do under California law, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Governing Documents.

2.2 Membership. Membership in the Mutual shall include, and shall be limited to, all Owners of any Condominium located within the Development. Membership shall be appurtenant to and may not be separated from ownership of a Condominium, and shall not be transferred, encumbered, pledged, alienated or hypothecated in any way, except upon the transfer or encumbrance of the Condominium to which it is appurtenant. Any attempt to make a prohibited transfer is void. Upon any transfer of title to a Condominium, including a transfer upon the death of an Owner, membership in the Mutual shall pass automatically to the transferee.

2.3 Voting. Only Members shall be entitled to vote, and only one vote shall be cast for each Condominium, as more particularly set forth in the Bylaws.

2.4 Board of Directors. The affairs of the Mutual shall be managed by or under the direction of a Board of Directors, the members of which shall meet the qualifications as set forth in the Bylaws. Directors shall be elected or appointed as provided in the Bylaws.

2.5 Mutual Policies. Subject to *Civil Code* section 4340 *et seq.*, the Board of Directors shall have the power and the authority to establish, promulgate, amend, repeal and enforce such Policies as the Board deems necessary for the management and operation of the Development and the conduct of business and affairs of the Mutual.

2.6 Relationship to Foundation. The Mutual is one of several common interest developments located within the senior housing community known as Rossmoor (the "Rossmoor developments"). The Rossmoor developments are managed and operated by various Mutuels known within Rossmoor as "mutuals." The mutuals (including the Mutual) are the beneficiaries under a certain trust agreement. The Foundation is the trustee under the trust agreement. By the terms of the Foundation's articles of incorporation and the trust agreement, the primary purpose of the Foundation is to act as trustee with respect to all land and improvement owned by the Foundation and to provide services and furnish community facilities to the mutual and for the benefit of the residents of the Rossmoor developments. Among other things, the Foundation is required by the trust agreement to collect for the costs of such services and facilities, such costs to be allocated pro rata among the mutual that are beneficiaries under the trust based on the number of the members of the respective mutual. The portion of these costs of the Foundation allocable to the Mutual is included in the component of the Annual Assessment imposed by the Mutual, as provided in Section 8.6.1 ("Calculation of Estimated Requirement").

2.7 Membership in the Foundation. Membership in the Foundation is distinct from membership in the Mutual and shall be as determined by the

Foundation pursuant to its duly adopted articles of incorporation, bylaws, and/or other applicable instruments.

2.8 Assessments. The Mutual shall have the power and duty to levy and collect Assessments, as more particularly set forth in Article 8 of this Declaration.

2.9 Acquisition of Property. The Board, acting on behalf of the Mutual, shall have the power to acquire (by gift, purchase, or otherwise), own, hold, improve, build upon, operate and maintain real property in connection with the affairs of the Mutual.

2.10 Capital Improvements. The Board of Directors shall have the power and authority to provide for the construction, installation or acquisition of Capital Improvements upon the Common Area.

2.11 Sale or Transfer of Mutual Property. Except as otherwise provided herein or by law, the Board of Directors shall not in any fiscal year sell, lease, or otherwise transfer property owned by the Mutual.

2.12 Easements to Owners. 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 a Member, for such purposes as the Board deems to be appropriate and not inconsistent with the purposes and interests of the Mutual. Unless an exception as set forth in *Civil Code* section 4600 applies, the approval of a Majority of a Quorum shall be required before the Board may grant exclusive use of any portion of the Common Area to a particular Member.

2.13 Safety and Security. Neither the Mutual nor the Board is responsible for ensuring the safety and security of the Mutual's Residents, Guests or Invitees. Neither the Mutual nor the Board has police powers.

### **ARTICLE 3**

#### **OWNERSHIP RIGHTS AND EASEMENTS**

3.1 Ownership of Condominium; Exclusive Easements. Ownership of each Condominium within the Development shall include: (i) a designated Unit; (ii) an undivided 1/106th interest as tenant in common in the Common Area; (iii) a membership in the Mutual; (iv) a membership in the Foundation to the extent provided in the Foundation's Governing Documents; and (v) any exclusive easements or easements appurtenant to such Unit and such other easements as are applicable, all as described in the Declaration or in the deed to the Condominium. The undivided interests in the Common Area established in this Declaration cannot be changed. The undivided interests in the Common Area shall not be severed or conveyed separately from the respective Units to which they are

appurtenant, and each such undivided interest shall in all cases be deemed to be conveyed or encumbered along with the respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit. Any purported severance or separate conveyance of an undivided interest in the Common Area apart from a conveyance of the respective Unit shall, for all purposes, be null, void and unenforceable. In interpreting deeds, 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, and regardless of any settling or lateral movement of buildings or minor variance between the boundaries shown on the deed, the Declaration and the actual existing physical boundaries.

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 Development for ingress, egress, and support over and through the 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 governing the use of the Common Area and facilities thereon;

(b) The right of the Board to charge reasonable admission and other fees for the use of any facilities situated upon the Common Area;

(c) The right of the Board to suspend an Owner's rights and privileges as a Member to the extent permitted by law for any period during which any Assessment against such Owner's Unit remains unpaid and/or for infraction of the Governing Documents of the Mutual;

(d) The right of the Board, as set forth in Section 3.9, to grant easements and rights of way in, on, over or under the Common Area subject to the limitations set forth in Section 2.12 and *Civil Code* section 4600;

(e) The right of the Board to mortgage, pledge, encumber, or otherwise hypothecate the Common Area and facilities thereon as security for money borrowed by the Mutual; and

(f) 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 Acquisition of Ownership Interest. Any person who acquires title to a Condominium or any ownership interest within the Development must notify the

Mutual of their acquisition of an ownership interest. Notice must be provided in writing, to the Mutual's managing agent, within thirty (30) days of the person's acquisition of an ownership interest.

3.4 Delegation of Rights of Use and Enjoyment. Any Owner may delegate their rights of use and enjoyment, including easements, in the Development to the members of his household, tenants, guests and invitees, subject to the terms of the Governing Documents. Each Owner shall notify the Mutual's managing agent of the names of any tenants of such Owner's Unit. Each Owner and/or tenant shall also notify the Mutual's managing agent of the names of all members of their household to whom such Owner or tenant has delegated any rights of enjoyment in the Development as provided herein and the relationship which each such person bears to such Owner or tenant. Any rights of enjoyment delegated pursuant to this Section are subject to suspension to the same extent that rights of Owners are subject to suspension as provided in the Governing Documents. Notwithstanding the above, a leasing or renting Owner shall be deemed to have delegated to tenants all rights of use and enjoyment of Common Area facilities. The renting and leasing of Units shall be subject to the provisions of Article 5 of this Declaration.

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 recorded 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 Development or their Condominium, such Owner shall forthwith cause such lien to be discharged by payment, bond or otherwise. If the Owner fails to cause the lien to be discharged, the Board may send written notice to the Owner specifying that unless the Owner causes the lien to be discharged within five (5) days from the date of such notice, the Board may cause the lien to be discharged. Within such five (5) day period, the Owner shall be permitted a hearing before the Board regarding the validity of such lien and any offsets or defenses thereto. At that time, the Board shall determine whether the lien adversely and improperly affects and encumbers the rights and interests of the Mutual or the other Owners. If the Board of Directors determines that the lien does adversely and improperly affect and encumber such rights and interests and that adequate protection of such rights and interests has not been provided, the Board may cause the lien to be discharged by payment, bond or otherwise. The Board shall have the right to levy a Reimbursement Assessment against the subject Owner for all amounts paid by

the Mutual, together with interest thereon at the legal rate and all costs and expenses incurred in connection with discharging a lien, including reasonable attorneys' fees.

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

3.8 Utility Easements. Easements over and under the Development or any portion thereof for the installation, repair, maintenance and replacement of electric, telephone, water, gas, and sanitary sewer lines and facilities, heating and air-conditioning facilities, cable, or master television antenna lines, drainage facilities, storm water drains and pipes, walkways, and landscaping as may be hereafter required or needed to service the Development, are reserved by and shall exist in favor of the Mutual, together with the right to grant and transfer the same. 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 for which Condominium Owners are responsible. The Mutual shall pay all charges for utilities supplied to the Development except those metered or charged separately to the Units.

3.9 Easements Granted by the Board. 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 Condominium Owners, for such purposes as the Board deems to be appropriate and not inconsistent with the purposes and interests of the Mutual, subject to the limitations set forth in the Governing Documents. The approval of at least a Majority of a Quorum of the Members shall be required before the Board may grant exclusive use of any portion of the Common Area to a particular Owner. Notwithstanding the foregoing and any other provisions of the Governing Documents, the Board shall have the power in its sole discretion and without approval vote of the Members (i.e., approval of zero percent (0%) of the Members without the need to send out ballots) to grant and convey licenses for use, rights-of-way, and easements in,

over, or under the Common Area as follows: (i) those exceptions set forth in *Civil Code* section 4600(b)(3); and, (ii) rooftop solar tubes and skylights.

3.10 No Right to a View. Owners do not have the right to an unobstructed or any other type of view from their Unit. This Declaration shall not be construed as granting any Owner a right to a view and neither the Mutual nor any Member shall have an obligation to take any action regarding or to preserve or provide for a view from any Unit. This shall be the case even if an Owner purchased a “view lot or unit.” Owners should anticipate that the view, if any, which may exist at the time of their purchase will change during the period of their ownership.

3.11 Partition Prohibited. There shall be no judicial partition of the Development, or any part thereof, nor shall any Owner or any person acquiring any interest in the Development or any part thereof seek any judicial partition thereof; provided, however, that if any Unit is owned by two or more co-tenants as tenants in common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition by sale as between such co-tenants.

## ARTICLE 4

### USE RESTRICTIONS

4.1 Senior Citizen Residential Use. Except as permitted in Section 4.4 below, Units shall be occupied and used for residential purposes only. Occupants, including Guests, of each Unit shall be subject to the restrictions set forth in a written policy (i.e., the Senior Housing Rules) adopted by the Board in compliance with applicable federal and California law as those laws may be amended from time to time. It is the intention of this provision to restrict occupancy to older persons or senior citizens to the fullest extent permitted by applicable law.

4.2 Number of Occupants. No more than three (3) Residents may occupy a one-bedroom Unit, five (5) Residents in a two-bedroom Unit, and seven (7) Residents in a three-bedroom Unit, so long as said limitations are not in conflict with any governmental regulation or ordinance. All occupants must be registered with Member records, except for those Guests who are not required to register with the Mutual pursuant to Section 4.3, below.

4.3 Rental of Units. The rental or lease of any Unit within the Development shall be subject to the provisions of the Governing Documents and Article 5 of this Declaration.

4.4 Restriction on Businesses. Units shall be used for residential purposes only, and no part of the Development shall be used or caused, allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other nonresidential



purpose. Notwithstanding the foregoing, Owners or Residents of the Unit may use any portion of a Unit as an office, provided that: the primary use of the Unit is as a residence; no advertising or signage is used in any manner in connection with the office use; no customers, clients, or patients enter the Unit on any regular basis; no increase in the number of cars parked in any entry parking area results from the business use of the Unit; and the use is in compliance with all local ordinances. The Board shall have the authority to adopt Rules regarding home offices within the Development in order to maintain the residential characteristics of the Development.

4.5 Offensive Conduct, Nuisances, Noise. No noxious, harmful, harassing, or offensive activities shall be conducted upon or within any part of the Development, nor shall anything be done thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, harassment, or annoyance to any Residents, or which shall in any way interfere with their use of the Common Area or the use and enjoyment of their Units. Without limiting any of the foregoing, no Resident shall permit noise including, but not limited to the barking of dogs, to emanate from the Resident's Unit, which would unreasonably disturb another Resident's enjoyment of their Unit or of the Common Area. The Mutual has the sole, absolute authority but not the obligation to pursue, on behalf of the Mutual, claims against Owners and Residents based on the existence or maintenance of a nuisance including, but not limited to harassment of others.

4.6 Use of the Common Area. All use of Common Area is subject to the Governing Documents and no modifications of any type shall be made to any Common Area without the express written permission of the Board. Common Area shall be kept free of rubbish, debris, personal items such as chairs and statues, and other unsightly or unsanitary materials. Nothing shall be kept or stored on the Common Area which attracts vermin. Each Owner shall avoid causing any damage to the Common Area. No portion of the Common Area, other than Exclusive Use Common Area, shall be monopolized by any Owner, group of Owners, Residents, or tenants without the prior written approval of the Board of Directors.

4.7 Hazards. There shall be no obstruction of any part of any Common Area. Nothing shall be done, placed, or kept within the Development 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 any Common Area without the prior consent of the Board. Each Owner and Resident shall comply with all requirements of all federal, state, and local governmental authorities and all laws, ordinances, rules, and regulations applicable to their Unit.

4.8 Requirement of Architectural Approval. As addressed in greater detail in Article 7, construction, installation, modification, or alteration of buildings are subject to approval of the Board.

4.9 Smoking Prohibited. Smoking is prohibited to the extent set forth in Walnut Creek Ordinance No. 2118, pertaining to second hand smoke, and any successor ordinance thereto.

4.10 Flooring Restrictions. Carpeted flooring is recommended for all Units located above other Units. Hard surface flooring and carpeted flooring in Units above other Units must meet the Mutual's sound proofing ratings and construction criteria set forth in its Rules entitled "Statement of Policies." Installation of all new flooring in Units above other Units requires an alterations permit.

4.11 Sports Apparatus. No basketball standards (including portable basketball standards) or other sports apparatus (fixed or portable), shall be placed upon or attached to any portion of the Common Area without the written permission of the Board.

4.12 Mailboxes and Newspaper Tubes. Mailboxes shall comply with applicable postal regulations and Rules, if any. There shall be no free-standing exterior newspaper tubes.

4.13 Outside Drying and Laundering. No outside clothesline or other outside clothes washing, drying, or airing facilities shall be maintained anywhere in the Development.

4.14 Solar Energy Systems. Solar energy systems as defined in *Civil Code* sections 801.5(a)(1) and (2) are subject to prior architectural approval pursuant to Article 7. The Board may adopt Rules regarding the installation and maintenance of solar energy systems.

4.15 Satellite Dishes and Antennas. No outside mast, tower, pole, radio or television aerial, antenna (including so-called "CB" or "ham" radio antennas), satellite dish, wire, or other receiving or transmitting device shall be erected, constructed, or maintained in the Development (including the Common Area, or the outside of any building) except (i) those erected, constructed, or maintained by the Mutual, (ii) those expressly approved by the Board, (iii) a free standing antenna located within a Balcony, Deck or Patio which does not extend outside the airspace encompassed within the Balcony, Deck or Patio, or (iv) those devices which, by law, cannot be prohibited by the Mutual. The Board may adopt Rules regarding the installation and maintenance of antennas, satellite dishes, telecommunications devices, and related wiring for such devices.

#### 4.16 Animals and Pets.

4.16.1 Board Authority. The Board shall have the right to prohibit the keeping of any animal which constitutes, in the sole and exclusive opinion of the Board, a nuisance or threat to persons, other animals, or property. Board action pursuant to this Section shall be effective only after a duly noticed hearing before the Board. After notice and hearing, the Board may order the removal of any animal or pet which, in the Board's sole discretion, causes excessive noise or otherwise creates a nuisance. Any animal that displays threatening behavior or attacks a person or animal may be immediately barred from the Common Area until a hearing can be conducted.

4.16.2 Limitations on Animals and Pets. No animals shall be kept, bred, or raised within the Development for any commercial purpose. The total number of all pets kept in any Unit is limited to two (2) household pets. Notwithstanding the foregoing limitation on the total number of pets, (a) unlimited numbers of fish and other marine life may be kept in an aquarium in a Unit, subject to the Rules, if any, and (b) unlimited numbers of caged birds may be kept in a Unit, subject to the Rules, if any, and applicable governmental regulations.

4.16.3 Service Animals and Assistance Animals. Service animals and assistance animals are not pets for purposes of Section 4.16; however, Owners shall be responsible for their service animals and assistance animals in accordance with the provisions of Section 4.16 and the Rules. Service animals and assistance animals are permitted on the Development in accordance with *Civil Code* section 54.2 and any other applicable law.

4.16.4 Owner's Responsibility for Animals and Pets. While in Common Area, each dog must be restrained on a leash held by a responsible person capable of controlling it. The owner of each animal or pet shall be responsible for immediately removing and disposing of any waste introduced to any portion of the Development by such animal or pet. Each Owner, Resident, and any person bringing or keeping an animal within the Development shall be strictly liable to the Mutual and all other persons for any injury or damage to persons, animals, or property caused by the animal. The Owner shall indemnify the Mutual and its officers, Directors, and agents against any and all claims, damages, losses, demands, liabilities, and expenses including, but not limited to attorneys' fees, arising out of or resulting from the presence or conduct of any animal brought upon or kept within the Development by the Owner, members of their household, guests, tenants, or invitees. No animal may be left, chained, or otherwise tethered in Common Area, including Exclusive Use Common Area. No animal shall be left unattended on Balconies or Patios at any time.

4.16.5 Rules. The Board may adopt and enforce Rules in addition to the provisions of this Section which may, among other things, include limitations on the size of animals and pets permitted.

4.17 Trash Disposal. Trash, garbage, accumulated waste plant material, or other waste and refuse shall be deposited only in dumpsters for trash, recycling and composting. No Owner or Resident shall permit or cause any garbage, trash, or other waste or refuse to be kept or accumulate upon any portion of the Common Area, except in such dumpsters. Owners shall be responsible for any violations of this Section 4.17 and any applicable Rules adopted by the Board committed by their tenants, guests, and invitees. The Mutual shall have the right to remove any extraordinary accumulation of rubbish, trash, garbage, or debris to an offsite trash collection facility at the offending Owner's or Resident's expense.

4.18 Construction Materials, Construction Debris. No portion of the Development shall be used for the storage of building materials unless approved by the Board or specifically authorized by the Rules. All construction debris shall be picked up and removed daily. Owners and contractors may not use Mutual trash receptacles for their construction debris.

4.19 Machinery and Equipment; Vehicle Maintenance. Unless approved by the Board, no power machinery or equipment shall be permitted within the Development except as is customary and necessary in connection with approved construction and/or Residents' non-commercial use. 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 any other relevant factors. No vehicle maintenance is permitted in the Development, with the exception of emergency work.

4.20 Signs, Banners, Flags. No sign of any kind shall be displayed to the public view from any portion of the Development except:

- (a) Signs required by legal proceedings;
- (b) Noncommercial signs or posters no larger than nine (9) square feet in size and noncommercial flags or banners no larger than fifteen (15) square feet in size, displayed on or in an Owner's Unit, and limited to the fullest extent permitted by *Civil Code* section 4710;
- (c) A single sign of customary and reasonable dimension and design complying with the Mutual or Architectural Rules and reasonably located in a Unit advertising a Unit for sale or rent;
- (d) Other signs which by law cannot be prohibited;

(e) A flag of the United States, subject to any federal, state, City or County restrictions as to size and as to time, place, and manner of display;

(f) Signs approved by the Board located at or near any entry identifying Unit addresses;

(g) Signs required for traffic control and regulation of streets or open areas within the Development; and

(h) Signs on the Common Area as approved by the Board for a purpose reasonably related to the affairs of the Mutual.

#### 4.21 Vehicles and Parking.

4.21.1 Parking Rules. Each manor may park no more than two (2) vehicles within the entry. Only golf carts, two-axle passenger vehicles which are of a type customarily used for personal transportation and standard size pickup trucks may be parked in Carports. Vehicles of Owners and Residents shall not be parked anywhere in the Development except wholly within the Owner or Resident's Carport, Assigned Parking Spaces, driveways and designated parking spaces in the Common Area. All Carports shall be used solely for the parking of golf carts or motor vehicles used for personal transportation. Guests shall park in outdoor parking spaces and driveways, subject to the Rules adopted by the Board and applicable ordinances imposed by the City. No parking is permitted within the private streets within the Development.

4.21.2 Oversized Vehicles. No trailer, camper, mobile home, recreational vehicle (excepting golf carts), boat, or truck other than a standard size pickup truck, shall be parked, kept, stored or permitted to remain upon any area within the Development; provided, however, that campers, motor homes and other recreational vehicles may be parked a maximum of twenty-four (24) hours for the purposes of loading, unloading, or preparing for or returning from a trip. All vehicles parked within the Development must have current registration and may not be inoperable or abandoned.

4.21.3 Commercial Vehicles. Commercial vehicles of vendors, utilities, contractors, delivery persons, movers, and others providing services shall be permitted within the Development while services are actually being performed as long as they are parked in authorized parking spaces. Commercial vehicles, except those driven by Residents, shall not be parked within the Development overnight. Commercial vehicles driven by Residents must be parked entirely within the Carport or Assigned Parking Space assigned to the Resident's Unit. Oversized commercial vehicles are subject to the provisions of Section 4.21.2.

4.22 Parking Enforcement; Parking Rules. In addition to the Board's ability to regulate vehicles and parking by Rules as provided in Section 4.21.1, above, the Board shall have the power and authority 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 Development in violation of any of the provisions of the Governing Documents. 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, or guests are responsible for the presence of such vehicle. Parking Rules adopted by the Board may include, but are not limited to, restrictions on the length of time that vehicles may be parked in the Common Area, procedures regarding the registration of vehicles, and the issuance of parking permits or tags.

4.23 Carports/Assigned Parking Spaces. Each Owner and Resident shall keep their driveway, Carport, and Assigned Parking Space in a sanitary and safe condition. In no event shall the Carport or Assigned Parking Space be used for storage or in a way that will preclude the parking of the Owner's or Resident's vehicles within the Carport or Assigned Parking Space.

4.24 Window Coverings. Drapes, window shades, and other window coverings installed in the windows of any Unit shall comply with any Rules adopted by the Board. In no event shall aluminum foil, newspaper, cardboard, blankets, or similar materials be placed in windows.

4.25 Roof Access. Owners, Residents, guests, invitees, vendors, and agents are prohibited from accessing the roofs of the buildings housing the Units and the roofs of Common Area components without the prior written consent of the Board or the Mutual's managing agent.

4.26 Outbuildings. No outbuilding, tent, shack, trailer, shed, or temporary building of any kind shall be located within the Development except in strict compliance with Article 7.

4.27 BBQs and Other Open Flame Devices. Only electric grills may be used. No open flame devices of any kind or outside fires are permitted elsewhere in the Development.

4.28 Combining Units. Contiguous Units may not be combined for use as a single Residence.

4.29 Drainage. No Resident shall do any act or construct any improvement which would interfere with the natural or established drainage

systems or patterns within the Development without the prior written approval of the Board.

4.30 Mineral Exploration. No Unit or any portion of the Common Area shall be used to explore or remove any water, oil, hydrocarbons, or minerals of any kind without the approval of the Board, and only if permitted by local ordinance.

## ARTICLE 5

### RENTING OR LEASING

***Note that this Article 5 conforms the existing limitation on the total number of Units which may be rented pursuant to the Amended Declaration of Covenants, Conditions and Restrictions of Mutual No. Twenty-Nine recorded on August 6, 2003, as Document No. 2003-0384872-00, in the Official Records of Contra Costa County, California, to Civil Code section 4741(b), which took effect on January 1, 2021. This Article retains the legacy status date contained in the Amended CC&Rs. Therefore, all Units purchased after August 6, 2003 are subject to a 25% (27 Units) cap on rentals, as set forth herein.***

5.1 Requirements for Renting. The term "Unit," as used in this Article, shall be deemed to include the Exclusive Use Common Area appurtenant to the Unit unless specifically noted. An Owner who wishes to rent their Unit shall:

- (a) Complete an application for permission to rent;
- (b) Do so pursuant to a written lease or rental agreement. The lease or rental agreement shall be for an initial term of at least three (3) months and shall expressly provide that its terms are subject to all the provisions of the Governing Documents, including the Senior Housing Residency Restrictions, and that failure of the tenant, members of the household, invitees, or guests to comply with applicable provisions of the Governing Documents shall constitute a breach of the terms of such lease or rental agreement;
- (c) File a copy of the signed lease or rental agreement with the Board within five (5) days after the lease becomes effective. The Owner may redact or blackout the financial terms (i.e., the amount of rent and security deposit) from the copy of the lease or agreement provided to the Board;
- (d) Comply with the requirements set forth in Section 10.6, below, namely, recommend the tenant to obtain and maintain a "renter's policy" (also known as an "HO-4" policy) and provide to the Board a certificate from the tenant's insurer certifying that the recommended insurance under Section 10.6 has been procured and is in full force and effect;

(e) Provide the tenant(s) with a copy of the Governing Documents and any subsequent changes thereto;

(f) Notify the Board of the name of each tenant and of the members of the household; and

(g) Have the duty and responsibility to keep the Board apprised of their current address and telephone number.

5.2 Rental of Entire Unit. As used in this Article, the term “rent” shall mean leased, rented, or occupied, whether or not for compensation of any kind. No Owner shall rent or lease less than the entire Unit and the Exclusive Use Common Area appurtenant to the Unit except as permitted by Sections 5.3 and 5.14, below. The preceding sentence is intended to prohibit the operation of a rooming house or similar operation within the Development. No Carport, Storage Space, accessory building, or other facility shall be rented, leased or hired to anyone who does not have the right of possession of the entire Unit, except as specifically provided in Section 5.14, below. This Section is not intended to prohibit a Resident Owner from sharing their Unit with a roommate or other person(s) with whom the Owner maintains a common household.

5.3 No Subletting or Short-Term Rentals; Roommates. No portion of any Unit shall be sublet nor shall any Owner lease a Unit for transient or hotel purposes. Owners are prohibited from offering all or part of any Unit for short-term rental (i.e., for a period of less than three (3) months) through Airbnb, VRBO or other similar websites or entities, or by any other rental agreement which includes as consideration payment of money, trade or barter of other goods or services, or conveyance of property occupancy rights. However, a Resident Owner may share their Unit with a roommate or other persons with whom the Owner maintains a common household for a period of thirty (30) days or more, provided that all persons occupying the Unit are authorized, as verified by the Mutual. An Owner shall be considered a “Resident Owner” if the Unit is the Owner’s primary residence, as documented by at least two (2) of the following: motor vehicle registration, driver’s license, voter registration, tax documents showing the Unit as the residence for purposes of a tax exemption, or a utility bill. In such common household cases, the Unit shall not be considered a “rental” for the purposes of the restriction on the number of Units that may be rented, as set forth in Section 5.5, below.

5.4 Time-Share Arrangements Prohibited. No Unit 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 in the Development 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. This Section shall not be construed to limit the personal use of any Unit in the Development by any Owner or their or its social or familial guests.

5.5 Restriction on Number of Units Leased or Rented. Except as provided in Sections 5.5.1 and 5.5.2 below, not more than twenty-five percent (25%) (i.e., 27) of the Units within the Development shall, at any particular time, be leased or rented or occupied by anyone other than an Owner together with members of their household or temporary guests, such that at least 79 of the Units in the Development are Owner-occupied. For purposes of this Article, the following individuals shall be deemed Owner-occupants if the Unit is owned by an entity other than a natural person: (i) a Resident of a Unit who is a trustee or beneficiary under a trust if legal title to the Unit is in the name of the trustee(s) of the trust; (ii) a Resident of a Unit who is a shareholder with a majority shareholder interest in the corporation that owns the Unit; and (iii) for any other legal entity, any Resident who is a majority owner of the entity.

5.5.1 Legacy Status/Termination of Right to Rent. The limitation on the number of permitted rentals as set forth in Section 5.5 shall not apply to any Member who is an Owner of a Unit on August 6, 2003, but shall apply to any such Unit or Units upon transfer of title to such Unit (provided the exceptions set forth in *Civil Code* section 4740(b) do not apply), such that if the number of Units then being leased or rented is more than the number permitted pursuant to Section 5.5, the Unit shall be sold to an Owner-occupant and not for rental. For purposes of this Article 5, the right to rent a Unit shall not terminate for any of the reasons described in *Civil Code* section 4740(b) including, but not limited to: transfers exempt for purposes of reassessment by the County tax assessor; probate transfers; and transfers exempt from the requirements to prepare and deliver a Real Estate Transfer Disclosure Statement.

5.5.2 Hardship Waivers. Upon written request of an Owner, the Board shall have the right, but shall not be obligated, to waive the limitation on the number of permitted rentals or the order of priority of requests to rent in cases of deserving and unusual hardship (for instance, a family illness requiring temporary relocation for treatment) provided: (i) each such waiver shall be for a limited term; (ii) the Owner in question shall deliver to the Board a signed statement representing that they will retake possession and occupancy of the Unit as a Resident thereof upon the expiration of such limited term; and (iii) such waiver shall be subject to other conditions as the Board may determine, which conditions may include but shall not be limited to Board review and approval of the lease for such limited term. Owners may apply for consecutive hardship waivers and the Board

may approve consecutive hardship waivers as deemed appropriate. For purposes of this Section, a “hardship” shall not include an Owner’s desire for a particular sales price or profit from an otherwise saleable Unit.

5.6 List of Rented Units. The Board shall maintain a list of all Owners currently leasing or renting a Unit, which list shall include: (i) the Owner’s name and mailing address; (ii) the address of the rented Unit and the Owner’s record date of ownership; and (iii) term of the lease.

5.7 Written Application for Permission to Rent; Waiting List. Any Owner desiring to lease or rent their Unit shall submit to the Board a written application for permission to rent on a form provided by the Board (the “Application”). The Application shall state: (i) the Owner’s name, mailing address, and current telephone number(s); (ii) the Unit address and the Owner’s record date of ownership; (iii) the proposed lease term; and (iv) such other information as the Board may reasonably require from time to time. The Owner shall have the right, upon written request delivered to the Mutual, to appear in person before the Board to discuss the request to lease or rent their Unit. The Board shall establish and maintain a waiting list of the Applications, organized in the order of date received by the Board. An Owner may make a written request regarding the Owner’s place on the waiting list.

5.7.1 Review of Application to Rent. Within thirty (30) days after receipt of the Application, the Board shall review and shall approve or deny the Application. Written notice of the Board’s decision shall be transmitted to the requesting Owner and, if the request is denied, the notice shall specify the reason(s) for denial. If the Owner and their Unit have legacy status pursuant to Section 5.5.1, above, the Board shall approve the Application subject to the other conditions of this Article. If the Owner and their Unit do not have legacy status, the Board shall approve the Application unless doing so will increase the number of Units leased or rented within the Development to more than the number permitted under Section 5.5, or will otherwise result in the violation of any provision of this Article 5 or any other provision of the Declaration. When the number of Units leased or rented in the Development is less than the number permitted under Section 5.5, the Board shall authorize the Owner who submitted the earliest received Application to rent their Unit. When the number of Units leased or rented in the Development equals or exceeds the number permitted under Section 5.5, Owner Applications to rent shall be added to the waiting list maintained pursuant to Section 5.7.

5.7.2 Reconsideration of Denied Application or Request for Hardship Waiver. If an Application or hardship waiver request is denied, the requesting Owner shall have a right, upon written request, to reconsideration by the Board. Within ten (10) days after such reconsideration, the Board shall

transmit its written determination to the requesting Owner and, if again disapproved, shall specify the reasons for such disapproval.

5.7.3 Duration of Authorization to Rent. Subject to the provisions of this Article 5, once an Owner who does not have legacy status pursuant to Section 5.5.1, obtains permission to lease or rent a Unit, that Owner shall have the right to continue renting that Unit to consecutive lessees or renters for consecutive terms without having to re-submit a request for permission to rent; provided such lease or rental is otherwise in compliance with the provisions of this Article 5 and is without interruption of more than thirty (30) days, or, in the case of approved remodeling of the Unit, ninety (90) days and provided further that during such interruption in rental the Owner shall not reoccupy the Unit for a period exceeding sixty (60) days.

5.7.4 Decision of Board Conclusive. The decision of the Board of Directors in approving or denying an Application or hardship request shall be final and conclusive.

5.8 Implementation. Upon request from the Board after this Declaration is recorded, each Owner renting or leasing a Unit shall provide such information as the Board may reasonably require to implement the provisions of this Article 5 including, but not limited to the names of the tenants and the members of the tenants' household and the duration of the lease. Upon request by the Board, such Owners shall also provide the Board with a statement signed by the tenants acknowledging that they have read and understand the Mutual's Governing Documents and will abide by the provisions contained therein.

5.9 Private Exchanges Prohibited. "Private Exchanges" or "home swaps" shall mean private exchange arrangements with another person whereby the Owner will occupy the dwelling of the other party to the exchange for a defined temporary period and that other person will occupy the Owner's Unit during the same period. Private Exchanges are prohibited.

5.10 Mutual as Third-Party Beneficiary. The Owner and the tenant(s) of any Units 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(s); that failure of the tenant, members of the household, or guests to comply with the Governing Documents shall constitute a breach of the terms of the contract between the Owner and the tenant(s); 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 the Declaration including, but not limited to the rights granted pursuant to Section 5.11, below, or under the law, including eviction, to the same extent as the Owner of the Condominium. The Mutual's right to maintain an eviction action shall arise only in the event that (i) the Mutual has given notice to the Owner detailing the nature of the infraction and the

Owner has had a reasonable opportunity to take corrective action or to appear before the Board to present arguments against eviction by the Mutual, and (ii) the Owner has not taken action to prevent and/or correct the actions of the tenant giving rise to the damage or nuisance.

5.11 Assignment of Rents as Security for Payment of Liens. As security for the payment of all liens provided for under the Declaration, including those described in Section 8.2, 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 8.2, to collect and retain such rents, issues, and profits as they may become due and payable. Upon any such default, the Mutual may at any time, upon ten (10) days' written notice to such Owner, then (either in person, by agent, or by a receiver to be 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 including, but not limited to imposition of a Reimbursement Assessment and any Additional Charges. The assignment of rents and powers described in this Section 5.11 shall not affect, but shall in all respects be subordinate to, the rights and power of the holder of any first Mortgage on any Unit, or any part thereof, to do the same or similar acts.

5.12 Owner Responsible for Tenant's Actions; Indemnification of Mutual. Each Owner leasing or renting a Unit shall be responsible and strictly liable to the Mutual for the action of such Owner's tenant(s) in or about all Units and Common Area and for each tenant's compliance with the provisions of the Governing Documents. To the fullest extent permitted by law, every Owner of a Unit that is occupied by persons other than the Owner pursuant to a rental agreement or lease or otherwise, agrees to and shall indemnify and defend the Mutual, its Directors and agents and shall hold them harmless from and against any cost, loss, claim or damages of any kind, arising out of the conduct or presence of the occupants of the Unit 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 non-enforcement by the Mutual of the Governing Documents with respect to such occupants. Any amounts owed pursuant to this Section 5.12 may be assessed as a Reimbursement Assessment.

5.13 Owner Prohibited from Using Common Facilities While Unit Rented. Any Owner who leases or rents their Unit and does not still reside in the Development shall not be entitled to use and enjoy any common facility during the period the Unit is occupied by a tenant or tenants.

5.14 Owner-Owner Leases. Notwithstanding any other provision of the Governing Documents, leases for the use of Assigned Parking Spaces, Storage Spaces or Carports between Owners ("Owner-Owner Lease") are permissible; provided, however, the Owner-Owner Lease is in writing and signed by all parties. Owners may not rent their parking spaces of any type to another Owner if doing so will prevent them from parking their personal vehicles in their assigned parking spaces, i.e., an Owner may not rent their parking spaces to another Owner and then use Common Area or guest parking spaces for their personal vehicle(s). There may be an unlimited number of Owner-Owner Leases. A copy of each such Owner-Owner Lease shall be provided to the Mutual within thirty (30) days of its execution.

## ARTICLE 6

### MAINTENANCE, REPAIR, AND REPLACEMENT RESPONSIBILITIES

6.1 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: mailboxes; exterior surfaces of buildings, including stucco; shingles; trim; roofs; roof drains; gutters; downspouts; private streets; unassigned parking areas; driveways serving multiple Units; private sidewalks; private walkways; trash enclosures; bus stop enclosures; utility lockers; irrigation and/or sprinkler systems; skylights; lights and/or lighting fixtures on the private streets and/or stairways; stairs; fences; open space and all landscaping located thereon (including the maintenance of trees planted in Common Area and the roots of any such trees); and utility facilities (except for those utility facilities which are maintained by public or private utility companies or agencies and sewer lateral lines located outside the boundaries of a separate interest and exclusively serving one Unit), keeping such property in good condition and repair.

6.2 Exclusive Use Common Area. The Mutual shall provide maintenance, repair and replacement of Exclusive Use Common Area only as specifically set forth herein. Mutual responsibility for Exclusive Use Common Area does not eliminate Member obligations to maintain, repair and/or replace Exclusive Use Common Area as set forth below. Any alteration, modification or replacement of Exclusive Use Common Area requires the approval of the Board pursuant to Article 7 of this Declaration and any Architectural Rules.

#### 6.2.1 Cable, Electrical, Telephone, and Telecommunications

##### Wiring.

(a) Mutual Responsibility. The Mutual shall be responsible for the maintenance, repair and replacement of electrical wiring from the meter up to and including the circuit breaker, except for electrical wiring which has been altered or replaced by the Unit Owner.

(b) Owner Responsibility. Each Owner shall be responsible for providing maintenance, repair and replacement of electrical wiring and cable wiring located inside the Unit. Additionally, electrical wiring from the meter up to and including the circuit breaker panel and cable wiring from the box into the Unit is the responsibility of the Owner if the Owner has altered or replaced that wiring during the course of a permitted alteration project. Telephone, telecommunications, and cable wiring serving the Unit is the sole maintenance, repair and replacement responsibility of the Unit Owner.

#### 6.2.2 Balconies and Decks.

(a) Mutual Responsibility. The Mutual shall provide maintenance, repair and replacement of Balconies and Decks, including framing, railings, and walking surfaces.

(b) Owner Responsibility. Each Owner shall be responsible for the cleaning and general upkeep of the Balcony or Deck appurtenant to their Unit. Each Owner shall also be responsible for the maintenance, repair and replacement of any improvements in the Balcony area or Deck area including, but not limited to planting and landscaping, subject to Rules adopted by the Board. Owners are further responsible for the maintenance, repair, replacement of the light bulbs and light fixtures within their Balcony, Deck, Patio and elevated landings.

#### 6.2.3 Carports.

(a) Mutual Responsibility. The Mutual shall provide maintenance, repair and replacement of Carports, including the Carport structure and the roof system of the Carport.

(b) Owner Responsibility. Each Owner shall be responsible for the day-to-day upkeep and cleaning of the Carport the exclusive use of which has been assigned to the Owner's Unit.

#### 6.2.4 Chimney, Chimney Caps, and Flues.

(a) Mutual Responsibility. The Mutual shall provide maintenance, repair and replacement of the exterior surfaces of chimneys

extending above the roofline, chimney caps, and rodent-deterrent wire barrier located on the chimney and/or roof.

(b) Owner Responsibility. Each Owner shall be responsible for the maintenance, repair and replacement of the chimney flue, including periodic chimney sweeping or other chimney cleaning as needed. Each Owner shall also be responsible for the maintenance, repair and replacement of the fireplace, firebox, and flue damper located in the Unit.

#### 6.2.5 Dryer Vent Lines and Vent Cap.

(a) Mutual Responsibility. The Mutual shall be responsible for the maintenance, repair and replacement of the dryer vent cap and rodent-deterrent wire barrier located on the roof. The Mutual may, but is not required to, conduct periodic inspections of the dryer vents on a Mutual-wide basis.

(b) Owner Responsibility. Each Owner shall be responsible for the maintenance, repair and replacement of the dryer vent lines located inside the walls and attic, including periodic cleaning as necessary.

6.2.6 Electric Vehicle Charging Stations. An Owner whose request to install an electric vehicle charging station ("EVCS") was approved by the Board shall be responsible at such Owner's sole cost and expense for the maintenance, repair and replacement of the EVCS and for all cost and expense associated with the removal of an EVCS if necessary, including the cost and expense to restore the Common Area to its pre-installation condition. Owners shall install their EVCS pursuant to the Mutual's Statement of Policies.

#### 6.2.7 HVAC Systems.

(a) Mutual Responsibility. The Mutual shall only be responsible for condensate lines. The Mutual cannot be denied access to the Unit to clear the condensate lines.

(b) Owner Responsibility. Each Owner shall be responsible for the maintenance, repair, and replacement of the HVAC systems serving their Unit, including all mechanical and electrical components, thermostats, wiring, plumbing, ductwork, and registers. Owners shall not place any item in front of the condensate line discharge opening.

6.2.8 Mailboxes.

(a) Mutual Responsibility. The Mutual shall be responsible for the repair and replacement of originally installed exterior mailboxes.

(b) Owner Responsibility. Each Owner shall be responsible for the cleaning and upkeep of their exterior mailbox, whether originally installed or replaced. If an Owner installs a new mailbox through an alteration permit, the Owner and all subsequent Owners shall be responsible for maintenance, repair and replacement of the mailbox.

6.2.9 Patios and Balconies.

(a) Mutual Responsibility. The Mutual shall be responsible for the painting, repair and replacement of the privacy walls that separate the Patios of the Units.

(b) Owner Responsibility. Each Owner shall be responsible for the cleaning and upkeep of the Patio the exclusive use of which has been assigned to their Unit. Each Owner shall also be responsible for the maintenance, repair and replacement of the walking surfaces of the Patios and all alterations (i.e. fences), subject to Rules adopted by the Board.

6.2.10 Plumbing.

(a) Mutual Responsibility. The Mutual shall be responsible for the maintenance, repair and replacement of Common Area plumbing located on Common Area, including the plumbing pipes located inside exterior walls of the building in which the Unit is located, and also including plumbing located inside non-bearing interior walls which are part of the Unit. Notwithstanding the foregoing allocation of responsibility, the Mutual shall not be responsible for plumbing which is altered by the Owner, except as set forth in Section 6.2.10(b), below.

(b) Owner Responsibility. Each Owner shall be responsible for providing maintenance, repair and replacement of plumbing pipes, lines, and fixtures located within the Unit, except for pipes located inside non-bearing interior walls as set forth in Section 6.2.10(a), above. Notwithstanding the foregoing, plumbing which has been altered or replaced during the course of a permitted alteration project is the maintenance, repair and replacement responsibility of the Owner regardless of location of the plumbing.



#### 6.2.11 Skylights and Solar Tubes.

(a) Mutual Responsibility. The Mutual shall be responsible for the maintenance, repair, and replacement for the waterproofing components around the skylights and solar tubes. Where skylights and/or solar tubes have been installed or replaced by an Owner with prior approval from the Mutual's alterations department, the Mutual shall perform future maintenance, repair and replacement and bill back the Owner for such work.

(b) Owner Responsibility. Each Owner shall be responsible for the maintenance, repair and replacement of the skylights and solar tubes serving their Unit, including all frames, the lens/bubble, and flashing. Owners, however, are prohibited from accessing the roof to perform any such maintenance, repair, or replacement. If work cannot be performed from inside the Unit, the Mutual may provide maintenance, repair and/or replacement of the skylight and/or its components and levy a Reimbursement Assessment against the Owner of the Unit served by the skylight or solar tube. Alternatively, the Owner may contract with a licensed, approved contractor to perform maintenance, repair, or replacement of the skylight and/or solar tube, provided an alteration application is submitted to the Board and approved prior to commencement of the work.

#### 6.2.12 Storage Spaces.

(a) Mutual Responsibility. The Mutual shall provide maintenance, repair and replacement of Storage Spaces.

(b) Owner Responsibility. Each Owner and Resident shall be responsible for the day-to-day upkeep, cleaning of the interior of the Storage Space assigned to their Unit and repairing any damage caused by the negligence of the Owner or Resident.

#### 6.2.13 Water Heaters.

(a) Mutual Responsibility. The Mutual shall not be responsible for water heaters serving the Units or for any of the hoses or other components of the water heaters serving the Units.

(b) Owner Responsibility. Each Owner shall be responsible for the maintenance, repair and replacement of the water heater serving their Unit, including the water lines and hoses and all other components of the water heating system, and Owner shall not block the condensate exterior exit. Any installation of a water heater requires an alteration permit.

6.2.14 Smoke Detectors. The Mutual has installed 10-year smoke detectors. Owners shall permit access to the smoke detectors for the Mutual's periodic maintenance. The Mutual shall not be responsible or liable for the

consequences of any Owner's failure to install, test, maintain, repair or replace any such smoke detector or carbon monoxide detector installed in an Owner's Unit.

6.3 Units. Each Owner shall be responsible for providing maintenance, repair, and replacement of their Unit or any portion thereof, as defined in Section 1.45, including any equipment, utility facilities, fixtures, cabinetry and appliances located therein, and the finished surfaces of the interior floors, ceilings and perimeter walls of the Unit, in a safe, clean, sanitary, workable, and attractive condition, subject to the provisions of this Article 6 and Article 7.

6.3.1 Windows and Doors.

(a) Mutual Responsibility. The Mutual shall be responsible for the maintenance, repair, and replacement for the waterproofing components around the Unit windows and sliding glass doors. Where the windows and/or sliding glass doors have been replaced by an Owner with prior approval from the Mutual's alterations department, the Mutual shall perform future maintenance, repair and replacement and bill back the Owner for such work.

(b) Owner Responsibility. Each Owner shall be responsible for the maintenance, repair, and replacement of their window systems (including glass, frames, flashing, gaskets, casings, and screens), sliding glass doors and all doors of their Unit. The Owner shall hire a licensed and insured contractor, as approved by the Board, to ensure that all components of the window systems, sliding glass doors and Unit doors including, but not limited to the frames, flashing and waterproofing components, are properly installed and integrated with the building envelope.

6.3.2 Interior Decorations. Each Owner shall have complete discretion as to furniture, furnishings, and interior decorating of the interior of their Unit and shall have the exclusive right to paint, plaster, panel, tile, paper, or otherwise refinish and decorate the interior surfaces of the walls, ceilings, floors and doors bounding their Unit, and to substitute new finished surfaces for the finished surfaces existing on said walls, ceilings, floors and doors; subject, however to the Maintenance Policies, and the Architectural Rules. In no instance shall the Owner do anything in or about their 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.

6.3.3 Hoses and Water Lines. Owners shall be responsible for the maintenance, repair and replacement of hoses to all appliances, including washing

machines, refrigerators, and dishwashers and shall be strictly liable for any damage or loss resulting from broken, burst, or leaking hoses.

6.3.4 Water Damage and Mold. Each Owner is responsible for water damage to their Unit, other Units, and/or the Common Area and mold in their Unit, other Units, and/or the Common Area: (i) caused by the Owner, Resident (including tenant), guests or invitees; or (ii) originating from one of the components including, but not limited to plumbing lines, plumbing-related fixtures, windows and sliding glass doors, which the Owner is responsible for maintaining, repairing and replacing. Each Owner shall regularly inspect their Unit for plumbing leaks, water accumulation, water intrusion through windows, doors, and roofs, and signs of mold. Owners must periodically service and/or replace supply and drain lines to appliances, heating, venting and air conditioning (“HVAC”) equipment, sinks, toilets and other components. Additionally, Owners must report evidence of plumbing leaks, water accumulation, water intrusion and/or mold to the Mutual upon discovery.

6.3.5 Compliance with Architectural Rules. An Owner’s right and responsibility for maintaining, repairing or replacing any portions of their Unit and/or any Exclusive Use Common Area appurtenant to the Unit shall be subject to any applicable provisions of the Governing Documents relating to landscaping and architectural control, including Article 7.

#### 6.4 Other Components.

6.4.1 Fire Extinguishers. The Mutual shall provide maintenance, repair and replacement of the fire extinguishers within the Common Area.

6.5 Reimbursement Assessments for Damage to or Caused by Owner-Maintained Components. If, in the course of performing its obligations to maintain, repair and replace, the Mutual and/or its agents discover damage to components not otherwise the responsibility of the Mutual, the Mutual has the right, but not the obligation, to repair or replace the damaged component(s) for which the Owner is responsible. The Owner shall reimburse the Mutual for the cost of said repair or replacement, which may be levied as a Reimbursement Assessment.

If it is determined that the cause of damage to a component, the maintenance, repair and/or replacement of which is the Mutual’s responsibility, is a failed or improperly installed component for which the Owner is responsible, then the Mutual shall also have the right to replace said component and may levy a Reimbursement Assessment against the Unit Owner to reimburse the Mutual for replacement costs as well as the costs to correct the damage resulting from that component.

6.6 Owner Alterations. In the event an Owner or Resident has altered, modified, or added on to a Unit or to a component that would otherwise be the responsibility of the Mutual and which increases the maintenance, repair and/or replacement cost to the Mutual, the Owner shall reimburse the Mutual for the increased cost, which may be levied as a Reimbursement Assessment. The Mutual may condition approval of an alteration on an Owner assuming responsibility for increased maintenance costs associated with the modification. However, the Owner and their successors shall be responsible for payment of increased costs even in the absence of an express assumption of responsibility.

6.7 Repair of Damage Caused by Wood-Destroying Pests or Organisms and Other Pests. The Mutual shall bear the costs for the repair and maintenance of its Common Area (including Exclusive Use Common Area) damaged by the presence of wood-destroying pests or organisms or other pests. However, if any of the maintenance and repair work referred to in this Section is necessitated by the willful or negligent acts of the Owner, members of their household, guests, tenants or invitees, the costs of such maintenance or repairs shall be charged to, and paid by, the Owner as a Reimbursement Assessment. Residents shall cooperate with the Mutual to enable any fumigation work to be done promptly and effectively. Owners shall be responsible for all costs for food, lodging, and other relocation costs during the period during which the Unit is required to be vacated.

6.8 Modifications that Affect Structural Integrity or Common Systems. No Owner shall do anything in or about their Unit and/or Exclusive Use Common Area appurtenant to their Unit that will affect or compromise the structural integrity of the building in which it is located and/or the common systems including, but not limited to the plumbing and electrical systems.

6.9 Owner Liability. In the event the need for any maintenance, repair, or replacement of a component which is otherwise the Mutual's responsibility is caused by the willful or negligent act or omission of an Owner or members of an Owner's household, tenants, guests, invitees, or household pets, 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. Owners shall be further responsible for any damage to Common Area or the Unit and improvements of another Owner which emanates from an Owner's Unit or Exclusive Use Common Area appurtenant to the Unit. The cost of any such maintenance, repair or replacement of damaged components, including the cost of materials, labor, supplies, and services, shall be charged to, and paid by, the Owner responsible in the form of a Reimbursement Assessment. This provision shall apply regardless of the applicability of coverage provided by Mutual-maintained policies of insurance.

6.10 Availability or Applicability of Insurance Proceeds. The responsibilities for maintenance, repair, and replacement as set forth in this

Article 6 shall apply irrespective of the availability or applicability of insurance proceeds from the Mutual's blanket policy. In the event of a loss covered by the Mutual's blanket policy, the Owner(s) of the damaged Unit have the right to apply the proceeds to pay for repairs caused by the loss. However, the mere fact that the Mutual's master policy may provide coverage in the event of a loss does not relieve Owner(s) of the responsibilities and liabilities as set forth in this Declaration, including this Article 6.

6.11 Mutual's Right of Entry. 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 there exists good cause for such entry, in the Board's discretion: (i) in connection with the performance of any maintenance, repair, construction, or replacement for which the Mutual is responsible or which it is authorized to perform; (ii) to mitigate damages; (iii) to inspect the Unit and/or Exclusive Use Common Area appurtenant thereto to ensure compliance with the Governing Documents and/or determine whether maintenance, repair, construction, or replacement is necessary; and/or (iv) for any other legitimate Mutual purpose. Neither the Mutual nor its agents, acting in good faith, shall be liable for trespass for entering a Unit and/or Exclusive Use Common Area under these circumstances.

6.11.1 Notice of Entry. The Mutual shall provide reasonable advance written notice of not less than twenty-four (24) hours, except in the event of an emergency. Prior to entry in the event of an emergency, the Mutual shall make a good faith effort to provide notice to the Owner and/or Residents as the exigencies of the circumstances permit.

6.11.2 Emergency Entry. In the event of an emergency, the Mutual or its agents may enter the Unit and/or Exclusive Use Common Area without notice. Such entry shall not constitute trespass or other wrongful act and neither the Mutual nor its agents shall be subject to liability to the Owner or Resident. Prior to entry in the event of an emergency, the Mutual shall make a good faith effort to provide notice to the Owner and/or Residents as the exigencies of the circumstances permit.

6.11.3 Duty to Cooperate with Mutual. All Owners and Residents have a duty to cooperate with the Mutual to perform its responsibilities as set forth in this Declaration.

6.11.4 Duty to Vacate. Each Owner and Resident has the duty to vacate a Unit and/or Exclusive Use Common Area if required for treatment and/or repairs related to or resulting from termites, other pest infestations, and microorganisms, or as is necessary for the Mutual to perform work within the Unit and/or Exclusive Use Common Area. The expense of any temporary relocation

during such repair and maintenance of any Unit and/or Exclusive Use Common Area shall be the responsibility of the Unit Owner.

6.11.5 Permit Access. Each Owner and Resident has the duty to permit access to the Unit and/or Exclusive Use Common Area to permit the Mutual to perform its responsibilities as set forth in this Declaration. Each Owner and Resident also has the duty to move (and store if necessary) personal property including, but not limited to furniture, vehicles, solar panels, and satellite dishes/antennas, as is necessary to permit the Mutual and its agents to access the Unit and/or Exclusive Use Common Area to perform its responsibilities as set forth in this Declaration.

6.11.6 Failure to Cooperate/Vacate. In the event any Owner or Resident fails to vacate or provide access to a Unit and/or Exclusive Use Common Area or otherwise cooperate with the Mutual, the Mutual shall be authorized to levy a Reimbursement Assessment against the Unit Owner for all expenses incurred by the Mutual in obtaining access to the Unit and/or Exclusive Use Common Area including, but not limited to attorneys' fees (regardless of whether legal proceedings are instituted), locksmith costs, storage costs, and moving costs. The Mutual is authorized to hire a locksmith to gain entry to a Unit or Exclusive Use Common Area.

6.12 Board Discretion. In addition to the authority granted to the Mutual in Section 6.11, above, to enter any Unit and/or Exclusive Use Common Area, 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 Development or any portion thereof. If appropriate, and time and circumstances permitting and appropriate as determined by the Board in its sole discretion, the Board may notify an Owner of the work the Board deems necessary rather than arranging to have the work performed. In the event an Owner fails to perform such work within thirty (30) days after notification by the Board to the Owner the Board may, after written notice to the Owner, and the opportunity of a hearing before the Board, cause such work to be done and charge the cost thereof to the Owner as a Reimbursement Assessment.

## **ARTICLE 7**

### **ARCHITECTURAL REVIEW**

7.1 Architectural Approval Required. The prior written approval of the Board is required for the following improvements and/or modifications:

7.1.1 Improvements and Modifications. Except for improvements made or constructed by or on behalf of the Mutual, no exterior addition or

modification of any kind including, but not limited to any fence, wall, obstruction, window, exterior door, balcony, screen, patio cover, tent, awning, roof, pool, outdoor lighting, improvement or other structure of any kind, and/or landscaping, shall be commenced, erected, painted or maintained within the Development, nor shall any exterior addition to or change or alteration thereto be made until the plans and specifications showing the nature, kind, shape, color, height, size, materials, and location of the same have been submitted to and approved in writing by the Board as provided in this Article 7.

7.1.2 Satellite Dishes and Antennas. No mast, pole, tower, antenna, receiver, transmitter or satellite dish, to the extent restricted by Section 4.15, may be commenced, erected or installed without the prior written approval of the Board as provided in this Article 7.

7.1.3 Solar Energy Systems. No installation or modification of a solar collector, solar panel, or other solar energy device or system in Common Area, including Exclusive Use Common Area, is permitted without the prior written approval of the Board as provided in this Article 7.

7.1.4 Merger of Units. The Mutual shall have the right, but not the obligation, to grant to the Owner of two (2) or more adjacent Units those easements necessary or appropriate to permit such Owner to effect internal access from one Unit to another through the walls or other portions of the Common Area which separate and divide the individual Units (such Units shall, for all purposes of the Governing Documents, remain and be treated as two (2) or more separate Units). The Mutual shall also have the right, but not the obligation, to grant the Owner of two (2) or more adjacent Units those easements necessary or appropriate to permit such Owner to separate and divide Units previously joined hereunder. All such work shall be done at the expense of the Owner, and any such Owner shall indemnify the other Owners and the Mutual against and hold them harmless from, any cost, loss, liability, damage, or injury to property or persons arising from, or caused by, such work. As a condition to the grant of any such easement, the Mutual may impose such reasonable terms and conditions with respect thereto as the Board deems necessary or appropriate including, without limitation, a requirement that the Owner obtain lien and completion bonds to insure lien-free completion of the work.

7.2 Architectural Rules. Subject to the Board's approval and the requirements of *Civil Code* section 4350 *et seq.*, the ARC, if any, may propose, for adoption by the Board, Architectural Rules which may interpret and implement the provisions hereof by providing for any or all of the following:

(a) The standards and procedures for ARC and/or Board review, including the required content of application and procedures for obtaining preliminary approval of plans.

(b) Guidelines for architectural design, placement of any work of improvement or color schemes, exterior finishes and materials and similar features which are recommended or required for use in connection with particular improvement projects within the Development.

(c) The criteria and procedures for requesting variances from any property use restrictions or minimum construction standards that would otherwise apply to the proposed improvement under the Governing Documents. All variances shall be reviewed on a case-by-case basis with no precedent being established if a variance is granted in a particular instance and must be approved by a majority of the affirmative votes of the Board.

(d) Lists of repair projects and minor improvement projects that can receive final review and approval by the Board, so long as the Development is undertaken in accordance with plans and specifications that are consistent with the Architectural Rules or the Development involves use of an identical color or external material to the existing color or material and the new materials/colors are submitted to and reviewed by the ARC, if any.

(e) Notwithstanding the foregoing, no Architectural Rules shall be in derogation of the minimum standards required by this Declaration. In the event of any conflict between the Architectural Rules and this Declaration, the provisions of the Declaration shall prevail.

7.3 Application. Any Owner proposing to perform any work of any kind whatsoever, which requires prior approval pursuant to this Article 7, shall apply for approval by notifying the ARC, and/or the Board, in writing, of the nature of the proposed work and furnishing such information and documentation as the ARC, if any, and Board may require.

7.4 Fees; Consultants. The ARC and/or the Board 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. The costs of any such outside consultants may be levied against an Owner and their Unit as a Reimbursement Assessment. However, before a consultant is retained by the ARC and/or Board, the Owner will be informed in writing of the ARC and/or the Board's intention to retain a consultant at the Owner's expense and the Owner will be given the opportunity to decide to pay the consultant's fee or decide not to pursue the improvement or modification. An Owner who withdraws their application shall do so without penalty, including fees.

7.5 Decisions on Architectural Applications. 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 decisions of the Board shall be made in good faith and shall not be unreasonable, arbitrary or capricious. The ARC and/or the Board may employ subjective criteria and judgments in their review of and determination regarding plans and proposals submitted to them. The decisions of the ARC and/or the Board shall be made from the perspective of the interest of the Development as a whole, including the coherence, value, attractiveness and aesthetic compatibility of all architectural designs and features in the Development, after consideration of all factors the Board determines to be relevant and after reasonable investigation consistent with the scope and circumstances of the proposal.

7.6 Grant of Approval. The ARC, if any, shall recommend approval by the Board and the Board shall grant the requested approval only if all the following conditions are met:

- (a) The Owner complied with the provisions of Section 7.4 above.
- (b) The plans and specifications conform to this Declaration and to the Architectural Rules in effect at the time such plans were submitted to the ARC and/or the Board.
- (c) The proposed improvements would be consistent with the standards and aesthetics of the Development and the purposes of this Declaration as to: quality of workmanship, design and materials; harmony of exterior design with the existing improvements; structures; and location with respect to topography and finished grade elevations.

7.7 Timing and Form of Approval. 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 Board. If the Board fails to act on a request for approval within sixty (60) days from the date of submission of a complete application, the Owner shall be entitled to request internal dispute resolution, as described in Section 9.12.2, below, and *Civil Code* section 5900 *et seq.*; except that, in the case of an application for installation or use of a solar energy system subject to *Civil Code* section 714, any application that is not denied by the Board within forty-five (45) days from receipt of a complete application shall be deemed approved; and in the case of an application for installation or use of an electric vehicle charging station subject to *Civil Code* section 4745(e), any application that is not denied by the Board within sixty (60) days from receipt of a complete application shall be deemed approved. Owners are responsible for confirming receipt of an application by the ARC and/or the Board. Oral approvals will be of no force and effect. If an application is rejected, the decision shall include an explanation of the decision of the Board and a notice describing the Owner's right to request reconsideration, if any.

7.8 Commencement. Within ninety (90) days of receipt of approval pursuant to Sections 7.7 and 7.8 above, the Owner shall satisfy all conditions thereof and diligently proceed with the commencement and completion of all work pursuant to said approval. If the Owner shall fail to comply with this Section, any approval previously given shall be deemed revoked unless the Board, upon written request of the Owner made prior to the expiration of said ninety (90) day period, extends the time for such commencement. No such extension shall be granted except upon a finding by the Board that there has been no change in the circumstances upon which the original approval was granted.

7.9 Completion. Unless shorter time is specified in the approval by the Mutual, the Owner shall complete the approved work within six (6) months after receipt of approval, except and for 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. If an Owner fails to comply with this Section, the Board shall proceed in accordance with the provisions of Section 7.11, below, as though the failure to complete the improvements was a non-compliance with approved plans.

7.10 Inspection of Completed Work; Non-Compliance. Inspection of work and correction of defects therein shall proceed as follows:

(a) Upon the completion of any installation, construction, reconstruction, alteration, or refinishing of the exterior of any improvements, or upon the completion of any other work for which approved plans are required under this Article 7, the Owner shall give written notice thereof to the Board.

(b) Within sixty (60) days thereafter, the ARC, and/or Board, or its duly authorized representative, may inspect such improvement to determine whether it was installed, constructed, reconstructed, altered, or refinished to substantial compliance with the approved plans. If the ARC, and/or Board finds that such installation, construction, reconstruction, alteration, or refinishing was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance within such sixty (60) day period, specifying the particulars of non-compliance, and shall require the Owner to remedy such non-compliance.

(c) If the Owner shall have failed to remedy such non-compliance upon the expiration of thirty (30) days from the date of such notification, the ARC, and/or Board, or other duly authorized representative of the Board shall notify the Board in writing of such failure. The Board shall then set a date on which a hearing before the Board shall be held regarding the alleged non-compliance. The hearing date shall be not more than thirty (30) days nor less than fifteen (15) days after notice of the non-compliance is given to the Board by the ARC, if any, or the

Board's duly authorized representative. Notice of the hearing date shall be given at least ten (10) days in advance thereof by the Board to the Owner, to the ARC, if any, and, in the discretion of the Board, to any other interested party.

(d) At the hearing, the Owner, the ARC, if any, and, in the Board's discretion, any other interested persons, may present information relevant to the question of the alleged non-compliance. After considering all such information, the Board shall determine whether there is non-compliance, and, if so, the nature thereof and the estimated cost of correcting or removing the same. If non-compliance exists, the Board shall require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board's ruling. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board, at its option, may either remove the non-complying improvement or remedy the non-compliance and all expenses incurred in connection therewith shall be assessed against the Owner as a Reimbursement Assessment.

(e) If, for any reason, the Board fails to notify the Owner of any non-compliance within sixty (60) days after receipt of a notice of completion from the Owner, the improvement shall be deemed to be in accordance with the approved plans.

7.11 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 of the Board under this Declaration, 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.

7.12 Liability. Neither the ARC and/or the Board (or 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 Development; *provided, however*, that the ARC and/or the Board (or any member thereof) has acted in good faith on the basis of such information as may be possessed by it (or such ARC, if any, and/or the Board member). Without in any way limiting the generality of the foregoing, the ARC, if any, and/or 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 ARC and/or the Board. Every purchaser, by acquiring title to a Condominium, agrees not to bring any action or suit against the ARC, if any, and/or Board (or any member thereof) seeking to recover any such damages.

7.13 Compliance with Governmental Requirements. The application to the Mutual 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, the responsibility for which lies solely with the respective Owner, nor shall it constitute the assumption of any responsibility by or impose any liability on the ARC and/or the Board (or any member thereof) as to the accuracy, efficacy, or sufficiency thereof. The obtaining of a permit or other approval of a government agency shall not be a substitute for nor constitute compliance with the requirements of this Article 7.

## ARTICLE 8

### ASSESSMENTS AND LIENS

8.1 Covenant of Owner. Each Owner of a Condominium within the Development, 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 (also known as the "Regular Assessment" or "monthly coupon"); (ii) Special Assessments; and (iii) Reimbursement Assessments (also known as "Owner billables") levied by the Mutual as hereinafter provided, together with all Additional Charges.

8.1.1 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 and Additional Charges and for the enforcement of the liens hereinafter provided for.

8.1.2 Each Assessment is a Separate Obligation. Each Assessment levied by the Mutual under this Article 8, together with all Additional Charges, shall be a separate, distinct and personal debt and obligation of the Owner against whom it is assessed, and shall bind their heirs, devisees, personal representatives, successors and assigns.

8.1.3 Obligation Runs with the Land. Such obligation to pay Assessments 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 Development shall, in turn, become liable to pay all such Assessments and Additional Charges assessed during the time they are record Owner of such Condominium.

8.1.4 Owner's Liability after Transfer. After an Owner transfers fee title to any Condominium they own, they shall not be liable for any Assessments 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. The seller of any Condominium shall continue to be liable for all Assessments and Additional Charges until a conveyance by deed of such Condominium is recorded in the Office of the County Recorder of Contra Costa County.

8.2 Creation of Lien. Each Assessment levied by the Mutual pursuant to this Declaration, together with 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 is levied. The Mutual shall have a separate lien and a separate lien is hereby created upon each Condominium to secure the payment of any such Assessments and Additional Charges as may be levied under this Declaration.

8.2.1 Continuing Lien. The lien provided for herein shall continue to secure all Assessments 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.

8.3 Purpose of Assessments. The Assessments levied by the Board shall be used exclusively to pay for the costs of management and operation of the Development, to conduct the business and affairs of the Mutual, to promote the recreation, health, safety, welfare, benefit and interests of the Owners and Residents in the Development, 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 Condominiums situated within the Development.

8.4 Authority of the Board. The Board shall have the power and the duty to levy Annual, Special and Reimbursement Assessments sufficient to meet the Mutual's obligations under the Governing Documents and applicable law.

8.5 Mutual Funds. Unless otherwise determined by the Board, the Mutual shall maintain at least two (2) separate accounts in one (1) or more banks or other depositories selected by the Board, which accounts shall be clearly designated Walnut Creek Mutual No. Twenty-Nine Operating Account and Walnut Creek Mutual No. Twenty-Nine Reserve Account. The Assessments collected by the Mutual shall be properly deposited into such accounts. The Assessments collected by 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 8.3. The Board shall allocate a portion of said funds as collected for the annual maintenance and operation of the Development and another portion of said funds as collected as reserves for contingencies, replacement, and deferred maintenance of the improvements within the Development for which the Mutual is responsible, as

specified in the annual budget. 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.

## 8.6 Annual Assessment.

8.6.1 Calculation of Estimated Requirement. Not later than thirty (30) days nor more than ninety (90) days prior to the beginning of each fiscal year, the Board shall complete and distribute to all Owners an estimate of the net funds required by the Mutual for such fiscal year, including a reasonable amount allocated to contingencies and to a reserve fund for restoration, repair and/or replacement of those components for which the Mutual is responsible and which must be repaired or replaced on a periodic basis; to manage, administer, operate and maintain the Development; to conduct the affairs of the Mutual; and to perform all of the Mutual's duties in accordance with this Declaration.

8.6.2 Allocation of Annual Assessment. The Annual Assessment shall be allocated equally against all Condominiums located in the Development. Unless the Board shall designate otherwise, the Annual Assessment 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.

8.6.3 Surplus Funds. If, as of the end of any fiscal year, there is an excess of membership income over membership expenses, as defined in *Internal Revenue Code* section 277 for the year ended, such excess shall be applied against the subsequent tax year's Assessments as provided in Internal Revenue Service Revenue Ruling 70-604, unless some other lawful disposition of such excess income is determined by the vote of the Members.

8.6.4 Increases in Annual Assessment. Pursuant to *Civil Code* section 5605(b), 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 twenty percent (20%) (or such other limitation on the increase as may be imposed by law), except upon the affirmative vote 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 (i.e., Members representing at least fifty-four (54) Units), notwithstanding any lower quorum requirement set forth in the Bylaws.

## 8.7 Special Assessments.

8.7.1 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 Development, 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.

8.7.2 Allocation of Special Assessments. Special Assessments shall be allocated and assessed among the Units in the same manner as the Annual Assessment. The Board, in its sole discretion, may allow Owners' portions of a Special Assessment to be paid in installments.

8.7.3 Approval of Special Assessments. Except in the case of an emergency situation as defined in *Civil Code* section 5610, 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 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 (i.e., Members representing at least fifty-four (54) Units), notwithstanding any lower quorum requirement set forth in the Bylaws.

8.8 Notice of Assessment Increases. Upon the imposition of a Special Assessment or an increase in the Annual Assessment, notice shall be provided to each Owner, as required by law, not less than thirty (30) days and not more than sixty (60) days prior to the due date of the Assessment.

8.9 Reimbursement Assessments. The Mutual shall levy a Reimbursement Assessment against any Owner and their Unit if a failure by such Owner, or any person or animal for which 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, specifically including attorneys' fees. A Reimbursement Assessment shall include any costs, including attorneys' fees incurred by the Mutual and costs of collecting from an Owner any amount which the Owner is obligated to pay to the Mutual. Imposition of a Reimbursement Assessment shall be effective only after a duly noticed hearing before the Board. A Reimbursement Assessment shall be due and payable to the Mutual when levied and subject to the same enforcement procedures as Annual and Special Assessments, including lien and foreclosure.

8.10 Foundation Assessments. So long as agreeable to the Mutual and the Foundation, the Mutual may provide Owners with a single periodic statement (typically monthly) directing the Owners to pay to the Mutual the regular

assessment levied by both the Mutual and the Foundation and the Mutual shall then pay to the Foundation each billing period all assessments levied by the Foundation.

8.11 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, 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.

8.12 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.

8.13 Delinquent Assessments. Any installment or other portion of an Assessment not paid within fifteen (15) days after its due date shall be delinquent and shall be subject to interest of twelve percent (12%) per annum and late charge of ten percent (10%) of the delinquent Assessment, as well as all other Additional Charges. The Board, on behalf of the Mutual, may enforce the payment of any delinquent Assessment plus Additional Charges by bringing an action at law against any Owner personally obligated to pay the same, or by foreclosing the lien against the Owner's Condominium by judicial or non-judicial foreclosure, except as prohibited by law. Prior to recording a Notice of Delinquent Assessment, the Mutual shall provide notice to the Owner in accordance with *Civil Code* section 5660. Any demand or claim of lien or liens on account of prior delinquencies shall be deemed to include subsequent delinquencies and amounts due on account thereof. No procedures shall be initiated to foreclose the lien securing any Assessment levied under this Article 8 except as in accordance with *Civil Code* sections 5705, 5710 and 5720. Except as prohibited by law, upon the recording of the Notice of Delinquent Assessment referred to above, the Mutual may, at its option, declare the entire balance of all sums then due or to become due from the Owner, immediately due and payable, which total sum may then be included in any suit, action, or other procedure initiated to collect said sums, including all Additional Charges. Notwithstanding any other provision of this Declaration, the Mutual must comply with the requirements of the *Civil Code* when collecting delinquent Assessments.

8.14 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 by law, and does



further grant to the Board of Directors, on behalf of the Mutual, the authority and power to sell the Condominium of such Owner in the event of any default in payment of any Assessments or Additional Charges levied against such Condominium, for lawful money of the United States, to the highest bidder, to satisfy said lien. The Mutual, as trustee for the remaining Owners, or any other Owner, may purchase the Condominium at said sale. The decision to record a lien and initiate foreclosure may only be made by the Board and may not be delegated.

8.15 Remedies Cumulative. The remedies provided in this Declaration for collection of delinquent Assessments shall be cumulative and not exclusive; that is, the Mutual may use one or more or all of the available remedies to collect delinquent Assessments.

8.16 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.

8.17 Priority. Except as otherwise expressly provided by law, the lien securing each of the Assessments provided for under this Article 8 shall have priority as of the date of recording of the original Declaration applicable to the Development 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 or first deed of trust 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 deed of trust, 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.

8.18 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 8, 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 8.

8.19 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 Contra Costa 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 9

### ENFORCEMENT

9.1 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; 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 be in the best interests of the Mutual and its Members as a whole. Notwithstanding the preceding sentence and without limiting its generality, 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; the Mutual, the Board, officers, employees or agents of the Mutual do not have police powers.

9.2 Violation of Law is a Violation of Declaration. Any violation of a state, municipal or local law, ordinance or regulation pertaining to the ownership, occupancy, or use of any property within the Development is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth herein.

9.3 Owners' Responsibility for Conduct of Others and Damages. Each Owner shall be responsible for informing members of their household and their tenants 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 Development or the Mutual resulting from the negligent or intentional conduct of any of them or any household pets. If a Condominium is owned jointly by two (2) or more persons, the liability of each Owner in connection with the obligations imposed by the Governing Documents shall be joint and several.

9.4 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 their Unit.

9.5 Rights and Remedies of the Mutual.

9.5.1 Rights and Remedies are 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.

9.5.2 Imposition of Sanctions. In the event of a breach or infraction of any provision of the Governing Documents by an Owner, members of an Owner's household, or their tenants or guests, the Board shall have the power to impose a sanction against the Owner who is responsible as provided in Section 9.3 for such breach or infraction. A sanction may include but shall not be limited to a monetary penalty and/or the suspension of an Owner's rights as a Member of the Mutual, including an Owner's voting rights (to the extent permitted by law) or an Owner's right to use the recreational or community facilities on the Common Area. Imposition of a sanction shall be effective only after notice and an opportunity for hearing. Any monetary penalty imposed pursuant to this Section shall not exceed the amount for each violation, as set forth in the schedule of monetary penalties adopted pursuant to *Civil Code* section 5850(a). Each Owner shall be obligated to pay costs incurred by the Mutual relating to violation of any provisions of the Governing Documents by such members of Owner's household, tenants, guests, pets, or other invitees. Sanctions may be enforced by the Mutual in any manner permitted by law.

9.5.3 Continuing Violations. In the case of a continuing violation, such as an uncorrected architectural violation, where an Owner, member of an Owner's household, or their tenants or guests fails to cease or remedy a violation after notice from the Board to do so, the Board may deem such a continuing violation and may impose separate and successive sanctions for each such violation without holding further hearings for each sanction.

9.6 Inadequacy of Legal Remedy. Except for the non-payment of any Assessment, a remedy at law to recover damages for the breach or violation of the Governing Documents is inadequate and 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 Development to comply with any provision of the Governing Documents may be enjoined in any judicial proceedings initiated by the Mutual or by any Owner, or by their respective successors in interest.

9.7 Limitation on Disciplinary Rights. The Mutual shall not have the power to cause a forfeiture or abridgment of a Member's right to the full use and occupancy of their Unit as the result of the failure by such Owner, members of such Owner's household, or their 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. The provisions of this Section shall not affect the Mutual's right to impose fines or monetary penalties or to suspend an Owner's membership rights, as provided in the Governing Documents.

9.8 Disciplinary Rules. The Board may adopt Rules that further elaborate upon and refine procedures for conducting disciplinary proceedings and otherwise imposing sanctions upon Members of the Mutual for violation of provisions of the Governing Documents. Such Rules, when approved and adopted by the Board subject to *Civil Code* section 4340 *et seq.*, shall be deemed to be a part of the Mutual Rules provided for, in and constituting a part of the Governing Documents.

9.9 Investigation of Complaints. Upon receipt of a written complaint from an Owner or 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.

9.10 Emergency Situations. The following shall constitute emergency situations: (i) an immediate and unreasonable infringement of or threat to the safety or peaceful enjoyment of Residents of the Development; (ii) a traffic or fire hazard; (iii) a threat of material damage to or destruction of the Development 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). Notwithstanding any other provision of the Governing Documents, under circumstances involving conduct that constitutes an emergency, the Board or its duly authorized agents may undertake immediate corrective or disciplinary action and, upon request of the Owner as to whom such corrective or disciplinary action has been taken, or on its own initiative, conduct a hearing as soon thereafter as reasonably possible. If the Mutual acts on its own initiative to schedule a hearing, notice of the date, time and location of the hearing shall accompany the notice of the disciplinary action which is transmitted to the Owner. If the Board has not scheduled a hearing and the Owner desires a hearing, the Owner's written request for a hearing shall be delivered to the Mutual no later than five (5) days following the date when the notice of the Board's disciplinary action is transmitted to the Owner. The hearing shall be held not later than fifteen (15) days following the date of the Board's notice of the disciplinary action or fifteen (15) days following

the receipt of the Owner's request for a hearing, whichever is later. If a hearing is scheduled or requested, any sanctions imposed or other disciplinary action taken by the Board shall be held in abeyance and shall become effective only if affirmed at the hearing.

9.11 Notices. Any notices required or given under this Article 9 shall, at a minimum, set forth the date, time and location of any hearing, 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 the sanction, disciplinary action, or other enforcement action being contemplated by the Board. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice to the affected Member; provided, however, that if notice is given by mail, it shall be sent by first-class mail, postage prepaid, sent to the most recent address for the affected Member as shown on the records of the Mutual.

9.12 Dispute Resolution.

9.12.1 Alternative Dispute Resolution. Any dispute other than those listed in *Civil Code* section 5930(b) or those related to the power and duty of the Board of Directors to levy and collect Assessments through lien and foreclosure proceedings shall be submitted to alternative dispute resolution procedures ("ADR") as described in *Civil Code* section 5925 *et seq.* In the case of any claim, dispute, or controversy which is not otherwise subject to *Civil Code* section 5925 *et seq.*, involving a sum of money not in excess of the jurisdiction of the Small Claims Court, any party to the dispute shall have the right to file a claim in Small Claims Court and have the matter determined therein in lieu of ADR.

9.12.2 Internal Dispute Resolution. In addition to the ADR provisions of *Civil Code* section 5925 *et seq.*, the Mutual shall provide for Internal Dispute Resolution in any dispute regarding the rights, duties or liabilities under *Civil Code* section 4000 *et seq.*, the Nonprofit Mutual Benefit Corporation Law, or the Governing Documents. The procedure may be invoked by any party pursuant to *Civil Code* section 5900 *et seq.*

9.13 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.

9.14 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 Owner or Resident, member of their household, tenants, 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 and experts' fees incurred by the Mutual in responding to such a violation and/or in enforcing any Governing Document provision, to the extent permitted by law. In the event of a court 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 Article 8.9 of this Declaration.

## ARTICLE 10

### INSURANCE

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

10.1.1 Commercial General Liability Policy. A Commercial General Liability policy insuring the Mutual, any manager, the Mutual's directors and officers, and the Members against liability arising from any bodily injury or property damage as a result of an accident or occurrence. Subject to the terms and conditions of the policy, the policy also shall cover bodily injury or property damage from an accident or occurrence within any Unit or Exclusive Use Common Area related to any maintenance or repair work required to be performed by the Mutual pursuant to the Bylaws and/or Rules, including, but not limited to work performed in the Common Area. The limits of such insurance (including the commercial general liability and any excess liability coverage) shall not be less than the general liability insurance requirements set forth in *Civil Code* section 5805 covering all claims for bodily injury and property damage arising out of a single occurrence. The coverage may be a combination of primary and excess policies. The insurance shall be provided with coverage terms provided by Insurance Services Offices (ISO) form CG 0001 or equivalent or better coverage. Such insurance shall include coverage against liability for owned, non-owned and hired automobiles and other liability or risk customarily covered with respect to projects similar in construction, location and use. The policy shall be primary and noncontributing with any other liability policy covering the same liability.

10.1.2 Directors and Officers Liability Policy. A Directors and Officers Liability policy containing such terms and conditions as are normally and customarily carried for directors and officers of a common interest development and in sufficient amounts to satisfy the insurance requirements of *Civil Code* section 5800.

10.1.3 Crime Insurance. A Commercial Crime Insurance Policy covering the Mutual, any organization or person who either handles or administers

or is responsible for Mutual funds, whether or not any person receives compensation for services. The policy amounts shall satisfy the Federal National Mortgage Mutual (“FNMA”) and Federal Housing Administration (“FHA”) requirements and in no event shall be less than the sum of three (3) months of Annual and Special assessments on all Memberships subject to Assessments.

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

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

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

(b) Units. Permanently affixed improvements situated within the Unit, including interior walls and doors; ceiling, floor and wall surface materials (e.g., paint, wallpaper, carpets and hardwood floors); utility fixtures (including gas, electrical and plumbing); cabinets; built-in appliances; heating and air-conditioning systems; water heaters and any replacements thereto; but excluding any personal property located in the Unit. If the Member renovates, upgrades or replaces any permanently affixed improvement within the Unit or adds new improvements to the Unit (collectively, the “Alterations”) and the replacement cost of the Alterations exceeds the cost of the improvements prior to the Alterations, the Member shall be responsible for procuring and maintaining insurance to cover the excess unless the Member has obtained written approval from the Mutual to make the Alterations and, to the extent required, approval from governmental authorities.

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

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

mechanical equipment that is used in the generation, transmission or utilization of energy.

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

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

(b) The market availability of coverage;

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

(d) The overall cost effectiveness of available coverage;

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

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

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

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

10.2.4 Primary. The Mutual's policy shall be primary and noncontributing with any other insurance policy covering the same loss; provided, however, that where a Member's individual insurance policy (discussed in Section 10.5) provides overlapping coverage, the Member's individual insurance policy shall be the primary coverage and the Mutual's policy shall be excess/supplemental/secondary coverage as the case may be.



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

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

10.2.7 Deductible. Except as otherwise provided by separate agreement, when a claim is made on the Mutual's property insurance policy, the Member is responsible for payment of the deductible on the Mutual's policy in circumstances: (i) where damage to Common Area is caused by the fault of the Member, contract purchasers, subtenants, Residents of the Unit, and agents, invitees, family members, guests and pets of any of the foregoing; or (ii) where damage to common area and/or Unit improvements is caused by the failure of some portion of the Unit or Common Area which the Member is responsible for maintaining. In cases where fault cannot be determined, the Mutual shall pay the deductible.

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

10.3 Insurance Rating and Cancellation. The insurance company providing the Mutual's insurance under Sections 10.1 and 10.2, shall have an A.M. Best rating of not less than A:VII if licensed to do business in the State of California and a rating of not less than if approved but not licensed to do business in the State of California, provided that if the Board determines that insurance from insurance companies with the required ratings is not available at commercially reasonable rates, the Board may reduce the rating requirements after consultation with a qualified insurance consultant. If the A.M. Best ratings are no longer available, the insurance ratings shall be based on equivalent ratings issued by an independent insurance rating company used by financial institutions for insurance rating purposes.

10.4 Board's Insurance Authority. The Board has the authority on behalf of the Mutual and each of its Members to participate with the Foundation (or any successor or assign thereto) and other Rossmoor mutuals in a group policy or policies procured and maintained by the Foundation as long as the group policy or policies provide equivalent or better coverage than the applicable requirements described in Sections 10.1 and 10.2, subject to the Board's right to deviate from the requirement as described herein. The Board shall have the power and right to deviate from the insurance requirements contained in this Article 10 in any manner

that the Board, in its discretion, considers to be in the best interests of the Mutual, provided that the Board shall maintain the minimum insurance requirements set forth in *Civil Code* sections 5800 and 5805 and as required in Section 10.2. If the Board elects to materially reduce the coverage from the coverage required in this Article 10, the Board shall, as soon as reasonably practicable, notify the Members of the reduction in coverage in the manner prescribed by law.

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

Each Member irrevocably appoints the Mutual, as that Member's attorney-in-fact for purposes of procuring, negotiating, accepting, compromising, releasing, settling, distributing and taking other related actions in connection with any insurance policy maintained by the Mutual and any losses or claims related thereto and agrees to be bound by the actions so taken as if the Member had personally taken the action.

**10.5 Members' Individual Insurance Requirements.** Each Owner, at that Owner's sole cost and expense, shall obtain and maintain a "special causes of loss" policy in an amount equal to or greater than the total replacement value of the Unit interior to the extent not covered by the Mutual's blanket property policy (described above), including, if applicable, upgrades to the Unit as originally constructed and the personal property contained therein (commonly known as a "HO-6" policy). The policy shall provide liability coverage in such amounts and for such acts or omissions as are normally and customarily included in homeowners property insurance coverage of the types required herein. Each Owner shall also consider maintaining a policy which includes the following coverage: dwelling, contents, loss assessment, and loss of use. However, no Owner shall be entitled to maintain insurance coverage in a manner so as to decrease the amount which the Mutual, on behalf of all Owners and their Mortgagees, may realize under any insurance policy which the Mutual may have in effect at any time. Each Owner shall annually provide their email address and a certificate from the Owner's insurer certifying that the required insurance under this Section 10.5 has been procured and is in full force and effect; provided, however, that neither the Mutual nor the Board shall be responsible for procuring insurance on an Owner's behalf or verifying that Owners are maintaining the required insurance. The Mutual's insurance policies will not provide coverage for: (i) losses to the Owner's personal property; (ii) losses to any Alterations to the extent not covered under Section 10.2; (iii) liability from accidents or occurrences within the Owner's Unit or portions of the Common Area set aside for the exclusive use or possession of the residents of the Unit (that is, Exclusive Use Common Area); or (iv) liability from accidents or occurrences within Rossmoor for which the Owner may be held responsible and which may not be covered under the Mutual's Commercial General Liability policy.

Each Owner should seek the advice of a qualified insurance consultant regarding the Owner's property and liability insurance obligations under this Section 10.2 and other applicable coverage available to Owners of Units.

Nothing herein imposes any duty on the Mutual, its directors, officers or agents (including the Mutual's managing agent) to confirm or otherwise verify that the Owners are carrying the insurance required in this Section 10.2.

No Owner shall separately insure any property covered by the Mutual's property insurance policy described in Section 10.2 above unless the Owner's individual insurance policy permits the application of any overlapping coverage under Owner's policy as primary without a reduction in benefits from the coverage under the Mutual's policy. If any Owner violates this provision and, as a result, there is a diminution in insurance proceeds otherwise payable to the Mutual, the Owner will be liable to the Mutual to the extent of the diminution. The Mutual may, subject to Mutual's compliance with the notice and hearing requirements set forth in the Governing Documents, levy a Reimbursement Assessment against the Owner and the Owner's Unit to collect the amount of the diminution.

10.6 Insurance by Tenant. Each Owner who rents or leases out their Unit shall (i) recommend the tenant to obtain and maintain a "renter's policy" (also known as an "HO-4" policy and (ii) provide to the Board a certificate from the tenant's insurer certifying that the recommended insurance under this Section 10.6 has been procured and is in full force and effect.

## ARTICLE 11

### DAMAGE OR DESTRUCTION OF BUILDINGS; CONDEMNATION

11.1 Damage to a Unit or Units. As set forth in Section 10.5 of this Declaration, each Owner is responsible for insuring the contents of their Unit. Regardless of the insurance carried by the unit Owner, damage to or destruction of the contents of the Unit from a property or casualty loss shall be the complete and total responsibility of the Owner. If damage occurs to property within the Unit that is insured by the Mutual pursuant to Section 10.2.1(b) of this Declaration, the insurance proceeds shall be paid to the Mutual, and the Mutual shall use same to rebuild or repair such property. In the event the insurance proceeds, from all insurance coverages (Unit Owner and Mutual) are insufficient to cover the complete cost of repair of such property, the Board shall levy a Special Assessment against all Owners in the amount necessary to complete the repairs to the damaged property.

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

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

If the amount of available insurance proceeds is less than one hundred percent (100%) but is equal to at least eighty-five percent (85%) of the cost of repairing or rebuilding the damaged portions of the Common Area, the insurance proceeds shall be paid to the Mutual, and the Board shall levy a Special Assessment in an amount equivalent to any shortfall between the insurance proceeds actually received and that amount necessary to complete the repair and rebuilding of the damaged portions of the Common Area, against all of the Unit Owners pursuant to Section 8.7.3 of this Declaration. Using the insurance proceeds and the Special Assessment(s), the Board shall contract to repair or rebuild the damaged portions of the Common Area.

11.2.2 Procedure Where Insurance Proceeds are less than 85% of Cost of Repair. In the event that the amount available from the insurance proceeds is less than eighty-five (85%) percent of the cost of repairing or rebuilding the damaged property to its original design and specifications including any modifications approved by the Mutual, and further in accordance with current building code and ordinance requirements, the Mutual shall, as soon as possible, call a special meeting of the Mutual Members to consider and vote to accept one (1) of the bids received pursuant to Section 11.2(b) above. A bid may be accepted by a favorable vote of not less than sixty percent (60%) of the Members attending such meeting provided a Quorum of at least a majority of the Total Voting Power is represented. As an alternative, a two-thirds (2/3) majority favorable vote of the Total Voting Power of the Mutual may elect to sell the entire Development.

In the event a bid is accepted, the Board shall levy a Special Assessment against all of the Unit Owners pursuant to Section 8.7.3 of this Declaration to make up the deficiency, if any, between the total insurance proceeds and the contract price for such repair or rebuilding. All insurance proceeds, including any subject to liens of Mortgagees, shall be used for such repair or rebuilding.

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

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

In the event that no alternative for repair or rebuilding is accepted by the Owners, or if repair or rebuilding has not actually commenced within one (1) year from the date of damage or destruction, the Board is hereby empowered, as the agent and attorney-in-fact for all Owners, to sell the entire Development in accordance with the provisions of Section 11.3 below, including all Units and the Common Area in their then present condition, on terms satisfactory to the Board.

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

11.3 Sale of Entire Development. In the event of the sale of all Units and the Common Area, proceeds from such sale and insurance proceeds received by the Mutual on account of the destruction of the Common Area shall be distributed by the Mutual among the Owners and their respective Mortgagees according to the respective fair market values of the Units at the time of the destruction as determined by an independent appraisal. The members of the Board are hereby authorized to execute and deliver, on behalf of all of the Owners, any instruments necessary or required to affect such a sale or sales and each Owner shall be obligated to execute and deliver such instruments and to perform such acts as may be necessary to affect such sale or sales.

11.4 Condemnation of Common Area. If at any time all or any portion of any Common Area, or any interest therein, shall be taken for any public or quasi-public use, under any statute, by right of eminent domain, or by private

purchase in lieu of eminent domain, the entire compensation or award in condemnation, to the extent such award is not apportioned among the Owners by court judgment or by agreement between the condemning authority and each of the affected Owners in the Development, shall be paid to the Mutual and shall be used in the manner determined by the Board, provided that such use shall not be inconsistent with the purposes of the Mutual. The Mutual shall represent the interests of all Owners in any proceedings relating to such condemnation to the extent such Owners have any interest in the Common Area.

## **ARTICLE 12**

### **AMENDMENT**

12.1 Amendment by the Members. This Declaration may be amended by the affirmative vote of Members representing at least a Majority of a Quorum of the Members. For purposes of the preceding sentence, a Quorum shall mean at least twenty-five percent (25%) of the Total Voting Power (which may be reduced to ten percent (10%) of the Total Voting Power), as set forth in Section 4.8.4 of the Bylaws. 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.

12.2 Amendment by the Board of Directors. The Board of Directors may, by a majority vote of all Directors then in office, adopt amendments to this Declaration when an amendment is needed to conform to a particular provision or provisions of the Declaration to changes in applicable California statutory law that are nondiscretionary in nature. Before entertaining a motion to approve any such amendment(s), the Board shall receive a written opinion from an attorney licensed to practice law in the State of California confirming that a change or changes in California statutory law necessitates a corresponding amendment to this Declaration to conform to the statutory requirements, which the Mutual is bound by law to follow.

## **ARTICLE 13**

### **GENERAL PROVISIONS**

13.1 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.

13.2 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.

13.3 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 Development for the benefit of the community.

13.4 Conflict Between Governing Documents. In the case of any conflict between the Articles of Incorporation, Bylaws and or Rules and this Declaration, this Declaration shall control.

13.5 Amendment to Referenced Statutes. References in this Declaration to particular statutes, including sections of the *Civil Code*, shall be deemed to include any successor statute and any amendments to existing or successor statutes.

13.6 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.

13.7 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.

13.8 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 thirty (30) year term or any ten (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. Twenty-Nine, constituting at least the requisite number of Members of said Mutual, hereby affirm, approve, and adopt the foregoing Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. Twenty-Nine, by means of the signatures of the President and

Hughes Gill Cochrane Tinetti, P.C. • 1350 Treat Boulevard, Suite 550 • Walnut Creek, California 94597 • 925-926-1200

SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF WALNUT CREEK MUTUAL NO. TWENTY-NINE

Secretary of the Mutual, duly authorized by the affirmative vote of the requisite number of Members of the Mutual; therefore the Declaration of Covenants, Conditions and Restrictions shall be recorded with the County Recorder of Contra Costa County, California.

DATED: \_\_\_\_\_

WALNUT CREEK MUTUAL  
NO. TWENTY-NINE

\_\_\_\_\_  
Richard A. Saillard, President

\_\_\_\_\_  
Isabelle Chen, Secretary

For Member Review



## ACKNOWLEDGMENT

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

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, before me, \_\_\_\_\_,  
Notary Public, personally appeared, Richard A. Saillard, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

## ACKNOWLEDGMENT

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

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)